Judgment No. HB 104/2003
Case No. HC 1298/2002
X-Ref HC 645/2002

ANNA GREEN

Versus

THE CHAIRMAN – NATIONAL SOCIAL SECURITY AUTHORITY APPEALS COMMITTEE

And

NATIONAL SOCIAL SECURITY AUTHORITY

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 1 NOVEMBER 2002 AND 2 OCTOBER 2003

C P Moyo for the applicant
J Moyo for the respondents

Application for Review

CHIWESHE J: This is an application for review of the decision of the first respondent wherein it upheld the decision of a disciplinary committee to dismiss the applicant from the employ of the National Social Security Authority (NSSA). The order sought is as follows:

"1. The decision of 1st respondent be and is hereby set aside.
2. The decision of the Hearing Committee of 2nd respondent handed down on February 7, 2002 be and is hereby set aside.
3. Applicant be and is hereby declared to be an employee of 2nd respondent and that her reinstatement be and is without loss of pay or benefits.
4. Second respondent pay all the costs of this suit and of the previous hearing by 1st respondent."

The facts of the matter are as follows. On 5 December 2001 the applicant was charged for misconduct by the Regional Manager acting in terms of a registered code of conduct for the second respondent. A hearing was held by the second respondent's Disciplinary Committee on 24 January 2002. The minutes of the hearing were prepared on 31 January 2002 and the decision of the Disciplinary Committee was

communicated to the applicant on 7 February 2002. The applicant had been found guilty of a breach of the code of conduct and demoted to a lower grade. The applicant lodged an appeal with the 2nd respondent's Appeals Committee. The hearing was set for 5 April 2002. At that hearing the applicant objected to the Chairperson of that Committee on the grounds of bias. The objection was upheld. As a result it became necessary that another person be appointed to chair the proceedings. That necessitated an adjournment. The committee re-assembled on 3 May 2002 under a new chairman, twenty eight days later. At that hearing the applicant raised another objection, namely that the committee no longer had jurisdiction over the matter because according to the code of conduct such a matter was to be heard and concluded within fourteen days. The committee, that objection notwithstanding, proceeded to hear the matter and concluded that the applicant ought to be dismissed from her employ.

The grounds for review are two fold – firstly that the respondents did not comply with a statutory requirement that the matter be concluded within 14 days and secondly that the 1st respondent was biased. In my view the applicant has not established the basis upon which the decisions of the respondents can be set aside on these two grounds.

The prescribed period cannot run where there is interruption on reasonable grounds and in the interests of justice. The Appeals Committee's deliberations were interrupted by an objection raised by the applicant. The objection was upheld necessitating a change in chairmanship. Until the committee was properly constituted the 14 days rule could not apply. Even if I were wrong in this interpretation, it has not been shown that the applicant has suffered prejudice in

the conduct of her appeal by means of such delay. By the same token it cannot be said that the 1st respondent by resolving to proceed to hear the appeal acted in a manner indicative of bias. No facts have been put forward in support of such a contention. A misdirection, if any, does not of itself in the absence of a *mala fide* intention constitute bias.

Similarly there is no merit in the suggestion by the applicant that the original hearing before the disciplinary committee exceeded 14 days in duration. The proceedings were commenced on 24 January 2002. The decision of the committee was communicated to the applicant on 7 February 2002 but the inquiry was concluded on 31 January 2002, well within the 14 day period. The communication with the applicant was also within the stipulated time. Again even if I was wrong in this view, the applicant has not shown that she has in any way been prejudiced by such delay. In my view therefore the applicant's submissions are without basis.

I now turn to the question whether the applicant was justified in seeking redress in this court. It has not been shown that the applicant has exhausted the remedies provided for under the Labour Relations Act [Chapter 28:01]. Although the courts indulged her the benefit of audience, the Act does provide sufficient remedies for complaints such as the present. Section 101(7) of the Labour Relations Act [Chapter 28:01] reads as follows:

> "Any person aggrieved by-
>
> (a) A determination made in his case under a code; or
>
> (b) the conduct of any proceedings in terms of a code.
>
> May within such time and in such manner as may be prescribed, appeal against such determination or conduct to the Tribunal."

The applicant should have proceeded accordingly. There is no reason why litigants and legal practitioners should shun the machinery specifically laid down by the legislature for the resolution of labour disputes. I am in entire agreement with the sentiments expresses by SMITH J in *Musunda* v *Chairperson Cresta Lodge Disciplinary and Grievance Hearing Committee* HH-115-94 when he stated:

> "In my view, this court should not be prepared to review the decision of a domestic tribunal merely because the aggrieved person has decided to apply to this court rather than by way of domestic remedies provided."

For these reasons the application is dismissed with costs.

Messrs Majoko & Majoko applicant's legal practitioners
Messrs Atherstone & Cook c/o Calderwood Bryce Hendrie & Partners respondents' legal practitioners