NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF BUSINESS MANAGEMENT

LABOUR LAW – CBU 2207

FINAL EXAMINATION – MAY 2011

TIME ALLOWED: 3 HOURS

INSTRUCTIONS TO CANDIDATES

Answer any **four** questions.

INFORMATION TO CANDIDATES

i) All questions carry **25** marks.
ii) Questions can be answered in any order.
iii) Credit will be given **for the use of appropriate examples.**
iv) This paper contains **seven** questions.

QUESTION 1

Sunday Mangware and Clever Kutanga

Versus

Thunderbird mines (PVT) LTD t/a Golden Kopje mine

This is an application for condonation of late noting appeal.

The determination appealed against was made on the 29th October 1999.

The appellants only approached the Tribunal on the 25th January 2000 intending to appeal against the determination. A delay of 88days when the applications were supposed to have lodged their appeals within 14days is undoubtedly inordinate.

The applicants blamed the delay on the Christmas holidays and a breakdown in communication between them and their Trade Union representatives. They alleged that they were waiting for the complaint form from the Trade Union. The Tribunal notes that for the complaint form was not relevant for the purposes of noting an appeal. The Christmas holidays were more than one and

half months from the date the determination was made. The Christmas holidays could not therefore have caused the delay.

For those I hold that the delay was inordinate, willful and deliberate.

Turning to the prospects of success, the record of proceedings shows that the applicants admitted the allegation of taking part in an illegal Collective Job Action. They however denied having incited others to take part in unlawful Collective Job Action. They signed a complaint form to that effect. They were represented by two workers who also signed on the complaint form.

The applicants now seek to attack the record of proceedings on the basis that they were speaking in Shona and they may have been misunderstood. When it was pointed out to them that the people who preside over their cases were Shona speakers they changed their story and alleged that the minutes were deliberately misrepresented.

There can be no grain of truth in that assertion because the minutes of the proceedings are not at variance with the complaint form which was signed by both the applicants and their legal representatives.

Before the Tribunal the appellants were unable to demonstrate their new defence which they now intend to proffer. They now intend to allege that they were forced to join the strike. All what they could say in this respect was that they were told by Jack not to go for work the defence cannot hold.

With reference to relevant Labour legislation discuss how the Labour court is likely to rule on this matter. **[25 marks]**

Source: Labour court

Judgement No: LRT/H/5/2001

Case No: LRT/H/CON/9/2000

QUESTION 2

SYDNEY HOPE ASSOCIATES t/a

POWER GUARDS SECURITY

Versus

T.BUKUTA AND 12 OTHERS

HOVE L;

A point in limine was raised in this matter by the respondent' s representative. It was submitted that the appeal is improper before the court as it was noted out of time.

The decision appealed against was on 14 August 2001.There is a note on a complimentary slip alleged to be that of the appellant company indicating that the decision had been received on 20 August2001

If indeed the appeal was received on that date, then the appeal was not out of time. The appeal was noted on 24 September 2001.

Appellant denied that the decision appealed against was received on 20 August 2001.He alleges that the person who signed the slip sent it to the Labour Relations Officer was the appellant company's operations manager who may have fraudulently written that note [on page 29 of the record]. It was further submitted that since the note was not on the company's letterhead, the document was a forgery.

I did not accept the evidence of Mr. Tembo. He clearly tried to mislead the court by alleging that page 29 of the record was not an official note. Even after a similar complimentary note was produced, he continued to try and deny that page 29 was official.

The note on page 29 of the record clearly indicated that the decision had been received and an appeal would be noted .The note was from the company's operations controller. There is no suggestion that at the relevant time, he was hostile to the company and or the Executive Chairman. In fact in prosecuting this matter, the Executive Chairman had sought to rely on the evidence of the operations controller. This is clear indication that at the relevant time there was no bad blood between the two?

[25 Marks]

QUESTION 3

National Railways Of Zimbabwe

Versus

Joas Chinanure

Before The Honourable L. Hove, Member

For the appellant, Mr Muchadahama

For the respondent,

HOVE L:

The facts of this matter are that the respondent and his colleagues spent the night at Harare Security Quarters on 20 January 1997. The following day, the Bulawayo Security Office received a report that Kitchen utensils had been stolen from the Harare Security Quarters where the respondent had spent the night before traveling to Bulawayo.

The missing utensils were found in the respondent's bag.

The appellant has argued that the only reasonable explanation is that the respondent had stolen the kitchen utensils that were discovered in his bag.

The respondent on the other hand denies that he had stolen the utensils. He alleges that the utensils must have been planted in his bag by his enemies. He alleges bad blood between him and management.

Management could not however have planted the utensils as they had not been at the Security Quarters with the respondent. The respondent is the one who locked the quarters and was the last person to leave the quarters.

He argued before the Labour Officer that the items must have been planted in his bag on the train or on his arrival in Bulawayo. He does not allege that he was with members of management in Harare or on the train. He would also not have failed to realize that these items were in his bag if they had been placed there without his knowledge as these are kitchen utensil. I also do not believe that the allegations of bad blood have been proved.

With reference to relevant Labour legislation discuss how the Labour court is likely to rule on this matter. **[25 Marks]**

QUESTION 4

SHADRECK MOYO AND 14 OTHERS

Versus

CENTRAL AFRICAN BATTERIES (PVT) LTD

The parties in this case through their respective legal representatives agreed that since there is no material dispute of the fact the matter should be determined on the basis of the record of proceedings.

Both parties having filed their heads of argument I now proceed to determine the matter.

On the 26th August, 1997, the appellant 's worker's committee wrote to the officer in charge Norton Police Station advising him of their intention to engage in collective job action at their work place.

The letter reads:

``Dear Sir

Collective Job action (Strike)

We wish to advise you of our intention to go on strike fourteen days from today the 26th August 1997.This is being done in accordance with Labour Relation Act 16 of 1985 Section 120 subsection 1 and 2.

We have already sent notices of this strike to the Trade Union and the Ministry of Labour.''

The relevant Section which is now Section 104 of the Labour Relations Act (Chapter 28:01) provides that:

(1) Subject to this Act , all employees workers' committee and Trade Unions shall have the right to resort to collective job action for the redress of lawful grievances.

(2) Subject to subsection (4) no employees workers' committee or trade union shall resort to collective job action unless fourteen days written notice of intent to resort to such action, specifying the grounds for the intended collective job action, has been given to the party against whom the collective job action is to be taken''.

(My emphasis)

Relying on the above notice the 15 appellants subsequently engaged in collective job action during the period extending from the 3rd of December, 1997 to the 5th December, 1997.

The respondent then applied to the labour relations officer for permission to dismiss the appellants from its employment on the basis that had engaged in unlawful collective job action.

The senior labour relations officer reversing the labour relations officer's determination held that the collective job action unlawful and authorized the appellants' dismissal.

The collective job action was undoubtedly unlawful because no notice was given to the respondent as is required by the Act. Notice to the officer in charge or Ministry officials cannot amount to notice "to the party against whom the collective job action is to be taken''.

It was argued that the appellants should have been dismissed in terms of the Collective Bargaining Agreement for the Battery Manufacturing Industry Regulations Statutory Instrument 665 of 1983.

An examination of the Statutory Instrument shows that it is not a disciplinary code of conduct, the regulations simply lay down the employees' conditions of service.

In the absence of any evidence that there is a registered code of conduct applicable to the parties, I hold that the matter was properly before both the labour relations officer and his senior.

It is common cause that of the 15 employees only Navhaya denied that he participated in the unlawful collective job action. He claimed that he was away from work on account of illness. To that end he relied on medical report. The medical report shows that it is dated 2nd December, 1997.

Once the appellant NAVHAYA had produced that evidence the onus shifted to the respondent to rebut the operation of that defence. It could easily have done so by evidence that he reported for duty on the day in question.

The respondent sought to rely on the uncorroborated evidence of its security guard. The possibility that the security guard in the confusion sparked by the unlawful collective job action could have been mistaken as to the identification of Navhaya cannot be excluded.

In the absence of any suggestions that the Medical Certificate is fake, it is highly unlikely that after being booked off sick for 4 days he could have gone to his work place for the sole purpose of engaging in collective job action. For that reason I hold that there is no credible evidence establishing that Nevhaya was a party to collective job action.

As regards the remaining 14 appellants they do not deny participating in the collective job action. What they dispute is that they were ring leaders. It is however immaterial whether or not they

participated in the illegal collective job action as ringleaders. The mere fact that they participated in the collective job action in whatever capacity is damning.

Source:Labour Court Judgement No LRT/H/56/2000

With reference to relevant Labour legislation discuss how the Labour court is likely to rule on this matter. **[25 Marks]**

QUESTION 5

PAUL TICHAPONDWA

Versus

OK ZIMBABWE

The appellant was employed by the respondent as a till operator. His duties included processing payments tendered through credit cards.

Where a customer tendered payment through a credit card the appellant was required to observe certain laid down security procedures before processing the transaction. He was required to among other things positively identify the customer through his national identity card and to swipe the customers credit card on a machine and then note the details.

Thereafter he was required to seek authorisation from his supervisor who in turn sought clearance from the Manager. All these procedures were safety measures meant to guard against credit card frauds.

If everything was in order the appellant then prepared a sales voucher which enabled the respondent to receive payment from the customer bank.

It is common cause that on the 6th July 1999 the appellant was manning till number 8. During the course of the day he processed a fraudulent credit card transaction for #1409.67.

Investigations revealed that when processing the transaction the appellant had not followed laid down security procedures. The following discrepancies were unearthed:

(1) The customer's name had not been recorded;
(2) The amount did not exist;
(3) A cheque guarantee card number was used instead of a credit card number ;
(4) The card was conveniently torn in certain places;
(5) There was no signature;
(6) The appellant had not sought any authorization from anyone before processing the transaction;
(7) The cheque guarantee card was not swiped. If he had attempted to swipe it, it would have been impossible to swipe it because the machine only accepts credit cards for which it was designed.

With reference to relevant Labour legislation discuss how the labour court is likely to rule on this matter? **[25 Marks]**

LRT/H/308/2002

QUESTION 6

Knewton Mudzingwa

Versus

One Stop Co-op

On the 12th December 1995 the respondent held a Christmas party for his employees. The appellant was present at that Christmas party as well as the two lady employees Miss Dubley and Mrs Greenland. Mr Ncube was also present and he gave an eye witness account of the events of that evening regarding this case.

It is common cause that the appellant got himself drunk at that party. The allegation against him was that in his drunken state he harassed and assaulted the two ladies.

The appellant admitted that he interacted with the two ladies at the party but denied that he harassed or assaulted them in the manner alleged at all.

Miss Dubley gave sworn evidence before the Tribunal.

It was her testimony that whilst at the party the appellant came and sat next to her. He then asked to speak to her in private. She declined the invitation. The appellant thereafter remarked that everyone was having it good together. The remark offended Miss Dubley and she told him to go away.

Despite being told off the appellant did not barge. He grabbed her by the upper arm insisting that he wanted to speak to her in private. At that stage she moved closer to her friend Mrs Greenland and asked her to go and find the general manger Mrs Biddlecombe so that they could get their gifts and leave early.

The two ladies then proceeded to an open space where the rest of the party was. The appellant followed them. He again grabbed her arm against her will and she once again objected. He then turned onto Mrs Greenland and grabbed her tightly by the ring finger hurting her in the process. Miss Dubley told him to let go which he did but not before he had told her to shut up.

At that stage the general manager came to the scene. The two ladies reported to her that the appellant was not in the right frame of mind. The general manager did not appear to have taken much notice. She left the two ladies to mingle with other members of staff.

Shortly thereafter Miss Dubley decided to make a telephone booth. Mr. Ncube obliged.

While Miss Dubley was on the phone the appellant approached her from behind and again attempted to garb her arm. Mr. Ncube intervened and took him away. Miss Dubley found the appellant's conduct aggressive and shocking. Prior to this occasion they had a normal relationship as workmates.

Both Mrs Greenland and Mr Ncube corroborated the evidence of Miss Dubley in every material respect there is no need to repeat their evidence.

The appellant admitted having held the two ladies hands but denied that it was without their consent. His version is that he was friendly to the two coloured girls. He was having a friendly chat with the two ladies holding their arms with their consent. He was spotted by the general manager Mrs. Biddlecombe, while holding the two coloured girls' arms. Being a racist Mrs. Biddlecombe took offence at seeing a black man holding hands with coloured girls. As a result she conspired and influenced the two ladies to make false allegations against him.

Their evidence was ambly corroborated by Mr. Ncube who is neither coloured nor white

With reference to relevant Labour legislation discuss how the Labour court is likely to rule on this matter. **[25 Marks]**

Source:Labour Court

Judgement No:LRT/MT/16/2000

Case No:LORT/MT/37/96

QUESTION 7

Ilford Services Private Limited

Versus

T. Kondo

The background to this case is that the respondent obtained default judgment against the applicant from a labour relations officer in the sum of $1 144 572,84 on the 15th May 2002.

The respondent subsequently registered the Labour relations officer's determination for enforcement. A warrant of execution was duly issued.

In response the applicant complied with the order and wrote to the Messenger of Court in the following vain on the 16th August 2002:

"Dear Sir

Re: Tax Kondo Case No.29245/02

Attached is cheque No. 001178for $1 186 206.50 (One million one hundred and eighty six thousand two hundred and six dollars fifty cents only) in settle (sic) for case No29245/02 between Tax Kondo and Granite Extraction Company.

Please be advised that Floquent Enterprises is paying on behalf of Granite Extraction Company.

The applicant having complied and settled the matter by paying the amount it was ordered to pay is now desperately trying to resuscitate the case.

With reference to the relevant Labour legislation discuss how the Labour court is likely to rule on this matter. **[25 Marks]**

LRT/H/307/2002

END OF EXAMINATION