

Judgment No. S.C. 154/98  
Civil Appeal No. 711/96

E M CHINDUNDUNDU v THE RESERVE BANK OF ZIMBABWE

SUPREME COURT OF ZIMBABWE  
GUBBAY CJ, McNALLY JA & MUCHECHETERE JA  
HARARE, SEPTEMBER 17 & 28, 1998

*H Zhou*, for the appellant

*W Ncube*, for the respondent

McNALLY JA: The appellant was a driver employed by the Reserve Bank of Zimbabwe (“the Bank”). At about 6 am on the morning of 24 February 1995, while driving his employer’s vehicle on duty, he was involved in an accident with another vehicle.

According to his account, he waited for about thirty minutes, but when the police did not come he drove to the Bank, left the Bank’s vehicle there, took his own vehicle and went off on private business. He says he reported to the police about noon and told his superior, the Bank’s transport administrator, about the accident at 3 pm. He claims he mentioned the accident to a security guard at the Bank when he first returned there.

There was a disciplinary hearing in terms of the Bank’s Code of Conduct (“the Code”) and he was dismissed on three grounds -

1. Failing to report an accident with a Bank vehicle, in terms of s 6(3) of the Code.
2. That he was “exceedingly negligent in failing to obtain the details of the other party thus preventing the Bank from making a claim for the cost of repairs from the insurers”. It was noted that Bank drivers were under express instructions to obtain the above-mentioned details.
3. He was also the subject of a final written warning issued on 18 October 1994 for four offences to do with his official duties as a driver during 1994.

The cost of repairs to the Bank’s vehicle was \$11 356,00.

The appellant was suspended with effect from 14 February 1995, and was advised on 8 March 1995 that he was dismissed with effect from the date of suspension. He “appealed” to the Governor of the Bank on 20 March 1995. But this letter was an appeal for clemency rather than an appeal in the legal sense. His letter contained this very clear statement, in his own handwriting:-

“I am not however contesting my dismissal from employment, but I am appealing to you as the Governor to give my case some consideration.”

Later in the letter he asked the Governor to consider “re-employing” him, and added:-

“I feel obliged once again to state that I am not challenging my dismissal from the Bank but am appealing to your office to give my case some consideration ...”.

This is not an appeal in the legal sense. The Bank is correct in that contention. The Deputy Chairman of the Labour Relations Tribunal (“the Tribunal”) took the same point in his judgment. The appellant, not having exhausted his remedies under the Code, had no basis for an appeal to the Tribunal.

His appeal to the Tribunal could have been dismissed on that ground alone. However, somewhat generously, the Deputy Chairman went on to consider the merits, and dismissed the appeal with no order as to costs.

I have no doubt that he was correct to do so, even though I am not convinced that the first ground of dismissal was established. The offence is described in the Code, rather tersely, as “failing to report an accident with a Bank vehicle”. The accident was at 6 am. He reported at 3 pm the same day, to the transport administrator at the Bank. He claims to have reported it to the police at noon.

The Code does not say to whom he is supposed to report. If it is to the police, s 70(5) of the Road Traffic Act says he must do so “as soon as is reasonably practicable and, in any event, within twenty-four hours of the occurrence of the accident”. If it is to the Bank, the Code imposes no such time limit. He claims he had permission to transact urgent personal affairs concerning a funeral that morning. The practicability of reporting before he transacted that business was not explored in the disciplinary proceedings. All in all, I would not consider that that ground of dismissal was established.

However, the second ground of dismissal was far more serious, and was clearly established. By failing to take the particulars of the other vehicle and its driver he breached a specific instruction. This made it impossible for the Bank to recover, either from the other party or from its insurer, the sum of \$11 356,00. That alone, even ignoring his final warning for an impressive list of offences during 1994 (including three culpable accidents and a breach of driving discipline), was sufficient justification for his dismissal. Mr *Zhou*, who appeared for the appellant, quite properly conceded that he could not dispute this ground of dismissal.

Counsel are reminded that in appeals concerning a Code of Conduct, a copy of the Code should form part of the record.

The appeal is dismissed with costs.

GUBBAY CJ: I agree.

MUCHECHETERE JA: I agree.

*Musunga & Associates*, appellant's legal practitioners

*Coghlan, Welsh & Guest*, respondent's legal practitioners