

CHW Reinstated After Unfair Dismissal

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On 10 April 2020, Thapelo Phillip Kotsia was charged and dismissed for fraud after issuing a sick note to a patient without authority from the Department of Health. A day before his dismissal, Kotsia received a letter informing him that his services as Lay Counsellor at Ya-Rona Clinic in Randfontein (West of Johannesburg) were being terminated with immediate effect.

The letter indicated that the termination was based on misconduct relating to fraudulent activities which Kotsia allegedly carried out on 30 January 2019, over a year ago. According to the letter, Kotsia fraudulently issued a sick note to a patient using the DoH's stamp and stationery without authorisation. In his capacity as Lay Counsellor, Kotsia does not have permission and authority to write sick notes.

Kotsia was not given any opportunity to defend his case and the charges made against him. The management at Ya-Rona Clinic refused him the opportunity to appeal the allegations. Kotsia then requested legal assistance with his case from the Gauteng Community Health Care Forum, and its support organisation, Khanya College.

Khanya collected the statement and the matter was taken to the Public Health and Social Development Sectorial Bargaining Council (PHSDSBC) in Centurion, south of Pretoria. On 21 August 2020, the arbitration was heard at the SG Lourens Nursing College in Pretoria under the auspices of the Public Health and Social Development Sectorial Bargaining Council (PHSDSBC). The dismissal case was challenged as being "procedurally and substantively unfair".

The DoH was found not to have followed the guidelines as set in terms of Schedule 8 of the Labour Relation Act. Therefore PHSDSBC found the dismissal procedurally unfair. With regards to the substantive unfairness, it was Kotsia's testimony that he had never issued a sick note on the health department's stationery because he knew that he was not permitted to do so because he is not a professional nurse or doctor.

Kotsia argued that he was wrongfully accused by management headed by Julia Mafethe, a Facility Manager. According to Kotsia and his statement, Mafethe is the one who gave a sick note to a person who was highly intoxicated. According to Kotsia, Mafethe "disliked him", hence the unfair dismissal and intolerable working conditions.

"It was my case and my manager on previous occasions informed other staff members that she disliked me and said that I would not work freely as she was the person in charge," argued Kotsia.

"In terms of section 185 of the Labour Relations Act, 66 of 1995 (as amended) states that every employee has the right not to be unfairly dismissed. Section 192 of the Act provides that the employee carries the onus of providing the existence of a dismissal, whilst the employer must prove that it was fair," Commissioner Tanya Roberts-Kruger stated.

Roberts-Kruger was aware that Kotsia's version has not been tested, but she had no reason to doubt his credibility. Roberts-Kruger consequently accepted Kotsia's evidence and found that Kotsia had been unfairly dismissed. Roberts-Kruger ruled in favour of Kotsia and ordered that he be reinstated.

“The Department of Health and Ya-Rona Clinic are ordered to reinstate him, with effect 14 September 2020.” The health department was also ordered to back-pay Kotsia from his date of dismissal (10 April 2019). The money has to be paid on or before 30 September 2020.

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