

Judgment No. S.C. 74/98
Civil Appeal No. 5/98

JONGILE NDEBELE v NATIONAL RAILWAYS OF ZIMBABWE

SUPREME COURT OF ZIMBABWE
McNALLY JA, EBRAHIM JA & KORSAH AJA
HARARE, MAY 18, 1998

Ms M Chitewe, for the appellant

G S Wernberg, for the respondent

McNALLY JA: At the hearing of this matter we dismissed the appeal with costs and indicated that our reasons would follow. Those reasons can, I think, be stated quite briefly.

The appellant was dismissed by the respondent. He appealed to the General Manager. On 21 September 1990 this appeal was dismissed. He then had a right of appeal to the Parastatals Commission, in terms of s 19 of the Parastatals Commission Act. That appeal, in terms of Statutory Instrument 252 of 1988, s 4, had to be lodged with the Secretary of the Commission “within thirty days of the decision being appealed against”.

No such appeal was lodged. In consequence, by 22 October 1990 the decision was final. The appellant was no longer an employee involved in a dispute with his employer. He was simply an ex-employee. The dispute was resolved.

On 18 January 1991 the Parastatals Commission ceased to exist. It was dissolved by Act 29/90. Pending appeals were saved, and were referred to the Labour Relations Board. But in this case there was no pending appeal. So it cannot be said, as is stated in the appellant's heads of argument, that his right of appeal was extinguished upon the abolition of the Commission. It had lapsed by reason of his failure to note an appeal, months before the Commission ceased to exist.

The argument for the appellant was that he was entitled to refer his "dispute" to a labour relations officer under the then s 109(1) of Act 16 of 1985. But there was no dispute. There was nothing to refer. To say the appeal was "due but not pending" is meaningless. It had lapsed. It was not "due". This was the conclusion to which the Labour Relations Tribunal came. That conclusion cannot be faulted. That is why we dismissed the appeal.

EBRAHIM JA: I agree.

KORSAH AJA: I agree.

Gula-Ndebele & Partners, appellant's legal practitioners

Webb, Low & Barry, respondent's legal practitioners