

STANWELL J CHODOKUFA

vs

THE NATIONAL EMPLOYMENT COUNCIL FOR THE CATERING INDUSTRY

HIGH COURT OF ZIMBABWE

HARARE, 8 May 2002

Mr *Pundu* for the applicant.

Miss *B Nagar* for the respondent.

BLACKIE J: The respondent (the NIC) employed the applicant (Chodokufa) as its chief accountant. On 21<sup>st</sup> February 2001, the secretary general of the NIC advised Chodokufa that the NIC had determined that his services were to be terminated and that he was to be suspended without pay and benefits with effect from 1<sup>st</sup> March, pending an application to be made to the Ministry of Labour, Manpower and Social Welfare (the Ministry) for his dismissal. That application to the Ministry is still pending.

In this application, Chodokufa challenges the legality of his suspension and claims payment of his salary and benefits until the application to the Ministry is finalised. The NIC denies that Chodofuka's suspension is unlawful and cross applies for Chodofuka to be directed to return to it a Mazda motor vehicle and a cell phone, which had been given to him as part of his benefits.

Chodofuka submits that his suspension is unlawful for three reasons. Firstly, he says, the secretary general required the authority of the NIC to suspend an employee of the NIC. No such authority has been given to the secretary general to suspend him. Secondly, and alternatively, if the secretary general was duly authorised to suspend him, then he was already on suspension at the time that the secretary general suspended him and it is not lawfully possible to suspend an employee who is already on suspension.

Finally, Chodofuka submits his suspension is unlawful because, contrary to the provisions of the Labour Relations Act and regulations, which require an application to the Ministry for dismissal to follow a suspension 'forthwith', the NIC delayed 5 months from the date of his suspension before submitting an application for his dismissal.

The background and relevant facts of this case are as follows. In August 2000, the NIC resolved to increase the salaries of its management and employees with effect from 1<sup>st</sup> September by 10% and 15% respectively. However, it also resolved that Codofuka was not to receive that increase because 'his performance was considered to be unsatisfactory'. On 22<sup>nd</sup> September, the secretary general advised Chodokufa that the Finance Committee was looking into the activities of the Accounts Department and that he was to go on paid leave of absence until the matter was finalised. In November 2000, Chodofuka was advised that he would not be paid the annual bonus that was to be paid to other members of management and employees. Finally, in February 2001 Chodofuka received the letter that told him that he was suspended and that application was to be made to the Ministry for his dismissal. It is common cause that the NIC's application for Chodofuka's dismissal was made at the time or shortly after that notice of suspension was given to Chodofuka.

None of the submissions made by Chodofuka can be sustained.

The secretary general of the NIC says that he was authorised by the NIC to suspend Chodokufa. The Chairman of the NIC and the minutes of the NIC confirm that he was authorised.

Chodofuka's two remaining submissions are based on a claim he was, in law suspended when he was sent on paid leave of absence on 22<sup>nd</sup> September 2000. That

submission is not correct. Chodofuka was not suspended at that time. He was on leave. The two concepts and the consequences that flow from them are entirely separate and different.

Accordingly, the application cannot succeed.

Chodofuka has not opposed the NIC's cross application for the return of the Mazda motor vehicle and the cell phone in the event of his application not succeeding. The application for the return of those items to the NIC will therefore be ordered.

There remains the question of costs. The NIC submits that Chodofuka's application was without merit and the court should express its disapproval of this waste for the court's time and the NIC's money in defending the matter with a special order for costs.

The award of costs on the higher scale is a matter for the court's discretion.

Chodofuka's application was without merit but I decline to make the order sought. The matter has been dealt with simply. Little of the court's time was wasted.

In the result, Chodokufa's application is dismissed. Chodofuka is directed to return forthwith to the NIC the Mazda 323 motor vehicle, registration number 695 697 R and the cell phone that he received as part of the benefits of his employment with the NIC. Chodofuka is ordered to pay the costs of this application.

*Madzivanzira & Partners, applicant's legal practitioners*