

Arbitration Award Rendered

Case Number: KNDB13578-12
 Commissioner: Bess Pillmer
 Date of Award: 12-May-2013

In the **ARBITRATION** between

Kesavel Muthusamy Naicker
 (Union/Applicant)

and

University of Kwazulu-Natal
 (Respondent)

Union/Employee's representative:
 Union/Applicant's address:

APPROVED
c/o Macgregor Erasmus
114 Bulwer Road
Glenwood
Durban

Telephone: 031 201 8955
 Telefax: 031 201 8966
 E-mail: debble@meattorneys.co.za

Employer's representative:
 Respondent's address:

M Maeso
c/o Shepstone & Whyllie
24 Riechfond Circle
Ridgeside Office Park ; Umhlanga Roacks

Telephone: (031) 575700
 Telefax: (031) 5757200/2602824
 E-mail: pllayc11@ukzn.ac.za

Details of hearing and representation

[1.1] The arbitration was held at the CCMA Durban and ran for four days on 19 and 20 February 2013 and on 25 and 26 April 2013.

[1.2] Both parties were legally represented by their respective attorneys. Bruce Macgregor of Macgregor Erasmus represented the Applicant. Michael Maeso of Shepstone & Whyllie represented the Respondent.

Issues to be decided

[2.1] The Applicant was dismissed from his employment by the Respondent and so the issue to be decided in this arbitration is whether the dismissal was substantively and procedurally unfair and, more specifically on the given facts, whether the Applicant made false declarations in applications he submitted seeking to be employed by the Respondent and, if he did, whether dismissal was the fair sanction.

Background to the issue

[3.1] The facts set out below were agreed or not disputed.

[3.1.1] Respondent employed Applicant in a senior managerial position on 2 January 2012 as Manager Operations, School of Education. It dismissed him on 24 October 2012 on the grounds of misconduct following a disciplinary hearing. The charges related to the veracity of the information contained in the job applications he had submitted to the Respondent when he applied for employment.

[3.1.2] The Applicant was found guilty on the following charges:

"Charge 1 – Misconduct dishonesty: made false declaration on your application form for three posts within UKZN:

- 1 Manager: School Operations, College of Humanities,
- 2 Chief Executive Officer – UKZN Extended Learning, ...
- 3 (The Respondent did not persist with this allegation).

when you misrepresented that you had not been dismissed from a previous employer; whereas in fact you were dismissed from SASSA;

Charge 2 – Misconduct/dishonesty: misrepresented that you resigned from SASSA during April 2009 whereas in fact you were dismissed from SASSA on 21 April 2009;

Charge 3 – Misconduct/dishonesty: made false declaration on your application when you misrepresented who your line manager was at SASSA".

[3.1.3] During February 2007 Applicant was employed by the South African Social Security Agency, the government agency responsible for pensions and government grants (generally referred to as SASSA). He was dismissed by SASSA for misconduct following a disciplinary hearing during July 2009. Applicant lodged an appeal against the decision and in terms of the Collective Agreement in force at SASSA the dismissal was stayed pending the outcome of the appeal. Applicant remained on suspension on full salary pending the appeal. The relevant section in the Collective Agreement states the following:

"The employer shall not implement the sanction during an appeal by the employee.

.....Where the Appeal Authority decides to reduce the sanction or to confirm the outcome of the disciplinary proceedings (e.g. dismissal cases), the sanctions will be implemented by the employer from a current date."

[3.1.4] The outcome of the appeal, which upheld the dismissal, was issued some eighteen months later, on 7 December 2011.

[3.1.5] During the two years that he remained on suspension Applicant sought alternative employment securing employment at the Walter Sisulu University in the Eastern Cape. He signed a three year fixed term contract with that institution. He thus earned two salaries during that eighteen-month period which came to an end when SASSA upheld his dismissal, on 7 December 2011.

[3.1.6] During the period Applicant was on suspension, his wife, Selvum Yettian, who lived in Durban and worked at the University of Kwazulu-Natal, used her computer to send job

applications in the name of the Applicant to the Respondent, which applied for posts that were advertised. She said that she did this on her own volition, because she wanted the Applicant to be employed in Durban. Respondent accepted that she sent off the applications but disputed whether she did it entirely on her own volition, without guidance from the Applicant.

[3.1.7] During 2010 Applicant and his wife, became involved in a bitter and acrimonious divorce. Yettian applied for and was granted a domestic violence Protection Order against Applicant, preventing Applicant from approaching her and from entering her work place because of allegations of assault, harassment and abuse.

[3.1.8] Yettian nevertheless continued her endeavours to find employment for Applicant closer to home, and said she submitted applications for employment to the University. For some of the period in question Applicant's banking statements were sent to the matrimonial home and Yettian accepted that she had read these and knew that Applicant was paid a salary by both SASSA and the Walter Sisulu University.

[3.1.9] A representative of the University, Nonhlanhla Kunene, contacted Applicant regarding the applications sent to her by Yettian in the name of the Applicant and interviews were arranged with the Applicant. The interview panel did not raise any questions regarding the application for employment. The Applicant contended he never saw the applications for employment. He said he had no knowledge of the content of the applications, or of any erroneous information that Yettian may have included in the applications. The Respondent disputed this, and argued that the probabilities were that Applicant must have had knowledge of the content of the applications and must be taken to have known.

[3.1.10] The University offered Applicant the position of School Manager, School of Social Sciences. After negotiating a salary, Applicant accepted the position on 7 November 2011, a month before he was notified that his dismissal at SASSA had been upheld. Applicant commenced his employment at the University on 2 January 2012. This was at a time after he knew that he had been dismissed having been found guilty on charges of dishonesty and fraud by SASSA.

[3.1.11] Applicant referred his SASSA dismissal to the CCMA, alleging it was unfair. An arbitration hearing was held where SASSA was in default of appearance and Applicant was awarded R400 000.00 compensation by default. SASSA applied to rescind the default award but its application was refused. The matter is presently on review at the Labour Court. SASSA is also suing Applicant for the return of the salary it paid him while he was on suspension, and earning a salary from the Walter Sisulu University, as in terms of its policy Applicant must obtain written authority from SASSA before obtaining remunerative work outside of SASSA.

[3.1.12] Applicant never disclosed to the University that he had been dismissed by SASSA, either before or after the outcome of the appeal. Nor did he inform the Respondent that he referred the dismissal dispute to the CCMA.

[3.1.13] Applicant was not suspended by the Respondent during the investigation of his actions or during the disciplinary proceedings. During this period he was transferred to the Edgewood College of Education, (an arrangement that had been previously decided upon) where his responsibilities were greater than those on the Westville campus, where he had worked prior to the transfer. The investigation took place during April 2012 and May 2012 and was completed during June 2012. Applicant was dismissed on 24 October 2012, after he was found guilty at a disciplinary hearing of the charges.

[3.2] Respondent's case was that that the Applicant had been dishonest in the way he answered the questions on the application form. The first being whether he had been dismissed by a previous manager and the second, who his line manager/referee was. It contended Applicant had suppressed important material information which should have been disclosed to the potential employer.

[3.3] The Applicant's case was that he had not been dishonest. He had not been dismissed as the outcome of his appeal was not known at the time of the interview, he said, and there was no duty upon him to notify the University of the dismissal once he became aware of it after the interview. He claimed that any mistakes on the application were not his fault, but had been made by his wife who had made the application on his behalf, and without consulting him. In particular, he said he did not know why his wife had said he had resigned from SASSA during 2009, when he had not. If there were errors in

the application for employment he claimed that he was not responsible for having made them.

[3.4] During opening statements Mr Macgregor indicated that the Applicant would contend that the dismissal was also procedurally unfair. He complained that there was a problem with the charge, that the University has a pro forma application form, and the CV is not part of that. Mr Macgregor also said that the chairperson was biased in that he overstepped the mark. The Applicant appeared to have abandoned these issues as the parties did not deal with these aspects in evidence, or argument. I deal with them no further in this award.

[3.5] Mr Macgregor also complained that the Respondent had not been consistent in its application of the sanction of dismissal, and had not dismissed Sibusiso Yani, who had not disclosed at an interview that he had shot a lecturer at an overseas institution. He submitted that the University had not taken disciplinary action in this respect.

Respondent's evidence

[4] Respondent led the evidence of three witnesses, Nonhlanhla Kunene, Human Resource Manager: College of Humanities, Avril Joan Bharuth Sahadew, a Forensic Audit Specialist, Ramesh Sivnarain, Head Forensic Services within the Corporate Government Division and Dr Mojaki Simon Mosia, Executive Director: Human Resources.

[4.1] Kunene testified as follows

[4.1.1] Kunene was in charge of the recruitment team and sat on the interviewing panel. Applicant applied for the position of Operations Manager, which was a top position in the University hierarchy. The University of KwaZulu-Natal was divided into a number of schools. Within each school the Operations Manager worked closely with the Dean of the College and they were responsible for the running of the School, the finance and staff administration and guidance. The structure being new, a number of interviews had to be conducted, and there were tight schedules in place. Kunene explained that because of this the checks usually done on CVs were not as thorough as usual. Checks were usually only done on request by the panel, if it found inconsistencies in the application, but essentially the honesty of the Applicant was relied upon.

[4.1.2] Kunene prepared the documents for the interviewing panel. She shortlisted the applicants, who were then invited to an interview. The members of the panel met the candidates, and questioned them on their skills, and asked for clarification, if need be, on their CVs. The emphasis in the interview was not so much on the history of the candidates, but rather on whether they had the ability to do the work.

[4.1.3] Kunene explained that if someone had disciplinary issues it would not automatically exclude them from employment. The panel would consider the circumstances, deal with the matter according to the merits, and ask Legal Services for direction if necessary. In the matter raised by the Applicant of Sibusiso Yani it was brought to the attention of the University that he had not made full disclosure. The University examined the circumstances of that particular matter, as it did with Naicker, and then decided on which process to follow. She was not sure what had been decided as far as Yani was concerned.

[4.1.4] Kunene explained that Applicant and his line manager had issues and it was agreed to transfer Applicant from the School of Social Sciences on 1 May 2012 to the Edgewood College of Education. Kunene was not aware that the Applicant was under investigation when the transfer was recommended. She would only have known about the investigation on receipt of the forensic report in June 2012.

[4.2] Sahadew said when she examined the relevant documents she found irregularities between what Applicant said he was paid at his previous employment, and what he was actually paid. She also complained that in the application the Applicant had not properly distinguished between his line manager and referee. He had also given incorrect telephone numbers, which confused who was his referee and line manager.

[4.3.1] Sivnarain said he had received an anonymous tip off. He followed up on this and initiated an investigation. In doing this he interviewed Applicant and his wife. The point of the interview was to allow Applicant to respond to the allegations. He printed the interview questions and answers document, and Applicant amended parts of the document, but he then refused to sign the amended statement saying that he wanted to think about it first. Applicant never returned to sign the document. Applicant had informed Sivnarain that he runs a private business and said that the lady who works for him in the office probably completed the application for him.

[4.3.2] Sivnarain said that Yettian indicated to him that she had completed the CV on Applicant's instructions, but said that she was not willing to write a statement or testify either on behalf of the University or the Applicant. Sivnarain was surprised to hear she was testifying at the arbitration.

[4.4.1] Mosia explained the purpose of the question "have you been dismissed" on the University application form is to disclose the information to the University so that it could take into consideration the reason for the dismissal, and make an informed decision whether to employ the candidate or not. Mosia explained that Applicant's non-disclosure of his circumstances when applying for the third highest position in the College destroyed the trust relationship between him and the University.

[4.4.2] Mosia agreed that Applicant had not been suspended prior to the disciplinary hearing. There had been an attempt to suspend him, but this had been challenged and there were procedural difficulties. The University wanted to be seen to have integrity and to take the correct and fair actions. It was decided to allow him to continue doing his job pending the inquiry. Because of various issues and non-availability of parties (including the Applicant) the disciplinary process took longer than it was anticipated it would take.

Applicant's evidence

[5] In addition to his own evidence Applicant led the evidence of two witnesses, Selvam Yettian, his ex wife and Kishore Gorbada, Director Professional Services: College of Humanities.

[5.1.1] Applicant said that his ex wife often applied for employment for him without his knowledge. He had been surprised when he received a telephone call from the University in respect of applications made to it by his wife. He asked for the job adverts to be sent to him, which was done. Applicant emphasised that as he had not completed or submitted the applications, that it was not his fault that the applications had errors and contended that he could not be held responsible, if there were mistakes in the content. The first sight he had of the application form that had been completed was at the disciplinary hearing.

[5.1.2] The Applicant argued that he had not misled the University when he had concealed the finding of dismissal. He said his understanding of the collective agreement between SASSA and organized labour was that an employee, he, in this matter, was only effectively

dismissed once he received the Appeal outcome, and because of that there was no obligation on him to reveal that he had been dismissed. He was only informed that the dismissal was upheld after the Respondent had offered him a position, and there was no obligation on him to disclose the dismissal at that stage either. In any event he was disputing the fairness of the dismissal, which was presently before the Labour Court.

[5.1.3] Applicant referred any questions regarding the content of the applications to his wife, and said he had no idea why Yettian had indicated that he had resigned from SASSA at the end of 2009 for better prospects. He had not explicitly told Yettian that he had been dismissed, but there were months he had spent at home, but he had been pre-occupied with other business as well. His bank statements were sent to the house and she should have seen that he still received salaries both from SASSA and the Walter Sisulu University. He had moved out of the matrimonial home during 2010, and had little contact with his wife after that.

[5.1.4] Applicant explained although he had corrected the initial statement prepared by Sivnarain he had not signed it because he had disagreed with the content.

[5.2.1] Yettian explained that without discussion with her ex-husband she regularly applied for employment positions on his behalf to secure better employment for him, which would assist her and their two children. She collated the information she inserted into the applications from documents Applicant had left at home, or that were on the home computer, and had made certain assumptions, which had led to her inserting on occasion incorrect information.

[5.2.2] Yettian explained that she did not know that Applicant had been suspended by SASSA even though she and Applicant still shared the same house, and she had access to his bank statements, showing that he was working at two places at the same time. She thought that he was working for SASSA and doing consultancy work at the Walter Sisulu University.

[5.2.3] When questioned during cross-examination why she had inserted that Applicant had resigned from SASSA at the end of 2009 for better prospects, she commented that perhaps in retrospect she had used the wrong word. She also stated when asked why if she had no contact with the Applicant how she came to insert details that she should not

have known. Yeltian said that Applicant had given an envelope containing information to her daughter to give to her, which she had inserted in the CV.

[5.3] Gorbadan testified that Applicant held a responsible position at the University, that he reported to him indirectly and that he had no reason not to trust him.

Argument

[6] Both Mr Macgregor and Mr Maeso submitted written argument. I briefly summarise their arguments below.

Respondent's argument

[6.1.1] Mr Maeso submitted that Applicant was essentially dismissed for making a false declaration in his application for employment with the Respondent. Mr Maeso argued that notwithstanding the specific questions asked in the application form, the Applicant was under a general obligation to disclose to the Respondent that:

[a] At the time of the interview he had been suspended from SASSA in the face of serious charges of misconduct which included allegations of dishonesty and conducting himself in an improper and unbecoming manner;

[b] At the time of his interview a decision to dismiss had been made by an enquiry constituted by SASSA;

[c] That when he started work at the Respondent he knew that he had been dismissed by SASSA for serious acts of misconduct and that the dismissal had been upheld on appeal.

[6.1.2] Mr Maeso argued that a person being interviewed for a senior post within the University should not be allowed to conceal material facts necessary for those interviewing him to be able to properly assess his suitability for the vacant post.

[6.1.3] Mr Maeso submitted that the Applicant had an obligation to disclose the events and his not doing so is conduct that irretrievably breaks down the employment relationship. Mr Maeso said that if Applicant was a man of integrity, as he claimed he was, he would have

disclosed to his prospective employer that a finding of dishonesty had been made against him, and that he was on suspension.

[6.1.4] Mr Maeso argued that Applicant made his wife a scapegoat for his misconduct, and she supported his version because she was afraid of him. She had successfully obtained a protection order against him from the courts.

[6.1.5] Mr Maeso referred to *MEC for Education Gauteng v Mgijima & Others [2011] 3 BLLR 253* where the court found that there was an obligation to inform an interview panel of a suspension. The court found as aggravating factors that Mgijima had applied for a senior post that required "unimpeachable honesty and integrity". Mr Maeso contended it was impossible for the Respondent to properly apply its mind to Applicant's suitability for a senior position in the University without the disclosure of his suspension and charges. Mr Maeso submitted that the circumstances in *Eskom Holdings v Fipaza & Others (2013) 34 ILJ 549 (LAC)* were different to this matter.

[6.1.6] Mr Maeso submitted that the evidence established that it was probable that Applicant had been party to the preparation of the CV and applications for employment for the following reasons:

[6.1.6.1] The divorce with Yettian was acrimonious and she had obtained a protection order that *inter alia* preventing Applicant from approaching her, from entering her work place because of allegations of assault, harassment and abuse. In these circumstances she could not have wanted Applicant to live nearby, and must have been pressurised by him to say so.

[6.1.6.2] The information contained in the application and CV was up to date and too detailed for Yettian to have known and inserted without assistance from the Applicant.

[6.1.6.3] That the statement taken by Sivnarain was correct, that Applicant gave the information to Yettian to use in applications, which is consistent with Yettian's evidence that Applicant left an envelope with information for her to use in the applications. This indicates the probability that Applicant gave her the information that he had resigned from SASSA to deliberately mislead a prospective employer.

[6.1.6.4] The reason for the mix up of telephone numbers in the CV was to direct a prospective employee to contact a colleague rather than his line manager who would divulge the true position.

[6.1.7] Dealing with the question of inconsistency and the incident concerning Yani Mr Maeso submitted that the Applicant's complaint was vague and not proven and does not constitute grounds for inconsistency. Kunene was unsure how the matter was concluded but explained that prior acts of misconduct do not automatically bar the person from employment. Kunene did confirm that Yani's conduct became known to the Respondent after he was employed and he had been given an opportunity to give his version.

[6.1.8] Mr Maeso made the point that the Respondent had attempted to suspend the Applicant but because the Dean had not followed proper procedures, and the Applicant had challenged the suspension, the Respondent decided to set aside the suspension, and proceed with the disciplinary hearing as speedily as possible. Unfortunately the process took six months because of the unavailability of parties, including the Applicant. Mr Maeso submitted that in the circumstances, because the Applicant was not suspended, did not mean that the trust relationship had not been irreparably destroyed.

[6.1.9] Mr Maeso submitted that the employment relationship with the Applicant is irretrievably destroyed and the Respondent had fair reason to dismiss the Applicant. He asked that the application be dismissed.

Applicant's argument

[6.2.1] Macgregor argued that the Respondent did not deal with Applicant's previous employment, and who might have been his line manager or referee during the Applicant's interview for a position at the University. In these circumstances, he said, the Respondent could only rely on the documentation, and the content of the application and CV, to establish that Applicant was dishonest and guilty of misconduct. Mr Macgregor contended that the Respondent had failed in these circumstances to establish its case.

[6.2.2] Mr Macgregor submitted that as the Applicant had not completed and submitted the application form and CV he could not be held responsible for the correctness of its content. In any event, Mr Macgregor argued, the application form and questions did not cover the

peculiarities of Applicant's situation, where his dismissal had been suspended pending the outcome of an appeal, and he was only effectively dismissed when he received the appeal outcome on 7 December 2011. In these circumstances Yettian was not mistaken when she said Applicant had not been dismissed. Applicant had not been aware at the time that Yettian had said he resigned from SASSA during 2009.

[6.2.3] Mr Macgregor submitted that once Applicant was dismissed, which was after being offered employment by the Respondent, there was no obligation on him to inform the Respondent of that dismissal. He in any event had not been charged for that, and had also been exonerated of guilt at the CCMA in a default award, which was presently on review at the Labour Court. Respondent was at liberty at any time to check Applicant's references with SASSA and the Walter Sisulu University.

[6.2.4] Mr Macgregor argued that in respect of charge 3 the form is ambiguous and Applicant cannot be found guilty of charge 3 as the form permits either a referee or a line manager to be stated.

[6.2.5] Mr Macgregor submitted that Applicant's evidence established clearly that he was unhappy with the content of the statement written taken by Sivnarain that he stopped correcting it, and did not sign it.

[6.2.6] Mr Macgregor submitted that the Applicant's testimony was clear and unambiguous. Yettian was the person who had made a mistake, and captured incorrect information. She had in any event only made one serious mistake, and that was to say that Applicant had resigned from SASSA. Mr Macgregor argued that both Applicant and Yettian were credible witness, and their version must be accepted.

[6.2.7] Mr Macgregor argued that the University did not view the allegations against the Applicant in a serious light, as it never suspended him. Applicant was transferred to the Edgewood College of Education, where he was given even more responsibility. He continued to work for six months before he was dismissed. Mr Macgregor submitted that this action established that the employment relationship had not been destroyed.

[6.2.8] Mr Macgregor referred to *Eskom Holdings v Fipaza & Others (2013) 34 ILJ 549 (LAC)* that indicated that there is no duty on a job applicant arising out of contract or law to

disclose a dismissal where this information was not within the exclusive knowledge of a job applicant. The Applicant in the Eskom Holding's case had not mentioned in her CV or her interview her previous dismissal from Eskom, i.e. the same employer to which she was reapplying for employment following an earlier dismissal. The Judge stated:

"In other words, it is generally not a requirement that a CV should provide reasons for leaving previous employment, it is the sort of document whereby a job seeker aims to advertise or market himself or herself concisely and succinctly to potential prospective employers. In short, it is a personal advertisement for the purposes of seeking employment. On this simple definition it would appear that the information provided by Fipaza in her CV was more than adequate for this purpose."

[6.2.9] Mr Macgregor argued that the Respondent was inconsistent in its application of the sanction of dismissal, and that another employee, Sibusiso Yani, had not disclosed that he had shot someone. Disciplinary action had not been taken against him.

[6.2.10] Mr Macgregor argued that in the circumstances the Applicant was not guilty of the alleged misconduct and furthermore the trust relationship cannot be said to have broken down seeing that the Applicant continued to work at a very high level of trust and was never suspended.

[6.2.11] Mr Macgregor submitted that in the circumstances the dismissal was unfair as the Respondent had not established that the Applicant was guilty of dishonesty and misconduct. He asked that the Applicant be reinstated.

Motivation and analysis of evidence and argument

[7.1] As an applicant for a senior post at a University where quite clearly one would have been shortlisted on the basis, *inter alia*, of the contents of the CV submitted, it does no lie in the mouth of such person to claim that someone other than him put false information in the CV. He is responsible for the CV submitted with the application form. Yet that is exactly the effect of the Applicant's case in this matter.

[7.2] In Applicant's CV it is stated that his employment with SASSA terminated because he was seeking better prospects. That statement is blatantly untrue. The correct factual situation was that he was in a dispute regarding what he alleged was his unfair dismissal

which was subject to an appeal. Applicant was accordingly under a cloud of suspicion, under suspension and faced the prospect of his dismissal for misconduct being upheld on appeal.

[7.3] It could be argued that he was under a duty to provide a full and truthful statement with regard to his employment because he must have been aware that it was a material factor. (See *Mgijima*) However it can also be argued that he had no obligation in these circumstances to deal with the dispute he had with SASSA because it was as yet unresolved, a view that was rejected in *Mgijima* but which perhaps gets some support in the *Eskom Holdings* case.

[7.4] In my view in the circumstances of this case, having regard to the seniority of the position of the Applicant, he was under a duty to properly set out the situation at SASSA regarding his suspension and continued employment pending an appeal against his dismissal. His failure to make that disclosure in my view constituted serious misconduct that would warrant dismissal.

[7.5] This case deals not only with a failure to provide material information, but also with the provision of false information. What is clear is that Applicant was not allowed to lie in his CV in material respects and, having regard to what was happening at SASSA at the time, making the positive averment that his employment had terminated, and that he had left for better prospects is untruthful, and misleading.

[7.6] The Applicant's answer to exculpate himself from what is prima facie fraudulent was to blame his wife for the lie on the basis that he claimed to have no knowledge of what was in the CV she had submitted on his behalf. I agree with Mr Maeso, and his submissions that the Applicant had to know what was in the CV and his evidence to the contrary is most improbable and should be rejected as untrue, but even if it is true his failure to check the CV which contained a basic blatant misleading untruth, is inexcusable. Yettian could give no plausible explanation for why she said he had resigned, when she knew he had not, and was still receiving a salary from SASSA. The bottom line was that the Respondent was misled by the untruthful CV for which the Applicant was responsible. This in itself is sufficient to destroy the employment relationship and constitutes a serious act of misconduct, which would in itself justify dismissal.

[7.7] Applicant was also charged with providing misleading information on the application form in regard to the person at SASSA with whom the Respondent should deal if it wanted to make any follow up enquiries and check the information provided. Telephone numbers were wrong, and the referee appeared to have the telephone number of the line manager. While this may have been Applicant's intention the form itself is confusing, and it was not shown that the person who was named as a referee had agreed to act in collusion with the Applicant to provide false information if contacted, which is really the substance of the charge. I do not consider this charge has been proven.

[7.8] It was the Applicant's case that because he was not suspended and was transferred to a responsible position at the Edgewood College of Education that the employment relationship had not been shown to have broken down. This argument is not logical because it assumes that before he is found guilty of misconduct he must be treated as if he is guilty, and that clearly is not our law. It is only once that he is found to have submitted a dishonestly misleading CV that it can be said on the basis of that finding that the employment relationship had broken down because of the seriousness of the misconduct. Once that finding was made, he was dismissed. In any event Kunene and Mosia said that it had been Respondent's intention to suspend Applicant, but because proper procedures had not been followed, it had not done so.

[7.9] The Applicant was invited to attend an interview by a University Panel for a prominent and very senior position at the University. He knew that this was on the basis of documents submitted on his behalf or by him and he had a duty to ensure that the documents submitted to the University were true and correct. What stands out from the documentation is that it records that Applicant resigned from his employment at SASSA to pursue better prospects, which is blatantly untrue. The obvious reason to suppress what had happened at SASSA was that Applicant and Yettian must have realised that if the circumstances were explained to the University, the probability was that Applicant would not be offered the position. They had the intention to mislead the university into employing him by providing it with false information and not providing important material information.

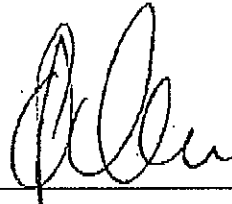
[7.10] Mr Macgregor argued that the Respondent was inconsistent in its application of sanction. The evidence did not establish that this was the case. The example mentioned was based on hearsay evidence and on what was presented was not similar to Applicant's circumstances. Kunene and Mosia explained that the University would explore each

matter, and deal with it according to its own circumstances and that this was done in both cases. I find that inconsistency has not been established.

[7.11] In the circumstances I accordingly find that the dismissal was fair.

Award

[8] The application is dismissed.



Commissioner Bess Pillemer

