



ARBITRATION AWARD

Case Number: **GAJB 10251-19**
Commissioner: **MOHAMED RAFFEE**
Date of Award: **03 OCTOBER 2019**

In the **ARBITRATION** between

NOHMESHNEE PILLAY

(Union/Applicant)

And

S2 LOGISTICS CC

(Respondent)

Union/Applicant's representative: NOHMESHNEE PILLAY
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Respondent's address: P.O. BOX 686
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DETAILS OF HEARING AND REPRESENTATION

1. The Applicant represented herself and the Respondent was represented by Mr. Marco Entres a SAUEO Official. This hearing was held on 25 September 2019 at CCMA House, 127 Fox Street, Johannesburg.

ISSUE IN DISPUTE

2. I am required to determine whether the dismissal of the Applicant is substantively fair.

INTRODUCTION

3. The Applicant, Nohmeshnee Pillay commenced employment on 8 May 2008 as an Import / Exports Operations Clerk earning R10 500.00 per month. The Applicant was dismissed on the 7 May 2019, has not found employment since and sought compensation as relief.
4. The Applicant was dismissed on the following charges:
 1. *Deliberately and with intent providing false information on your CV to clients and partners of S5 Logistics CC, in that the reference on page 9, is "Heidi Moodley" giving the false impression that this person forms part of S5 Logistics CC. This person is no longer a part of the company and has not been for approximately 2 years.*
 2. *Bringing the company's name into disrepute on the 29 of April 2019. You sent out your CV to the clients and partners of S2 Logistics CC, showcasing the company in a bad light.*
 3. *Misappropriation of company resources on the 29 of April 2019. You used the company internet and computer to send out your CV. This was done during working hours.*

SUBMISSION OF EVIDENCE

The Respondent's case

5. Ms. Yoraine Kruger was the chairperson of the internal hearing and a SAUEO official who testified that the Respondent's business is shipping imports and exports and has only four employees.

6. The Applicant pleaded guilty to all the charges and according to Ms. Kruger, the dismissal was fair because the trust relationship had been broken. Reference was made to factors that were considered in aggravation and that being that on the Applicant's own version, the following was mentioned:

The cv was not updated. I was working under Heidi previously. I didn't give Alfred as a reference, I was afraid if they phoned him I would get a bad reference.

This statement was signed off by the Applicant.

7. Further, that the Applicant used the Respondent's resources in looking for another job. The Applicant indicated in no uncertain terms after it was put during cross-examination, why permission was not sought. The Applicant said that it would have been a pointless exercise as permission would not have been given.
8. This goes to the core of the matter in that the dishonesty was unwittingly displayed by the Applicant as looking for another job and using the employer's resources to do so without consent, constitutes dishonesty more specifically if you know that that permission would be refused.

The Applicant's case

9. The Applicant indicated that she was hoping to find a better job and that a final written warning would have been an appropriate sanction.
10. The Applicant pleaded guilty on the basis that she thought that her job would be retained in circumstances where there was no plea bargaining involved.

ANALYSIS OF EVIDENCE AND ARGUMENTS

11. The Applicant used Heidi Moodley as a reference when Heidi Moodley left two years prior to "not updating" the curriculum vitae. However, this was done intentionally, as Alfred would not give the Applicant a favourable reference according to the Applicant's own version.

12. It was put to the Applicant: why was permission or consent to use its resources at the time the

Applicant was in search of alternative employment. The Applicant in no uncertain terms and without hesitation said that such permission would be refused.

13. Despite such knowledge, the Applicant nonetheless chose to use the Respondent's resources. Such conduct compromises the trust relationship between the parties.

14. Taking the conspectus of the above, the probabilities favour the version of the Respondent more than that of the Applicant.

AWARD

1. The dismissal of the Applicant is substantively fair.

Signature: _____

Commissioner: **MOHAMED RAFFEE**

Sector: **JOHANNESBURG**

APPROVED