

Civil Appeal No. 401/05

BARCLAYS BANK OF ZIMBABWE LIMITED
v FORTUNE NCUBE

SUPREME COURT OF ZIMBABWE
SANDURA JA, ZIYAMBI JA & GARWE JA
HARARE, OCTOBER 16, 2007 & MAY 12, 2009

G V Mamvura, for the appellant

D T Mwonzora, for the respondent

SANDURA JA: This is an appeal against a judgment of the Labour Court which dismissed the appeal by the appellant (“the bank”) against the decision of the appeals board of the Employment Council for the Banking Undertaking which had declined to hear the bank’s appeal against the decision of the grievance and disciplinary committee reinstating the respondent (“Ncube”) as an employee of the bank.

The relevant facts are as follows. Ncube was employed by the bank at its Main Street Branch in Bulawayo as a senior cashier. In March 2002 the bank preferred charges of misconduct against him in terms of its Code of Conduct (“the Code”), published in Statutory Instrument 273 of 2000.

On 24 April 2002 Ncube appeared before a hearing officer, and was found guilty of failure to comply with standing instructions or follow established procedures resulting in substantial loss to the bank, an act of misconduct which fell within category D, and the penalty for which was dismissal. Accordingly, the hearing officer recommended that Ncube be dismissed, and he was dismissed on 26 April 2002.

On 27 April 2002 Ncube appealed to the grievance and disciplinary committee which, on 24 May 2002, altered the verdict to one of guilty of negligence causing a substantial loss to the bank, an act of misconduct which fell within category C in terms of the Code, and substituted a severe written warning for the penalty of

dismissal.

Aggrieved by that result, the bank appealed to the Employment Council for the Banking Undertaking, but did not do so within seven days as required in terms of the Code.

When the matter came before the appeals board of the Employment Council for the Banking Undertaking on 7 August 2002, the appeals board declined to hear it on the ground that the appeal had not been noted timeously.

Thereafter, the bank appealed to the Labour Court which dismissed the appeal. Dissatisfied with that result, the bank appealed to this Court.

The real issue in this appeal is whether the appeals board erred when it declined to hear the appeal. The Labour Court answered that question in the negative. In my view, that decision was correct.

In declining to hear the appeal, the appeals board said the following:

“The Appeals Board considered the fact that the case had been appealed to the NEC out of time. The excuse given by the bank was that the case had erroneously been sent to another Grievance and Disciplinary Committee. However, the Appeals Board did not feel that a mistake like that was a valid excuse for submitting a late appeal. The bank has vast experience in dealing with disciplinary issues, and the procedure is very clear in the Code of Conduct.”

It was, therefore, common cause that the appeal had not been noted timeously, although it is not clear from the record when the appeal was noted. However, in a letter dated 3 July 2002, and addressed to the Secretary of the Employment Council for the Banking Undertaking, Ncube stated that the bank filed its appeal on 14 June 2002, about three weeks after the grievance and disciplinary committee had made its decision.

As the appeal was not noted timeously, it was not properly before the appeals board, and the appeals board properly declined to hear it.

In addition, there is no provision in the Code which empowers the appeals board to condone the late noting of an appeal to it. Consequently, the appeals board correctly declined to condone the bank's failure to note its appeal timeously.

In the circumstances, the appeal is devoid of merit and is, therefore, dismissed with costs.

ZIYAMBI JA: I agree

GARWE JA: I agree

Scanlen & Holderness, appellant's legal practitioners
Mwonzora & Associates, respondent's legal practitioners