



Arbitration Award

Case Number: GAJB26262-22

Commissioner: Themba Ceda

Date of Award: 13-Mar-2023

In the **ARBITRATION** between

Tshifhiwa Sihadi

(Union/Applicant)

and

Tsu Protection Services

(Respondent)

APPROVED

DETAILS OF HEARING AND REPRESENTATION

1. The Arbitration proceedings took place in terms of section 191 (5) (a) of the Labour Relations Act 66 of 1995 (the LRA) on 27 February 2023 at 127 CCMA House at Fox Street in Johannesburg. The applicant represented himself. The respondent was represented by Fentse Mpye who was an official of an employer's organization called SAU.
2. Aubrey Mokansi was an interpreter and the proceedings were recorded digitally.

ISSUE TO BE DECIDED

3. I am required to determine whether or not the dismissal of the applicant was substantively fair and, if found to be unfair, to grant the necessary relief.

BACKGROUND TO THE ISSUE

4. The Applicant testified under oath that he has worked for the respondent as an area supervisor. At the time of dismissal on the 24th of November 2022 he was paid R9 500 per month.
5. The respondent is a security company providing security services to its clients.
6. The applicant was seeking compensation.

SURVEY OF EVIDENCE AND ARGUMENT

RESPONDENT'S CASE

Sidwell Ndanduleni: Area Manager

7. He testified that the applicant was fairly dismissed after he was seen by the CEO transporting restaurant's staff employees using the respondent's vehicle during working hours.
8. Thereafter the car tracker was checked and it confirmed that he had been collecting the restaurant's employees using the respondent's vehicle.
9. The applicant as a supervisor was aware of the rule that prohibited the use of company's cars for private benefit without permission.
10. The applicant claimed that he was fetching his wife, but he did not seek permission before doing it.
11. Moreover, he stole company time because he was transporting these employees during working hours.
12. The applicant was dishonest by using the respondent's vehicle without permission and he was aware of the rules and procedures.
13. In 2018 the respondent sent a memorandum to all its employees informing them not to use company's vehicles for private and personal benefit.

APPLICANT'S EVIDENCE

Tshifhiwa Sihadi: Area supervisor

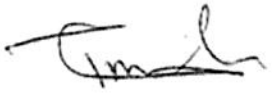
14. He testified that his dismissal was harsh because he was helping his family by transporting his wife. He was aware that he used the respondent's vehicle without permission.
15. According to him, he used the respondent's vehicle over the weekend. He did not plan it because it happened unexpectedly. The respondent found out about the use of the vehicle before he could inform them.

ANALYSIS OF EVIDENCE AND ARGUMENTS

16. I am called upon to determine whether the dismissal of the applicant was fair in relation to three charges brought against him. First charge pertained to unauthorized use of the employer's property in that on 4 November 2022 he used a company vehicle to pick up restaurant's staff members at Morningside shopping mall without permission from management. Second charge relates to dereliction of duty in that on 4 November 2022 he failed to perform his duties when he was seen picking up restaurant staff at the Morningside shopping mall and taking them Desmond street in Johannesburg. Thirdly, dishonesty in that on 4 November 2022 he failed to enter the trip into the vehicle trip log as he was required to do.
17. The respondent's only witness, Sidwell Ndanduleni, an area manager, testified that the applicant was caught using the respondent's vehicle transporting restaurant's employees during working hours without permission. He was dishonest because he did not enter the trip into the vehicle trip log. The applicant was an area supervisor and he was aware of the respondent's policies and procedures.
18. The applicant testified that he committed the misconduct and he was aware of the respondent's policies and procedures. He was also aware that he used the company's vehicle without permission. The applicant argued that the respondent was harsh and he should not have been dismissed because he used the vehicle over the weekend.
19. The applicant in this regard admitted that he contravened a rule that prohibited the unauthorized use company's vehicles without permission. This rule was valid and reasonable because it protected the respondent from the abuse of its properties or vehicles by its employees.
20. The applicant was aware of this rule because he testified that he used the vehicle without first seeking permission and he said the respondent found out before he could inform them. But his excuse, which I deem unacceptable and lousy was that he used the car over the weekend. The fact he used the vehicle over the weekend did not detract from the fact that he did not have permission and he knew that there was a rule that prohibited such private and personal use.
21. In the light of the afore-mentioned I find that the respondent proved, on a balance of probabilities that the applicant committed the alleged misconduct and I also find that dismissal as a sanction meted out against the applicant was appropriate. The applicant was not remorseful because he sought to use a lame excuse that he used the vehicle over the weekend. Worse off, the applicant was an area supervisor who was supposed to lead by example by being the custodian of the respondent's policies and procedures. He was required to ensure that his subordinates follow and obey the rules yet he was the one taking advantage of his position by breaching these policies and standard rules.
22. Hence I deem the following award just and equitable in the circumstances.

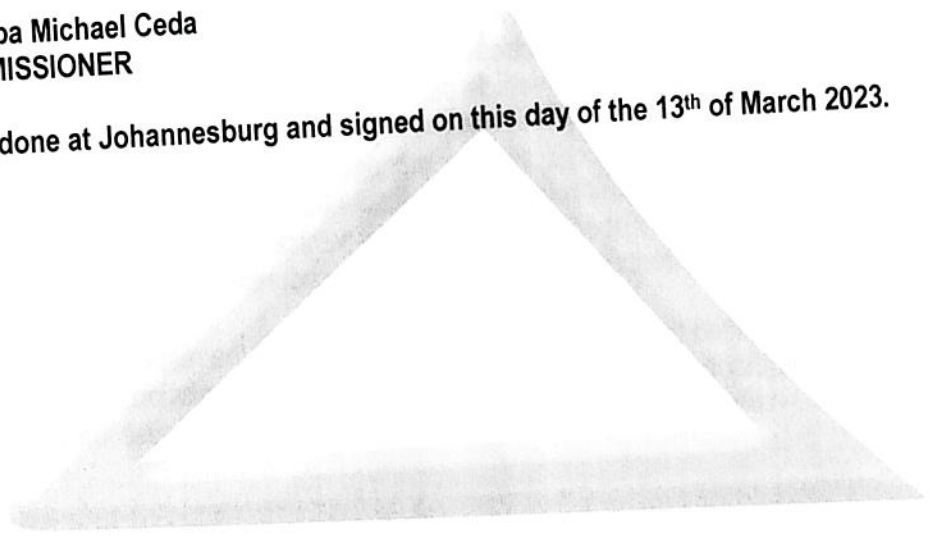
AWARD

- 23. The dismissal of the applicant, Tshifhiwa Sihadi, by the respondent, Tsu Protection Services, was substantively fair.
- 24. The matter is dismissed.



**Themba Michael Ceda
COMMISSIONER**

Thus done at Johannesburg and signed on this day of the 13th of March 2023.



APPROVED