

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF BUSINESS MANAGEMENT

SUPPLEMENTARY EXAMINATION JULY 2014

LABOUR LAW CBU 2207

TIME: 3 HOURS

INSTRUCTIONS TO CANDIDATES

Answer question **one** and any **three** questions from section B.

INFORMATION TO CANDIDATES

- i) Question one carries **40** marks.
- ii) Questions in section B carry **20** marks.
- iii) Questions may be answered in any order
- iv) Credit will be given for the use of appropriate examples.
- v) This paper contains **seven** questions.

QUESTION 1

P. Mutumwa V Zimglass Industries Ltd

The appellant P. Mutumwa was charged of having committed a fraudulent act. It was alleged that he made an application to buy medication from Central Pharmacy .He got a quotation of the prescription which he had been given.

The quotations were for \$141-86 and \$750-00 respectively.

When it was discovered by the employer that the one had been altered to seven, the appellant was called to a hearing. In his defense, he alleged that the alteration was a mistake as he was ill. Appellant later on sought to allege that the managers are the ones who could have effected the alterations. It is however clear that the person who stood to benefit from the alterations was the appellant and not the managers

He also sought to allege that he had differences with the managers and they could have altered the figures to enable them to later use to von terminate his contract of employment .The appellant also pointed out some procedural defects. Mr. Dzimba legal

representative for the respondent conceded that there had been a delay in finalizing the matter contrary to the code of conduct that an inquiry shall be conducted within 5 days.

Required:-

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

Source: Labour Court Judgment No. LRT/MD/21/2002

QUESTION 2

Standard Chartered Bank Ltd V C. Chipinungu

The respondent Chipinungu was employed as a teller. In that capacity he was a co-custodian to the treasury cash and keys together with the Operations Manager Mr. Jambo. For security reasons they had different set of keys such that none could get access to the treasury without the other's keys. There was a standing instruction which forbade the respondent from giving keys to anyone unless authorized to do so by the branch manager.

On or around 10th November 1995, while busy attending to customers the respondent was approached by Jambo his Operations Manager. Mr. Jambo intimated that to him that he needed cash from the treasury to give to a teller who was short of cash. Mr. Jambo impressed upon him to continue serving customers. The respondent relying on the Operations Manager's representations then released his treasury keys to him contrary to above standing instructions.

The Operations Manager proceeded to the treasury on his own; subsequently he didn't turn up for work.

A check in the treasury finds 10 days later revealed that \$50,000 was missing. The Operations Manager's desertion from work led to the suspicion that he had stolen the missing money.

Chipinungu was charged with negligence when he appeared before the appeals Committee, but the employer appealed to the Labour Court against the decision of the Appeals Committee.

Required:-

With reference to relevant Labour Legislation illustrate how the Labour Court is likely to make a decision on the matter. **[25 marks]**

Source: Labour Court Judgment No: LRT/H/54/2000

QUESTION 3

Robert Kadzima and 7 others V Favco (Pvt) Ltd

This matter is an appeal against the determination of the respondent (employer) which upheld the determination of Designated Agent (DA) authorizing the appellants' dismissal for engaging in an unlawful collective Job Action.

The 8 appellants were alleged to have participated in an unlawful Collective Job Action on 7 October 1996. Purporting to act in terms of the registered Code of Conduct for the Commercial sectors, the respondent suspended the 8 appellants without pay on the 8th October 1996. They were subsequently dismissed from employment following the proceedings in terms of that Code of Conduct.

In this case the Code of Conduct did not create nor prescribe any penalty for the alleged offence. The suspension letter charged the appellants with contravening the Labour Act only. It made no reference to any contravention of the Code of Conduct.

Required:-

With reference to relevant Labour Legislation, deliberate how the Labour Court is likely to reach its decision on this matter. **[25 marks]**

Source: Labour Court Judgment No: LRT/A/2/2001

QUESTION 4

Paddington Musandu V Cresta Lodge

The appellant Paddington Musandu was employed as a Supervisor. His duties included compiling time sheets for overtime worked by employees under his supervision for payment by the accounts department.

On or about 21st to 23rd August 1993, the appellant authorized that one Chikengezha be paid for twelve and half hours overtime work. Chikengezha was duly paid in terms of the appellant's recommendation.

After Chikengezha had been paid, the appellant had a misunderstanding with one of his junior employees a Mr. Dube. Dube revealed that the appellant had fraudulently, authorized that Chikengezha be paid for twelve and a half hours overtime.

Investigations revealed that Chikengezha was in fact off sick during the period the appellant approved him to be overtime. Chikengezha himself confirmed that he was off duty on the day in question. He further stated appellant had told him to sign for overtime because he had not been ill, he would have been entitled to work overtime.

The appellant was charged with misconduct however blamed other people for framing him up and he complained about not being granted affair hearing.

Required

With reference to the Labour Legislation, indicate how the Labour Court is likely to judge in this matter. **(25 marks)**

Source: Labour Court Judgment No: LRT/H/55/2000

QUESTION 5

Champion Madzvatsa and three others V National Foods

The 4 applicants obtained a default judgment against the respondent because they failed to attend the hearing on 16 November 2001. The applicants failed to get the employer to either reinstate them or to pay them damages.

They then made an application to the Labour Court to have the matter set down for quantification of damages. At the hearing, respondents were in default again and the matter proceeded without them. The applicants submitted that their claim was as per the quantification worked out by their union. The claim was for all outstanding wages, bonus, damages equal to one year's salary and all the benefits they were entitled to which include mealie meal and cooking oil. All the 4 applicants were fairly advanced in age and at today's conditions they would not manage to secure employment.

Required:-

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

Source; Labour Court Judgment No; LRT/MD/17/2002

QUESTION 6

D Shambare V Interfress

The alleged facts are that the appellant prepared 117 kgs of tomatoes and sent them together with other orders to TM Chitungwiza. These tomatoes were kept in Chitungwiza for him and when appellant went to collect the tomatoes, the branch manager queried the price which was that of second grade tomatoes when the tomatoes were first grade tomatoes.

The employer alleged that applicant was acting in consent with one Farai, an employee of the respondent stationed at TM Chitungwiza. He is alleged to have received the tomatoes packed and dispatched by applicant. He kept the tomatoes and only released them to the appellant when he came. The tomatoes were clearly first grade tomatoes and an attempt to sell them to the appellant at the price of second grade was clearly an attempt by the two to fraudulently buy the tomatoes at a lower price.

Required :-

With reference to relevant Labour Legislation, discuss how the Labour Court is likely to determine this matter. **(25 marks)**

Source; Labour Court Judgment No; LRT/11/312/2002

QUESTION 7

Loice Takaona V The Montclair Hotel and Casino

On Thursday the 11th July 2002, respondent through its general manager Mr Macheke gave appellant who was based in Harare an instruction to attend a June financial review meeting at Montclair Hotel in Nyanga.

The meeting was scheduled for Monday the 15th July 2002 at 0900hrs.

Appellant did not attend the meeting and as a result disciplinary proceedings were instituted against her for deliberately refusing to obey a lawful instruction given by a person in authority. She was found guilty and dismissed from employment. Her appeal to the Appeal's Committee was unsuccessful hence her appeal to the Labor Committee.

Appellant's submissions in general were that she did not deliberately disobey authority and that the appeals Committee misdirected itself the evidence placed before it. It was her argument that she made efforts to attend the meeting in question but was hampered by the unavailability of fuel and problems with her car. She argued that if she had wanted to defy authority, she would not have gone; she did, but got to Nyanga late and meeting was over then.

Respondent in turn argued in general that a lawful order was timely given that is at least 4 days notice before the meeting. The failure to attend was in the circumstances deliberate.

Appellant did not communicate with the general manager about her predicament. She did not have a prepared written presentation for the meeting as was required. She left Harare for Nyanga at 10.00 am on Monday the day of the meeting, when she knew the meeting was starting at 0900 hours.

Appellant only explained to the general manager her failure to attend the meeting two days later after the general manager had initiated the dialogue.

Required:

With reference to relevant Labour Legislation, discuss how the Labor Court is likely to rule on this matter. **[25 marks]**

Source: Labour Court Judgment no: LC/MC/11/2006

END OF EXAMINATION PAPER