

REPORTABLE (125)  
Judgment No. SC. 138/04  
Civil Appeal No. 110/03

**Olivine Industries (Private) Limited  
V Patrick Jack And Three Others**

SUPREME COURT OF ZIMBABWE  
SANDURA JA, CHEDA JA & ZIYAMBI JA  
HARARE, JULY 20, 2004 & MAY 19, 2005

*E T Matinenga*, for the appellant

The respondents in person

CHEDA JA: The respondents were employed by the appellant and were referred to as dispatch clerks.

A job evaluation exercise was carried out by the appellant and the respondents were advanced from Grade 6 to Grade 8 employees. Other clerks employed by the appellant were placed in Grades 9 and 10.

The respondents complained that their grading was wrong and said that they should have been placed in Grade 9 like the other clerks.

The appellant has a Code of Conduct ("the Code"), which binds both the appellant and its employees. The Code was registered with the Labour Relations Registrar in March 1993. It regulates both the disciplinary and grievance procedures. The grievance raised against the appellant by the respondents was dealt with at different levels up to the level of the officer referred to in the Code as the Head of Business.

While the disciplinary structure states that the levels of authority have to follow the various steps up to the Head of Business and then provides that an employee who is dissatisfied with the final decision of the Head of Business can appeal to the Labour Relations Tribunal ("the Tribunal"), the grievance procedures end at the level of the Head of Business. He makes the final decision and there is no provision for any further appeal thereafter.

Step 4 of the grievance procedure in the Code provides for the referral of a grievance to the Head of Business (or his representative) by the personnel manager if all the steps already taken have failed to resolve the grievance. Step 5 of the Code provides that the Head of Business (or his representative) shall make the final decision to resolve the matter if all the other steps have failed. Section 6:3 provides for an appeal if the employee is not satisfied with the resolution of the grievance in steps 1 to 3.

The respondents were aware of these provisions. They said in their heads of argument that if there is a clause which states that an affected worker cannot appeal to a higher court, that clause is by mutual mistake of both parties. I do not agree because in the provisions for the disciplinary procedures the lodging of an appeal to a higher court was specifically provided for, while in the grievance procedures it was specifically provided that the decision of the Head of Business was final.

In the circumstances, the Tribunal should not have interfered with the resolution of the matter by the Head of Business, as this was in accordance with the agreement entered into by the parties. The Tribunal could only interfere if there were special reasons similar to those referred to in the case of *Farmers' Co-operative Society (Reg) v Berry* 1912 AD 343 at 350 and *Charuma Blasting & Earthmoving Services (Pvt) Ltd v Njainjai* 2000 (1) ZLR 85 (S).

The respondents argued that:

“The right of every citizen to be heard in a court of law in Zimbabwe cannot be overtaken by a mere provision of a Code.”

It would be difficult to deal with complaints if parties who enter into a binding agreement to regulate their industrial relations were to be readily allowed to turn against their agreement when they so wished.

A further observation is that the respondents were upgraded to a higher grade than that provided in the Regulations, Statutory Instrument No. 89 of 1997 and the standards set by the National Employment Council.

The respondents also alleged that their employer had committed an act of unfair labour practice. Acts of unfair labour practice are defined in s 8 in Part III of the Labour Act [*Chapter 28:01*].

There is nothing in what the appellant did that has been shown to amount to an unfair labour practice. The different grades given to the other clerks are explained by the difference in their duties and qualifications.

In view of the above reasons, I find that the Tribunal should not have interfered with the decision of the Head of Business, as it was made in accordance with the grievance procedure provided for in the registered Code of the appellant.

The appeal succeeds. The decision of the Tribunal is therefore set aside. The respondents are to bear the costs.

SANDURA JA: I agree.

ZIYAMBI JA: I agree.

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