APPEAL NO. 102 OF 2000

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT KABWE

(CIVIL JURISDICTION)

BETWEEN:

GODFREY KABATI & 60 OTHERS — Appellants

and

ZAMBIA RAILWAYS LTD. — Respondent

Coram: Sakala, Chirwa and Chibesakunda, JJs on 18th April 2001 and 27th August 2002

For the Appellant: Mr. A. Musanya, Zambezi Chambers
For the Respondent: Mr. C. Muneku, Charles & Charles

JUDGMENT

Chirwa, JS, delivered the judgment of the Court: -

This is an appeal against the refusal by the Industrial Relations Court to grant to the appellants six orders that they prayed for in that court.

The complaint before the Industrial Relations Court was for orders that: -

(a) the appellants be paid their terminal benefits and gratuity as provided under paragraph 1.20 of the Collective Agreement the quantum being dependent on duration of service and not of age of 55 years and above: -

(b) that the appellants be paid their retirement gratuities by computing the benefits based on the basic annual salary as on 15th March 1995 the date of their compulsory retirement and not as in October 1989;

(c) that the appellants be paid their retirement benefits based on the correct co-efficient factors as provided under paragraph 1.20 (ii) (a) of the Collective Agreement;

(d) the appellants be paid their pension terminal benefits made up of their contributions and the respondents' contribution and interest; and

(e) that each appellant be paid repatriation allowances consequent upon the compulsory retirement.

Upon consideration of all the evidence before it, the lower court found as a fact that the Union representing the appellants had the mandate to negotiate with the respondent conditions of service as it had always been doing in the past and that following the scenario at the time, the respondent had been financially unable to give the workers any better retirement, retrenchment packages did agree with the Union on new packages.

The court, on evidence before it, found that the long service bonus was suspended with the full consent of the Union representing the appellants and therefore the appellants could not claim it. The court found as a fact that the amendment to the packages was with the consent of all Union branches in the country except the Kafue Branch.

The court further found that as a result of the amended agreement, the appellants were entitled to transport on repatriation or K120,000 (one hundred and twenty thousand kwacha) cash in lieu thereof and the court found no evidence that the respondent failed to provide either of them.

With the findings of these facts, the lower court dismissed the appellants complaints with costs. It is against the dismissal of the complaints that the appellants have appealed to this court.

The memorandum of appeal contains one ground of appeal which states:

> *"The learned Chairman and members of the trial court erred in law and in fact in holding that the joint appellants were not entitled to be paid the balance of their terminal benefits following their retrenchment from their employment under the respondents' company".*

During the hearing of the appeal, Mr. Musanya (now Hon. MP) put in what he said were two grounds of appeal but in essence it was one ground of appeal as stipulated in the memorandum of appeal. The arguments were that the purported agreement altering the Collective Agreement between the Union representing the appellants and the respondents' management was reached in bad faith in that the management selected a few Union Officials to negotiate a new package and these people put themselves as representatives of the Union when in fact they were not representing the Union but their own interest and this is evidenced by the fact that when the amended agreement was implemented the Union

president Mr. Ndalama was one of those retrenched and he publicly wept because of the raw deal in the amended agreement. Having negotiated the agreement in bad faith, it was argued that the Collective Agreement then substituting and under which the Managing Director wrote the staff rationalisation circular under which the appellants were retired applied. They should therefore be paid their benefits under the Collective Agreement and not the bad agreement concluded between the management and a few union officials. The said circular is dated 28th February 1995. Although conceding that the later agreement between the Union and management was binding on the appellant it was submitted that the conduct of the respondent in paying some people under the Collective Agreement under "retrenchment" and paying the appellants under the new agreement under "retirement" was discriminatory. It was argued that the court erred in holding that the appellants were not entitled to have their benefits calculated under the Collective Agreement.

In response, it was argued, supporting the lower court, that the appellants were properly paid their terminal benefits on the agreed package between the management and the Union representing the appellant which agreement has been accepted as binding. Clause 1.20 of the Collective Agreement is not applicable to the appellants and that their benefits cannot be calculated as if they had retired or reached retirement age. Further, under the new agreement the appellants were entitled to refund of their pension contributions with interest at 5% per annum.

We have considered this appeal and the evidence and findings of the lower court and the arguments before us. We should state from the outset that this appeal was bound to fail because it is based on findings of facts. Under Section 97 of the Industrial and Labour Relations Act, no appeal lies to the Supreme Court except on point of law or a point of mixed law and fact. We allowed the appeal to proceed with the hope that may be our

attention would be led to the findings of facts which were perverse or said to ply into the teeth of the evidence of the lower court but we have not been able to be assisted on this point. In our view, the findings of the lower court cannot be faulted. The court found as a fact that the fresh negotiations held between the management and Union were conducted in good faith and that the Union represented the appellants as before. From the minutes on record at page 126 they show that the Union was represented by six (6) Union officials and it is not indicated that they were branch officials so as not to bind the National Union. These representatives were National Union representatives and the meeting at which they agreed on new packages was held on 6th April 1995 and the new circular is dated 7th April 1995 and it specifically states that it supersedes the package agreed upon in 1992 as well as that contained in the Managing Directors Circular dated 28th February 1995. We find no evidence that this agreement reached upon by the Union and Management was in bad faith and that it was not representative of the members of the Union. With this evidence before it, the lower court cannot be faulted in its findings that the appellants benefits are to be calculated based on agreement reached between the Union and management and that agreement covers all the benefits claimed by the appellants as having been underpaid or not paid. The long service bonus having been suspended and other benefits are to be calculated as agreed in clauses 3.21; 3.22 and 3.23. This appeal therefore fails and costs to the respondent, here and the court below, to be agreed in default to be taxed.

E.L. SAKALA
SUPREME COURT JUDGE

D.K. CHIRWA
SUPREME COURT JUDGE

L.P. Chibesakunda
SUPREME COURT JUDGE