

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/355/2023

HARARE, 18 OCTOBER 2023 05

CASE NO LC/H/560/23

DECEMBER 2023

BRIAN MUREWA

APPLICANT

NATIONAL SOCIAL SECURITY AUTHORITY

RESPONDENT

Before the Honourable G. Musariri Judge:

For Applicant - Mr B. Magogo, Advocate

For Respondent - Mr N. Phiri, Attorney

MUSARIRI, J:

At the onset of oral argument in this Court respondent raised a point *in limine* which applicant opposed.

The point is adumbrated in respondent's opposing affidavit thus

- “5. I am advised by Respondent's Legal Practitioners that in terms of Rule 20 of the Labour Court Rules, 2017, an application for review ought to be brought to this Honourable Court within twenty-one (21) days from the date the proceedings being reviewed were concluded.
6. The Disciplinary Authority's Determination was handed down on the 5th June 2023 yet the present application was filed on the 19th July of 2023. The Applicant is therefore out of time and I am advised that a process filed out of time cannot be entertained by this Honourable Court without condonation being applied for. It follows therefore that the Application is fatally defective for non-compliance with the rules.”

Applicant countered in his heads of argument;

“12.1.3 The determination was delivered on the 11th July 2023 and thereafter an appeal was filed within the timelines in the Labour Court.

12.1.4 The Respondent seeks to ignore the fact that appeal was filed with the internal appeal structure and a communication was shared and delivered on the 11th July 2023.”

Rule (1) of the Labour Court Rules S.I. 150/17 reads

“A person wishing to seek review of proceedings referred to in terms of the Act shall, within twenty-one days from the date when proceedings are concluded, do the following

(a) Complete in three copies a n notice of review in Form LC 5;”

Therefore, the key question becomes when were the (disciplinary) proceedings concluded? The parties reference different dates.

Respondent refers to the 5th June 2023. The record shows that is the date when the Disciplinary Authority signed the determination. The determination concluded thus

“I conclude that the appropriate and fitting penalty is that employee be dismissed from employment. I recommend accordingly.”

Applicant refers to the 11th July 2023. However, during oral argument applicant shifted to rely on the termination letter dated 27th June 2023. The relevant portion reads

“Reference is made to your suspension from employment and suspension letter dated 16 February 2023, the disciplinary hearing and the Decision of the Disciplinary Authority dated 5 June 2023. (See attached decision for your reference).

Please be advised that the Authority has endorsed the decision of the Disciplinary Authority and will therefore be implementing it. Resultantly your contract of employment is hereby terminated effective 5 June 2023.”

It is apparent from the foregoing that the disciplinary proceedings were concluded by the termination letter dated 27th June 2023. The present application was filed on 19th July 2023. That was the 16th day after the conclusion of proceedings. Thus the application for review was filed timeously. Respondent argued that what is sought to be reviewed is the earlier decision of the Disciplinary Authority. Yet it is clear that the so called decision was but a recommendation. The substantive decision was embodied in the termination letter. This attempt to split the termination from the earlier recommendation amounts to splitting hairs which cannot be countenanced. The two were part of one process which was concluded by the termination.

Wherefore it is ordered that;

- 1. The respondent's point *in limine* be and is hereby dismissed;**
- 2. The Registrar of this Court shall re-set the matter for hearing on the earliest available date, and**
- 3. Costs shall be costs in the cause.**

**G MUSARIRI
J-U-D-G-E**