

IN THE LABOUR COURT OF ZIMBABWE

JUDGMENT NO LC/H/57/14

HELD AT HARARE 28TH NOVEMBER 2013

CASE NO LC/H/474/10

& 14TH FEBRUARY 2014

In the matter between:-

TENDAI ZIZHOU

Applicant

And

BARCLAYS BANK

Respondent

Before The Honourable L Hove, Judge

For Applicant

Mr A Muchandiona (Legal Practitioner)

For Respondent

J Chilimbe (Internal Legal Counsel)

with Mr Vamwe (Human Resources Manager)

HOVE, J:

This is an application for quantification of damages.

The parties are agreed that the Applicant is entitled to damages following this Court's finding that the Applicant's dismissal was wrongful.

The Applicant claims as part of his damages an amount of \$26 502.22. this amount represents his back pay calculated from October 2009 when he was unlawfully dismissed to June 2013 when an order for reinstatement was made by the court.

He also claims \$6 112.00. This amount represents what Applicant would have earned over a period of eight months. It was submitted on behalf of the Applicant that this amount is fair and reasonable especially when regard is had to the fact that jobs are not easy to find in this economy.

The Respondent argued that the order by this Court did not order reinstatement with full benefits from the date of dismissal. In the Respondent's Heads of Arguments, the Respondent submits that it is correct that a party who is wrongfully dismissed is entitled to salary and benefits that he lost as a consequence of that wrongful dismissal. The amount so computed will be adjusted as a result of a number of factors.

The Respondent argues that the Applicant is only entitled to 12 months salary representing a fair period within which the Applicant would have been able to find alternative employment. No back pay is offered on the authority of the decision in **Leopard Rock Hotel Co (Pvt) v Van Beek** SC 6/2000 where the Court observed as follows;

“Back-pay is thus a concept associated with reinstatement if an employee is reinstated she will normally be awarded back-pay. If she succeeds in proving wrongful dismissal, but is not reinstated, she will be entitled to ‘damages’, a major element of which will be back-pay. Perhaps more correctly one should say the damages will be assessed by reference to the back pay lost. But here the back pay will be limited to a period from the date of wrongful dismissal to a date by which she could, with reasonable diligence, have obtained alternative employment.”

The Court has considered the decision by my sister Judge Honourable Chivizhe, and noted that she in fact, did not order that the Applicant be reinstated. Her order merely quashed the decision to dismiss the Applicant. What this means is the Court set aside the decision to dismiss where that leaves us is that the Court has effectively reinstated. If the Court did not want to reinstate with effect from date of dismissal, it would have clearly stated so in its order that the Appellant was reinstated with effect from the date of her order or some other date as it is, the general position that a dismissed party will be entitled to the salary and benefits that he lost as a consequence of that wrongful dismissal must rule the day.

Having decided that both back pay and the claim for 8 months salary are payable. I may just mention that the back pay is calculated from the day of the wrongful dismissal to the date when the order to reinstate was made. See **Oliver Chiriseri v Plan International** SC 56/02, and **Redstar Wholesalers v Mabika** SC 52/05.

The claim for 8 months salary is also properly made as it would represent the period he would have been able to find an alternative job. See **Leopard Rock Hotel (supra) Kuda Madyara v Globe and Phoenix Industries (Pvt) Ltd t/a Rneco Mine** SC 63/02.

The claim is therefore properly made.

There is however another requirement that the Applicant is in law expected to mitigate his damages. If he fails to mitigate his damages, he would be penalised in that his claim would be reduced.

This is a position that appears to have been known by the Applicant as he alluded to the fact that he tried to get a job but was unsuccessful.

The applicant did not however place in evidence before the Court what it is that he did in trying to mitigate his losses. He merely mentions without giving details that he friend to but failed to get a job.

The Applicant is an able bodied young man who is qualified in information technology. There is no record of which companies he approached in trying to seek for alternative employment. There simply was no evidence that he had approached any company or prospective employer. There was no evidence that he had been turned down by any prospective employer. I am not satisfied that the Appellant tried to seek alternative employment in mitigation of his damages.

The Courts have made it dear that if a dismissed employee fails to mitigate his damages, then the damages he is entitled to would be reduced. See the case of **Ambali v Bata Shoe Company Ltd** 1999 (1) ZLR 374 (S)

The Applicant did not even approach the Respondent for a reference letter. The probabilities are that he never had need of the reference letter or a certificate of service since he was not seeking for alternative employment to mitigate his damages.

I am not satisfied that the Appellant made any effort to mitigate his damages. His claim for damages therefore will be reduced to what he would have earned during the first two years of his unlawful dismissal.

I accordingly order as follows;

1. The Applicant be paid damages for the unlawful dismissal in the sum of \$12 156 USD.
2. Each party will bear its own costs.

Danziger & Partners, Applicant's Legal Practitioners