

**IN THE LABOUR COURT OF ZIMBABWE
HELD IN HARARE, 19TH NOVEMBER, 2013
And 14th FEBRUARY, 2014**

**JUDGMENT NO. LC/H/58/14
CASE NO. LC/H/766/12**

ENOCK MUKUSHWA

APPELLANT

HEALTH SERVICES BOARD

RESPONDENT

Before The Honourable G. Musariri: Judge

For Appellant : Mr R. Masinire, Attorney

For Respondent: Mr C. Gutu, Advisor

MUSARIRI G,

Appellant worked for Respondent as a Meat Inspector based at Chivhu General Hospital. He was charged with misconduct (corruption and incompetence). A hearing was held which led to his conviction and dismissal from employment. Appellant appealed against his dismissal but Respondent dismissed the appeal. Appellant then appealed to this Court.

The grounds of appeal were five-fold and read as follows;

1. No reasons for the determination and no record of proceedings were given to the Appellant thereby depriving him of the opportunity to properly state his case.
2. The Health Service Board considered a multiplicity of charges and also erred as the Disciplinary Committee did by convicting the Appellant on all three counts without specifically stating on each account how the act of misconduct was proved.
3. The Health Service Board erred by disregarding the Appellant's defence without giving reasons.

4. The Health Services Board erred by endorsing the verdict and pending (sic) of the Disciplinary Committee without considering that the Disciplinary Committee had heard the matter out of time and further that only one witness was called instead of the witnesses who had testified for the Respondent in the Criminal Court. Further the Disciplinary Committee had not called for mitigation at all but the Health Services Board failed to make a note of this.
5. The penalty of dismissal for a first offender is so harsh that it induces a sense of shock.

Respondent opposed the appeal. Its Notice of Response read thus,

“Appellant did not request for the record of proceedings which he should have been availed with upon request. Failure to follow the work procedure makes him guilty of the of the first charge while receiving money of the second one and receiving money of the third charge and he admitted the charges. The Committee asked for mitigation. There was prejudice to the State and applicant was neither remorseful to show that he would repent.”

Evidence was elicited from the Chairman of Chivhu Butcheries Association.

He said that,

“We used to pay the hospital a fee and then got a receipt which was demanded before a meat inspection was done. When Mr Mukushwa came as the new Meat Inspector he said we should directly give him this money as he was going to use it for maintaining his uniform. He could not inspect without us paying him until the hospital administration here came asking us why we were no longer paying fees to the hospital. We told them that we were paying directly to Mr Mukushwa----. During his inspections he demanded some meat that he said was the inspector’s portion as a normal practice. He took pancreas and other offals. He could take more than 4 kg from various beasts on the day he inspects the meat.”

This evidence was given by a respectable businessman who was the chairman of the butcheries association. It confirmed the charges of corruption and incompetence. It was a damning piece of evidence which was corroborated by Appellant’s own admissions. The record shows the following admissions,

“A. On meat inspection I did the right. I did wrong by not encouraging people to come and pay at the hospital and by passing beasts before full post mortem inspections.

Q. What is called “Meat Inspectors portion”?

A. This was some meat given to me as a token of appreciation.

Q. Do you agree there was improper performance of duties by asking for free meat portions?

A. Yes”

The evidence clearly showed that Appellant performed his duties corruptly and incompetently. He took meat portions from his employer's clients in dodgy circumstances. He did not follow proper revenue-receipting procedures. It is obvious that the major motivation in his work had become the "inspector's portion" which was effectively a bribe meant to pass meat which might have been unfit for consumption. I therefore consider that the grounds of appeal, directed against his conviction, lack merit.

The penalty of dismissal was appropriate in the circumstances. Appellant was a Senior Officer. In other words he certainly knew what was expected of him. He held a position of trust. He abused the trust for private gain. In the process, he tarnished the reputation of his employer and fellow employees. The employer suffered financial prejudice which was not put right. His long service did not mitigate his actions as argued on his behalf. Rather, it aggravated the offence because of the gross abuse of office involved. The other complainants raised by Appellant related to matters of procedure. These can only be raised in a review and not in an appeal. I therefore dismiss those complaints.

Wherefore it is ordered that,

- 1. The appeal is hereby dismissed; and**
- 2. Each party shall bear its own costs.**

**G. MUSARIRI
J U D G E**