

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/16/14

HELD AT HARARE 18TH SEPTEMBER 2013

CASE NO LC/H/335/13

AND 31ST JANUARY 2014

In the matter between:-

STAR AFRICA CORPORATION

Appellant

And

SUGAR REFINERY WORKERS UNION

Respondent

Before The Honourable Hove, J

For Appellant

Mr Z Makorie (Legal Practitioner)

For Respondent

Mr E Maponga (Trade Unionist)

HOVE, J:

The parties in this case were engaged in a dispute of salaries. The parties failed to agree on the determination of a new minimum wage for the Industry for the period 1 January 2011 to 30 June 2011. They also failed to agree on a housing allowance for the period 1 January 2011 to 30 June 2011.

The employees wanted the minimum basic salary to be increased from \$157 to \$150 per month. They sought no increment for the housing allowance. The employer partly wanted to maintain the position *aquo ante*.

Before the Arbitrator, according to the award, the employer made generalized submissions. No explanations as regards the company's financial position were given.

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The Arbitrator was however able to note that the company had not made profits in the years 2011 and 2012. But that the company had been using the profits from another sister company which was recording profits i.e. Country Choice which had recorded a profit of US\$33 000 for the year ending March 2012. The Arbitrator noted the loss which had been posted for the Appellant company.

The Arbitrator then considered the position of the employees and the high cost of living in terms of accommodation and other basic needs.

He decided to strike a compromise decision by minimally raising the salary. He also awarded a housing allowance. In making the minimum adjustments upwards, the Arbitrator took into account the hardships being faced by the company and decided not to further burden the company financially beyond the bare minimal increases to cushion the workers from the high cost of living.

The employer was not happy with the award and appealed to this court and the grounds of appeal are;

- 1. The Arbitrator erred at law in relying on the financials for the whole group instead of considering those of Goldstar Sugars, the division with which the arbitration was concerned.*
- 2. The Arbitrator erred at law in awarding an increase when the company has been making heavy losses, and the increase is clearly unsustainable.*
- 3. The Arbitrator erred at law in awarding an increase based on the fact that Country Choice Foods, another division of Star Africa Corporation Limited, had a profit.*

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4. *The Arbitrator erred at law in making sweeping statements, and relying on them, about the pricing of sugar, having a narrow top, disposing of non-care and non-profitable businesses for the group without foundation and without consideration that those issues were not before him. His sole mandate was to determine minimum wages for employees of Gold Star Sugars.*
5. *The Arbitrator erred at law in finding that workers wanted an increment on the minimum wage only, without an increment on the housing allowance, but he erred in proceeding to award an increase on the housing allowance.*

When the matter came up for hearing in the Labour Court, the Respondents challenged the appeal on the basis that the grounds of appeal did not raise any points of law but only raise factual conclusions made by the Arbitrator.

They argued that ground number one does not raise any point of law but challenges the financial conclusions drawn by the Arbitrator. these are factual conclusions.

The second ground is also challenged on the basis that no point of law is raised. The salary increase is a factual decision which raises no point of law. This is the same with the rest of the other three grounds of appeal. No legal issue is raised.

I agree that no point of law has been raised in the grounds of appeal. The grounds seek to challenge the factual conclusions made by the Arbitrator.

What the Appellant company did was to merely mention and precede the grounds of appeal by saying that the Arbitrator erred on a point of law but proceeded to outline facts. By merely saying “erred on a point of law” an Appellant cannot hope to transform a ground of appeal raising only points of facts to one raising points of law.

What is a point of law has been stated in the case of **Muzuva v United Bottlers (Pvt) Ltd** 1994 (1) ZLR 217.

In that case it was held that a point of law is a point which seeks to define what the true position of law is. That which is in the province of a Judge and not the jury.

In this case no point of law is raised. What is challenged is the decisions based on facts which were made by the Arbitrator on whether or not he should award an increment and by what percentage if he was of the view that there ought to be a raise.

There is no allegation that the misdirection on the factual conclusions is so grossly unreasonable so as to amount to a misdirection on a point of law.

Appeals to the Labour Court from decision of Arbitrators are in terms of Section 98 (10) of the Labour Act [Chapter 28:01] (the Act) and in terms of that section such appeals must be on points of law.

It follows therefore that an appeal which raises no points of law is improperly before the Court. I find that this appeal is raising no point of law and therefore improperly before the Court.

I accordingly order as follows;

The appeal be and is hereby dismissed.

There is no order as to costs.

Coghlan, Welsh and Guest, Appellant's Legal Practitioners

United Food Allied Workers Union of Zimbabwe, Respondent's Representatives