

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT KABWE AND LUSAKA

SCZ APPEAL NO.37/2000

G. MICHELO & OTHERS
VS
ZNPF BOARD

APPELLANT
RESPONDENT

Coram: SakalaAG. DCJ., Chirwa and Chibesakunda JJS
10th August and 28th December, 2000

For the Appellants, Mr. C. Mundia of Mundia & Company.
For the Respondent Mrs. M. Mulonda, Legal Counsel.

J U D G M E N T

E.L. Sakala, AG. DCJ delivered the Judgment of the Court.

Cases referred to:

- 1. *Lukama and Others Vs Lint Company of Zambia SCZ No.8 of 1998(1)***
- 2. *Zambia Railways Ltd V Kaunda & Others SCZ APPEAL No. 147/1998(2)***

This is an appeal against a judgment of the High Court deciding that the expression "basic salary" did not include allowances of a regular nature. It is also an appeal against that part of the judgment deciding that the appellants were not entitled to new salaries effected on 1st November 1992.

The facts, which were common cause, were that the appellants, comprising of unionised and non unionised employees, were employed by the respondent in various capacities. The unionised employees served under a Collective Agreement, while the non unionised staff served under conditions of service for Senior and Non-Unionised employees. During the period of their respective services, the appellants were each entitled to a monthly salary and various allowances of a regular nature, which included hardship, canteen, education,

transport as well as housing allowances. The appellants had their services terminated by way of redundancies. They were each paid redundancy packages based on their respective basic salaries. It was common cause that these packages excluded allowances of a regular nature.

Dissatisfied with the packages, the appellants commenced separate actions claiming the various allowances of a regular nature. Subsequently, the actions were consolidated. In the consolidated action, the claim based on allowances of regular nature was subdivided into three categories namely; allowances covering the period of notice, allowances of regular nature covering the period of redundancy packages and arrears of payment on redundancy packages based on new salary scales which were said to have become effective on 1st November, 1992.

The learned trial judge heard evidence, on behalf of the appellants from two witnesses, one representing the unionised appellants and the other representing the non-unionised appellants. The court also heard evidence from two witnesses representing the respondent. One of the respondent's witnesses was the Managing Director himself, while the other witness was the Human Resources Administration Manager. The trial court further received lengthy submissions from counsel representing the appellants and the respondent, who also represented them before this court. The learned trial judge identified the main issue for determination as being whether the allowances of a regular nature, as claimed by the appellants, formed an integral part of the "basic pay" or "basic salary" for purposes of computing the appellant's redundancy packages. The

court noted that two documents governed the appellant's conditions of service namely; the Senior and Non Unionised staff conditions of service and the Collective Agreement for unionised staff. The learned trial judge also examined other documents governing the appellants' redundancy packages. He noted that, although the expression "basic pay" appears in the Senior and Non Unionised staff conditions, the same is not defined, but that the Collective Agreement defined "basic salary" as monthly payments for regular employment determined on a year's basis.

The court also made reference to the definition of "basic salary" in the Cambridge International Dictionary of English, 1996 Edition and the Longman Dictionary of the Contemporary English. The court was satisfied that the words "basic salary" or "basic pay" did not incorporate any extra payment, such as allowances. The court also considered the various allowances claimed and held that they did not form part of the "basic salary" or "basic pay" and therefore not payable as part of the redundancy packages. The court, however, entered judgment in favour of the appellants only in respect of their allowances during the notice period.

Both learned counsel made brief oral submissions but relied on detailed written heads of argument filed with the court based on five amended grounds of appeal. Both counsel cited a number of authorities decided by this court in support of their arguments. We have taken these authorities into account in resolving this appeal.

The first ground of appeal attacked the learned trial judge's finding that allowances of a regular nature were not payable to cover the entire retrenchment period as they did not form part of the basic salary. A number of arguments were advanced in support of this ground. The main ones were that, while the redundancy procedure as provided in the Collective Agreement was followed in relation to unionised employees, it was not followed in relation to non-unionised employees; and that the issue of redundancy of non-unionised employees was never an agenda item at the Board Meeting of 30th October, 1992 but only brought in under "any other business." The submission on these arguments was that the Board had no power to change the non-unionised employees conditions to their detriment and that the imposition of basic pay was ultra vires the Boards powers. In response to these arguments and submissions counsel for the respondent pointed out that the redundancies for the Senior and non-unionised employees were provided in their conditions of service and that the Board had the power to amend that provision at its meeting of 30th October, 1992.

We have examined the arguments and submissions on this ground. In our view, the redundancy procedure adopted by the respondent was never an issue before the trial court. We have considered the whole record and the judgment of the court. We are satisfied that it was not the appellant's case or some of them at least, that their redundancies were unlawful. In other words, the legality of the redundancies, was never an issue at trial. Our understanding of the appellants' case in relation to ground one is that the redundancy package should have comprised basic pay plus allowances of a regular nature. The learned trial judge, properly so, considered this as the main issue. The learned trial judge took note

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of the two different documents and others governing the appellants conditions of service namely; the Senior and non-unionised staff conditions of service for non-unionised staff and the Collective Agreement for unionised staff as well as relevant circular and meetings. The documents provided for redundancy procedures and the meetings established what was agreed. The learned trial judge examined these documents and others. He concluded that the words “Basic salary” or “Basic pay” did not incorporate any extra payments such as allowances.

In arriving at this conclusion the learned trial judge examined the Collective Agreement and also relied on the express provisions of Section S(d) of the Senior and Non-Unionised staff conditions of service which reads:-

“All employees, other than married women not housed by the Board shall be entitled to a housing allowance of fifty percent of monthly basic salary or K500 whichever is less. The said allowance shall not form part of the basic pay.”

We have also examined the various documents and the relevant conditions and the applicable law. The finding of the trial court that “Basic Salary” or “Basic Pay did not, in the circumstances of this case, include the various allowances claimed cannot be faulted. This appeal based on ground one cannot, therefore, succeed.

The second ground of appeal raised the issue of whether the respondent increased the salaries of their employees during the appellant’s notice period. The fact that