

DAVID MOYO
v
RURAL ELECTRIFICATION AGENCY

SUPREME COURT OF ZIMBABWE
ZIYAMBI JA, GWAUNZA JA & PATEL JA
HARARE, JANUARY 27, 2014

T. Magwaliba, for the appellant

R. Chingwena, for the respondent

ZIYAMBI JA: The appellant was employed by the respondent as an Accounting Officer. On 22 May 2009 he was handed a letter suspending him from his employment on charges of habitual and substantial neglect of duties in terms of s 4(g) of the Labour (National Employment Code of Conduct) Regulations, 2006, (“the Regulations”) and inviting him to attend a disciplinary hearing on 29 May 2009. He was advised in the letter of his right to appear in person or with a legal representative and was warned that in the event of his non attendance, the hearing would proceed in his absence and possibly to his detriment.

That notwithstanding, the appellant travelled to South Africa on 26 May 2009 without leave of absence and without seeking a postponement of the hearing. The hearing proceeded in his absence on 29 May 2009 and the appellant was found guilty as charged.

At the end of August 2009, the appellant returned to Zimbabwe and, by letter dated 1 September 2009, advised the respondent of his return and his willingness to assume his duties, fully aware that the hearing had taken place on 29 May 2009. The respondent, in

reply, wrote to the appellant on 3 September 2009, advising him that he had been found guilty as charged and that his employment had been terminated with effect from 22 May 2009, the date of suspension. The appellant challenged the dismissal before an arbitrator and, on appeal, the Labour Court. Both courts found that he had been fairly dismissed.

The main point taken by Mr *Magwaliba* before us, was that the disciplinary proceedings were irregular and unfair in that the appellant was not heard in person and the proceedings were not concluded within fourteen (14) days as required by s 6(2) of the Regulations.

In our view the appellant, by deliberately absenting himself without leave from the hearing, waived his right to challenge the conduct of the disciplinary proceedings. He had the option, which he did not exercise, of seeking a postponement since he knew that he would not be available on the date of the hearing. In these circumstances we do not feel that the failure by the respondent to strictly comply with the Regulations operated to vitiate the disciplinary proceedings.

Accordingly, it is our view that the appeal lacks merit and it is hereby dismissed with costs.

GWAUNZA JA: I agree

PATEL JA: I agree

Advocate Chambers, appellant's legal practitioners

Advocate Chambers, respondent's legal practitioners