

DISTRIBUTABLE (2)

**THOUSAND SADZIWANI
v
NATPAK (PRIVATE) LIMITED**

**SUPREME COURT OF ZIMBABWE
GWAUNZA JA, PATEL JA & GUVAVA JA
HARARE, JUNE 26, 2015**

The appellant in person

A.K. Maguchu, for the respondent

GWAUNZA JA: The appellant appealed to the Labour Court against the decision of the respondent's Appeals Committee, alleging procedural irregularities and impugning the Committee's decision on the merits of his dismissal from employment with the respondent.

The pertinent background to the matter is that the appellant, who was employed by the respondent, was given a supervisory role over two casual employees. He sent the two to the premises of National Foods Limited to pack and stack used bags in packs of 100 bags each, as directed by National Foods. The bags had been paid for and were to be transported to the respondent's premises, by the appellant. It was later discovered, just before the bags were to be removed, that the two employees had packed 110 instead of 100 bags per pack, suggesting an intention to steal the extra 10 bags per pack. The appellant was charged with theft and appeared before the disciplinary committee and later, the Appeals Committee. During the disciplinary hearings the two casual employees testified that they had acted under

the instructions of the appellant in packing more bags than had been instructed by National Foods. The appellant, when he was given the opportunity to do so, declined to cross examine the two witnesses.

The Labour Court found that the procedural irregularities raised by the appellant did not vitiate the proceedings of the Appeals Committee because:

- a) he had received a fair hearing before the disciplinary committee and the Appeals Committee, which relied on the evidence presented to the disciplinary committee; and
- b) no prejudice was shown to have been suffered by him as a result of the alleged irregularities.

The issue before us therefore is whether the court *a quo* erred in finding that the irregularities alleged were not so fatal as to vitiate the disciplinary proceedings, that the appellant was afforded a fair hearing and that he was properly found guilty of theft.

It is our unanimous view that the court *a quo* correctly found that the procedural irregularities alleged by the appellant did not vitiate the disciplinary proceedings conducted by the respondent. Furthermore, we are satisfied that the Labour Court correctly found that no prejudice was occasioned to the appellant, as, in the circumstances of the case, he had received a fair hearing before the disciplinary committee and subsequently the Appeals Committee.

The court, in our view, properly relied on the case of *Watyoka v Zupco* SC 87\05, where this court stated as follows:

“The appellant also raised a complaint about the composition of the disciplinary committee but it was not shown that there was any bias or prejudice at all. The composition of the committee is a technicality that cannot be allowed to nullify the proceedings which according to the record, reflect that he had a fair hearing.”

That being the case, we find that the court *a quo* correctly proceeded to determine the matter on the merits.

Turning to the merits of the matter, we are satisfied that the Labour Court properly analysed the evidence before it. We note, in particular that the appellant declined to cross examine the witnesses who gave evidence against him, which linked him to the alleged theft. In our view, the evidence of the witnesses in question remained uncontroverted. On this basis, we are unable to find that the court *a quo* misdirected itself in any way in upholding the appellant’s conviction and subsequent dismissal.

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In the result, we are of the unanimous view that this appeal lacks merit and ought to be dismissed.

As regards costs, we are satisfied that in the particular circumstances of this case it would be inappropriate to penalise the appellant with an order for costs.

It is accordingly ordered as follows:

The appeal be and is hereby dismissed with no order as to costs.

PATEL JA: I agree

GUVAVA JA: I agree

Appellant in person

Dube, Manikai & Hwacha, for the respondent

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