

DEFAULT AWARD

Case Number: GAJB26408-14
 Commissioner: Mbongeni Motsoeneng
 Date of Award: 31 March 2015

In the **ARBITRATION** between

YKWUSA obo Kondwe Shedreck

(Applicant)

And

Sablan Othodox Church

(Respondent)

Applicant's representative: P Mhlanga
 Applicant's address: 412 Lobola Street
Xubeni Section
Themblisa
1632
 Telephone: 011 920 3510/071 029 0572
 Telefax: 086 615 1030/086 535 0420
 E-mail: _____

Respondent's representative: No appearance
 Respondent's address: PO Box 1078
Rivonia
2128
 Telephone: 011 234 3270
 Telefax: 011 234 3270

Details of hearing and representation

1. This is an award in the arbitration between YKWUSA obo Kondowe Shedreck (applicant) and Sabian Othodox Church (respondent).
2. The matter proceeded on 19 March 2015, at 9h00, at the offices of the CCMA, 127 Fox Street, Johannesburg.
3. The matter was scheduled for an arbitration process and at the appointed time only the applicant and his representative Prosper Mhlanga from YKWUSA a union duly registered with the registrar of labour relations was in attendance. The respondent was afforded a thirty minutes grace period as is practice within the CCMA. Despite this grace period, there was still no appearance on behalf of the respondent.

Issues to be decided

4. I am required to determine whether or not the applicant's suspension was procedurally and substantively fair.
5. In the event I find that it was unfair, the applicant sought an order uplifting the suspension.

Background to the dispute

6. The Applicant was employed by the respondent around November 2011, as a General Assistant earning R1800-00 per fortnight.
7. On 18 September 2014, he was suspended for allegedly unknown reasons.
8. On 12 November 2014, he referred a dispute to the CCMA.
9. The CCMA scheduled the matter for a con/arb process to proceed on 2 December 2014. The conciliation was attempted but could not resolve the matter as a result of the respondent not being in attendance. As a result of the con/arb process being objected to, the arbitration proceeded on a different date.

Survey of evidence and argument

Applicant's case

10. The Applicant testified that:
11. On 18 September 2014, he reported to work and commenced his duties. While busy with his work, Pastor Isailo stopped him from working at the kitchen area and advised him to proceed to work at the garden.
12. He immediately advised him that his services were suspended because he was not in possession of a passport.

13. He testified that he then reminded him that he had been working for the church for over a year without a passport and same had gone missing from the church and the church was aware of it because he reported the matter to him.
14. Pastor Isailo then insisted that he was suspended.
15. He testified that he was not paid during his suspension and had requested the respondent to assist him attain a new passport because same went missing at the church, but the respondent refused to assist him.

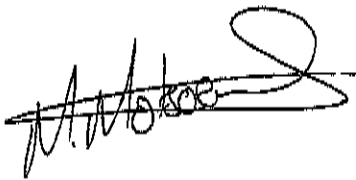
Analysis of evidence and argument

16. It is trite that in circumstances where the commissioner hears only one part of the evidence, like in circumstances of default arbitration, the commissioner must still be satisfied amongst other factors that a suspension took place.
17. In the absence of contrary evidence challenging the applicant's testimony in relation to his suspension, I am compelled to accept that the applicant had indeed been suspended.
18. It is trite that while the respondent has a prerogative on effecting suspension, the applicant must be afforded an opportunity to make representations on why he should not be suspended.
19. From the evidence presented, the respondent failed to afford the applicant an opportunity to make representation on why he should not be suspended and as such I cannot conclude that the suspension was procedurally fair.
20. The fact that an employee is suspended does not mean that the employee's labour potentials are not at the employer's disposal. The applicant did not stay at home at his behest but same was occasioned by the respondent as a result his labour potentials was at the respondent's disposal. The fact that the respondent had failed to pay the applicant when his labour potentials were at the respondent's disposal makes the suspension unfair.
21. In fact undisputed evidence was that the respondent was aware that the applicant lost his passport and had requested the respondent to facilitate that process but refused. Undisputed evidence was furthermore that same continued for a period of a year. Based on this I cannot not conclude that it was reasonable or even justifiable to suspend the applicant when he was allowed to work for such a period and when it suites the respondent simply suspend his services. While I do not intend to be seen as condoning the contravention of other laws, in this circumstances, the respondent was unfair to refuse to facilitate the attainment of the passport for a period of a year and then decide to suspend the applicant.
22. I therefore cannot conclude that the suspension had been substantively fair.
23. In the circumstances I determine that the applicant's suspension was both procedurally and substantively unfair.

24. I therefore conclude that the applicant is entitled to the relief prayed for.

Award.

25. The respondent, Sabian Othodox Church is ordered to uplift the suspension and reinstate the applicant to his previous position on the same terms and conditions that existed immediately prior to the unfair suspension.
26. The respondent is furthermore ordered to pay the applicant his back-pay to the amount of R21600-00 (Twenty One Thousand Six Hundred rand) (R1800-00 x 2 x 6) which is equivalent to six months' salary calculated at the applicant rate of remuneration for the duration of his suspension.
27. The amount referred to in paragraph 26 must be paid to Kondowe Shadreck by no later than 15 April 2015.
28. The applicant must report to work on 16 April 2015
29. I make no order as to costs.



COMMISSIONER (SIGNATURE)

NAME: Mbongeni Motsoeneng