

CHARLES KAKURIRA
v
NATIONAL RAILWAYS OF ZIMBABWE

SUPREME COURT OF ZIMBABWE
HARARE, JUNE 1, 2011 & SEPTEMBER 3, 2014

The applicant in person
A Muchadehama, for the respondent

Before **MALABA DCJ**, in Chambers.

The applicant is seeking leave to appeal against a decision of the Labour Court dismissing an appeal from a decision of the General Manager of the respondent. The General Manager upheld the finding by the disciplinary hearing committee that the applicant stole the respondent's property. He was dismissed from employment. The learned Senior President of the Labour Court refused leave to appeal.

The application has no merit. The applicant was employed by the respondent as a station clerk based in Banket. He appeared before the disciplinary hearing committee. The applicant admitted that he had given three steel sleepers to a lorry driver without authority from his employer. He knew that the lorry driver had previously approached one Chenjerai asking for

scrap metal. He was told that there was no property belonging to the NRZ which was for disposal.

The applicant knew that the property belonging to NRZ had to be disposed of through a procedure which required that all property be sent to Bulawayo for reclamation. His job involved sending such property from Banket to Bulawayo for proper disposal. Notwithstanding this knowledge, he found it necessary to give the three steel sleepers to the lorry driver. The property was loaded on the lorry in the presence of the applicant. He admitted that it was only recovered when the station master saw what was happening and rushed to where the lorry was parked and ordered that the property be off-loaded.

The applicant admitted that the station master asked him why he was giving away company property. He said he apologized for his conduct and said that he thought the three steel sleepers were of no value to the N.R.Z. What the applicant told the disciplinary committee was what he had said in a report submitted five days after the incident.

The allegation by the applicant that he thought the property was of no value was false. He knew that it was not his duty to decide whether the property was useful to the NRZ or not. He knew that the lorry driver had interest in the property. The procedure for disposing of NRZ property was intended to protect railway property from the kind of theft the applicant committed.

When the applicant told the lorry driver to take the property which was taken, he must have intended that the NRZ be deprived of its property permanently. The fact that the property was off-loaded from the lorry, on the instruction of the station master, did not absolve the applicant of the intention to steal the property.

By virtue of the admissions by the applicant, the facts were common cause. Each of the bodies that considered the question whether or not he was guilty of the misconduct he was charged with had no choice but to return a verdict of guilty.

Accordingly it is ordered that the application for leave to appeal against the judgment of the Labour Court (LC/H/06/2008) be and is hereby dismissed with costs.

Mbidzo, Muchadehama & Makoni, respondent's legal practitioners