

**IN THE LABOUR COURT OF ZIMBABWE**

**JUDGMENT NO LC/H/359/2023**

**HARARE 28 SEPTEMBER 2023**

**CASE NO LC/H/129/20**

**05 DECEMBER 2023**

**EVELYN MARIMA**

**1<sup>ST</sup> APPELLANT**

**HANDRIX CHIGIJI**

**2<sup>ND</sup> APPELLANT**

**ZIMBABWE NATIONAL STATISTICS AGENCY**

**RESPONDENT**

Before the Honourable G. Musariri Judge:

For Appellants                      Mr W. Magaya, Attorney

For Respondent                      Ms B. Mahuni, Attorney

**MUSARIRI, J:**

Appellants appealed to this Court against their dismissal from employment by Respondent. The appeal was made in terms of section 92D of the Labour Act [Chapter 28:01]. Respondent opposed the appeal.

The grounds of appeal were initially eight-fold. At the onset of oral argument the parties agreed that respondent drops its points in limine and appellants drop grounds 3,5,6,7 and 8 of their appeal. The remaining grounds read thus,

- “1. The Respondent erred in ignoring the recommendation of its own disciplinary committee which found the Appellants not guilty of misconduct.

2. The Respondent erred in imposing a penalty of dismissal from employment without inviting the Respondent to make submissions in mitigation.
4. The Respondent erred in concluding that the allowance was not properly authorised and approved yet documents on record show that it was clearly authorised and approved by both Zimbabwe National Statistics Agency and UNICEF.”

On the 30<sup>th</sup> October 2020 the Disciplinary Committee found as follows,

- “1. The request and payment of Co-ordination Allowances was properly requested from UNICEF by the Finance Director on behalf of the Director-General. There was the separation of responsibilities in that the requesting and processing Departments were different.
2. UNICEF as the co-operating partner authorised the disbursement in March 2019. The issue regarding the payment was queried in October 2019, after both an Audit investigation and a letter to UNICEF by the Director-General seeking clarity. In the absence of a UNICEF official to clarify this apparent contradiction, the benefit of doubt lies with the employee.
3. The UNICEF position i.e. authorising payment was discounted by the new Country Representative who stated that it was not in line with UNICEF procedures.
4. Allegations that the Director-General signed the Memorandum of Understanding and not the budget was not conclusively proven as the Employer Representative asserted that it was not approved while the Defence Counsel cited implementation by ZIMSTAT as evidence of acceptance of the budget.
5. Regarding the alleged falsification and concealment of the Coordination Allowance, the Employer’s Representative, supported by the witnesses argued that this amount was hidden due to the line item it was allocated in the budget. The defence counsel on the other hand argued that there was never any concealment or falsification because of the multiple use of the term Coordination Allowance in correspondence between ZIMSTAT and UNICEF. This coordination allowances was not concealed.
6. At the period in question there was no regulation specifically barring the payment of coordination and similar allowances.”

On the basis of these findings the Disciplinary Committee recommended that the suspended appellants “be reinstated with full benefits.”

On the 2<sup>nd</sup> November 2020 respondent's Director-General found the appellants guilty of misconduct and dismissed them from employment. The D-G concluded thus,

“The two crafted a budget, where the allowance was drawn from an item camouflaged under Data Processing Computer Supplies. The line items in the budget read:

1 x Survey Director 15 months x US\$700

4 x Survey Coordinators 15 months x US\$600

Nowhere did the line items in the budget suggest that they were coordination allowances. Thus the term ‘coordination allowance’ is not in the budget but only appears at draw-down stage.

Payment of a coordination allowance required specific approval from UNICEF and the ZIMSTAT Director-General as was done for the US\$20.00 a day operational allowance that was paid to officers under this survey. The reason being any allowance outside the budget and MOU would need specific approval.”

The DG evidently disagreed with the DC and hence overrode their recommendation. Was he right to do so?

By letter dated 27 February 2019 the Director General (appellants' boss) wrote to UNICEF requesting payment of co-ordination allowances per the attached budget. The budget provided for the amount of \$196,605.00 requested. By e-mail dated 1<sup>st</sup> March 2019 UNICEF indicated it will transfer the requested payment. By payment advice dated 2019/03/04 UNICEF confirmed payment of the amount of \$196,605.00. Clearly the payment was approved by both UNICEF and Respondent through the then DG. Apparently the advent of a new DG is what changed matters. Be that as it may his conclusion that the payments were not approved flies in the face of the documentary evidence. His claim that the allowances were camouflaged does not stand scrutiny. The letter requesting payment clearly stated that they were co-ordination allowance. The amounts involved are there in the budget and allocated to co-coordinators including the both appellants. Faced with this evidence the Disciplinary Committee naturally recommended Appellants' acquittal. As demonstrated above the new DG did not have a valid basis for disregarding the recommendation by the DC. His decision is in fact irrational and thus cannot be allowed to stand.

See NRZ v Hama 1996 (1) ZLR 664 (S) at 670 C.

**Wherefore it is ordered that,**

- 1. The appeal be and is hereby allowed;**
- 2. The dismissal from employment of appellants by respondent is set aside;**
- 3. (a) The respondent shall reinstate appellants without loss of salary and benefits, or**  
  
**(b) The respondent shall pay appellants damages in a sum either agreed by the parties or assessed by this Court; and**
- 4. The respondent shall pay half of the appellants' legal costs.**

**G. MUSARIRI**

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