REPORTABLE (17)

Judgment No. SC 19/04
Civil Appeal No. 370/01

T.M. SUPERMARKET v T.M. NATIONAL WORKERS' COMMITTEE

SUPREME COURT OF ZIMBABWE
SANDURA JA, CHEDA JA & GWAUNZA JA
HARARE, JANUARY 29 & MAY 10, 2004

T Biti, for the appellant

L Mazonde, for the respondent

CHEDA JA: The appellant is a company which owns a chain of stores scattered all over Zimbabwe, which are known as TM Supermarkets.

The respondent is the national workers' committee of the appellant. The respondent filed a complaint with the Ministry of Public Service, Labour and Social Welfare against their employer, the appellant, concerning the awarding of salary increments.

The matter was heard before a labour relations officer, who determined the matter in their favour. She made a finding that awarding some employees and leaving out one hundred and eighty-two employees was discrimination against them and that this amounted to an unfair labour practice. She ordered the appellant to pay the one hundred and eighty-two employees their wages/salary increases as of 30 June

1995 as per Statutory Instrument 208 of 1995 and back payment for the months of October and November 1997.

The matter was referred to a senior labour relations officer. The senior labour relations officer found that the provisions of SI 208/1995 had been implemented long before the labour relations officer's order. She found that there was no discrimination against the one hundred and eighty-two employees. She reversed the decision of the labour relations officer and the appeal by the appellant succeeded.

The respondent then noted an appeal to the Labour Relations Tribunal (now the Labour Court). The grounds of appeal were as follows:

> "1. The senior labour relations officer seriously erred and misdirected herself in arriving at the decision she did for the following reasons –
>
> 1.1 That the respondent *in casu* (now the appellant) had fully complied with the provisions of Statutory Instrument (SI) 208/1995.
>
> 1.2 That there was no discrimination by the respondent (now the appellant) when it made salary adjustments in each grade.
>
> 1.3 That the provisions of s 5(1)(d) of the Labour Relations Act [*Chapter 28:01*] does not apply *in casu*.
>
> 1.4 That the respondent (now the appellant) had not contravened s 8(1) (a) to (f) of the Labour Relations Act aforesaid in that it had not committed an unfair labour practice."

The Labour Relations Tribunal held that the appellant did not discriminate against the one hundred and eighty-two employees on the basis of race, colour, place of origin or any of the other grounds listed in s 5 of the Labour Relations

Act ("the Act"). It held also that the appellant had refused to negotiate with the respondent and that such refusal amounted to an unfair labour practice, thus breaching the provisions of ss 8 and 24 of the Act. The Labour Relations Tribunal reversed the decision of the senior labour relations officer and upheld that of the labour officer.

The appellant has now appealed to this Court on the following grounds:

> "1. The Labour Court erred in holding that the employer in this matter had in fact refused to negotiate.
>
> 2. Put differently, the fact that the employer, the appellant herein, provided reasons for its refusal to make an additional salary increase to the affected members of the respondent, did not mean that there had been no negotiations. Put simply, even if it was held that the appellant had an obligation to negotiate an additional salary increase that does not mean or imply that there has to be an increase any time that there is a negotiation."

At the hearing of the matter before the Labour Relations Tribunal it became clear that the alleged discrimination was not based on any of the grounds referred to in s 5(1) of the Act. It was also established that what the respondent was complaining of was the raising of minimum wages for certain low grades.

The dispute was therefore based on the following two points –

(a) whether the employer refused to negotiate with the workers' committee; and

(b) the interpretation of Statutory Instrument 185 of 1985.

From what the respondent says, the appellant would not agree to award them what it had just awarded the lower grades in order to raise the minimum wages. The question perhaps is "What is meant by negotiation?". I would take it to mean a discussion between the parties leading towards a conclusion on a certain issue. I do not consider that negotiation necessarily means a discussion in which one party gives in to the demands of the other.

The fact that the appellant refused to award what the respondent asked for suggests that the issue was discussed. The respondent seems to be of the view that because the appellant did not agree there was no negotiation. I do not agree. There is a difference between refusing to negotiate and refusing to grant an increase. The appellant, it seems from the papers, explained why it had left out the one hundred and eighty-two workers, and that they had been awarded increases granted to all the other workers in terms of the Collective Bargaining Agreement contained in Statutory Instrument 208 of 1995.

The parties also argued about the provisions of Statutory Instrument 185 of 1985.

The respondent's representative said it provides in s 5(1)(i) that:

> "… should an employer decide to give any increases above the maximum stipulated by the Statutory Instrument, and if there happens to be any complain (*sic*) from any source then a formula referred to as 'A x B x C over D' should then be employed."

His explanation was not clear because he then sought to repeat the same explanation but put it in this way:

> "That particular Statutory Instrument says if you should decide then to increase above the minimum, because that is set by a given Statutory Instrument at a given date, should you decide to give above that, then you should apply the same formula."

It is clear that he has given his own version of the section. I do not believe that the provisions of the Statutory Instrument in question can be interpreted the way he put it.

However, while the Statutory Instrument was not provided, the appellant's representative, who had it at the hearing, pointed out that the respondent's representative was not reading it correctly as he left out the last part.

The section in question reads as follows:

> "5 (1) Subject to this section, if an employer, on or after the fixed date, increases the income of any employee otherwise than in terms of subsection (4) of section 4 he shall, at the same time increase the income of every other employee who is earning less than the first mentioned employee by the amount obtained by applying the formula
>
> $$\frac{A \times B \times C}{1 \times 100}$$" (emphasis added)

In the formula –

> A represents the actual percentage increase applied to the income of the first-mentioned employee;
>
> B represents the appropriate maximum rate of increase set out in the Second Schedule and applicable to the employee who is earning less than the first-mentioned employee;

C represents the actual income of the employee who is earning less than the first-mentioned employee; and

D represents the appropriate maximum rate of increase set out in the Second Schedule and applicable to the first-mentioned employee.

Section 6(3) states:

> "The provisions of this section shall not apply so as to require an additional increase for those employees who were employed on the fixed date and whose wages have been increased by virtue of the Minimum Wages (Specification of Minimum Wages) Notice, 1985."

These two sections clearly show that the respondent's members were not entitled to another increment as their wages were more than the minimum referred to.

Even the threatened job action was not proper in view of s 10(2) of Statutory Instrument 185 of 1985, which reads as follows:

> "10 (2) No employee or organisation of employees shall strike or threaten to strike or take other industrial action on the grounds that the lower paid employees in their industry, place of work or who are employed by the same employer have received an increase of income while they have not received the same increase or proportional increase or any such increase."

In conclusion, I am satisfied that there was no unfair labour practice; there was no discrimination; and the workers' committee had no right to demand an additional increment.

Accordingly, the appeal is allowed with costs. The judgment of the Labour Relations Tribunal is set aside, and substituted by the following –

"(1) The appeal is dismissed.

(2) The appellant in this appeal will pay the costs of this appeal."

SANDURA JA: I agree.

GWAUNZA JA: I agree.

Honey & Blanckenberg, appellant's legal practitioners

Coghlan, Welsh & Guest, respondent's legal practitioners