

**IN THE LABOUR COURT OF ZIMBABWE**  
**HELD AT HARARE ON 11 JULY, 2013**  
**And 14<sup>TH</sup> FEBRUARY, 2014**

**JUDGMENT NO. LC/H/72/2014**  
**CASE NO. LC/H/725/2012**

In the matter between:-

**GOROMONZI RURAL DISTRICT COUNCIL** - **Appellant**  
And  
**Z.R.D.C.W.U.** - **Respondent**

Before The Honourable B.T Chivizhe: Judge

**For Appellant** - **Advocate R.T. Chadawuka - Instructed by**  
**Wintertons**

**For Respondent** - **Mr J. Chaka (Trade Unionist)**

**CHIVIZHE J,**

The appeal was noted against an arbitral award handed down on 6 August, 2012. The background facts to the matter are as follows:

The Appellant is a Rural District Council established under Rural District Council Act, [Cap 29:13]. The Respondent is a trade union representing employees in the health sector who claim to fall under Appellant. The Respondent lodged a claim of alleged non-payment of US\$847 735.00 by the Appellant being for outstanding salary and allowances covering the period between January 2007 and May 2011. The Appellant refused to pay and the dispute was then referred to the National Employment Council for conciliation. When conciliation failed the matter was then referred for arbitration. The terms of reference were for the Arbitrator to determine;

- (i) Whether or not the health staff were employees of Council or Government.
- (ii) Whether or not the health staff were owed as claimed.

The Arbitrator in an award handed down on 6<sup>th</sup> August came to the following conclusion;

- “8.1. That Health staff are employees of Council
- 8.2. That in the absence of grading of Health Staff, especially nurses, claimant’s claim on salary arrears can not succeed.”

Subsequent to this award the Respondent then lodged an application for quantification of damages in respect of allowances and food hampers (salary excluded). The application was opposed by the Appellant on the basis that;

- (i) the Respondent were seeking quantification of a new issue not determined before the Arbitrator
- (ii) as there had been no grading of health personnel after the 1<sup>st</sup> arbitral award the Respondent were raising the same issues previously raised before the Arbitrator
- (iii) the Respondent could not claim allowances/benefits excluding salaries when the two are interconnected
- (iv) that, in any event allowances and benefits were not an entitlement but discretionary.

The Arbitrator after coming to the conclusion that allowances and benefits were entitlements rather than discretionary benefits; that allowances and benefits were clearly separately provided for in the Collective Bargaining Agreement dated June 2009 then granted an award in the following terms.

“AWARD

In view of the above therefore, below is my award:

- 1. Respondent is ordered to pay a total of \$71 340.00 as indicated in the attached schedule. Such payment should be made within 30 days of this award.
- 2. Respondent is further ordered to give the named employees the following;
  - a. 23 780 kgs of mealie-meal
  - b. 4 756 kgs of sugar
  - c. 2 378 kgs litres of cooking oil
  - d. 1 189 bars of soap

These should be given to the named employees as indicated in the attached schedule.

Aggrieved by this decision the Appellant then lodged the present appeal premised on the following grounds;

1. The arbitrator erred at law in taking jurisdiction when he should have declined jurisdiction on the basis that:
  - 1.1. the matter was a new matter which should have been brought separately through a new institution of the appropriate adjudication process;
  - 1.2. there was no legal basis on which the application brought before him was so brought as his role as arbitrator legally terminated upon his issuance of the earlier award of 15<sup>th</sup> September 2011.
2. Alternative to 1.1. above, the arbitrator erred at law in taking jurisdiction when he was *functus officio* and the matter was *re judicata*. If the matter was not a new matter, then it had been dispensed with his earlier award and it was therefore not for him to, without legal basis, reopen the matter and change his order.
3. The arbitrator erred at law in:
  - 3.1. in dealing with the alleged application for quantification when his determination of 15/09/2011 amounted merely to a dismissal of that earlier application.
  - 3.2. further in then proceeding to treat the statement in his determination of 15/09/2011 to the effect that ‘the health staff are employees of the council’ as a *declaratur* when yet, as an arbitrator in a labour matter, he had no power to issue any *declaratur*.
4. The arbitrator erred at law in granting an order based on purely arbitrary calculations of the respondents as to what was allegedly owing in the absence of any contract or other legal basis from which the figures were drawn.
5. The arbitrator erred at law in stating that the health staff were employees of the respondent.
6. The arbitrator erred at law in electing to ignore that the parties had agreed that the respondents be paid by government rather than the appellant and that in light of that agreement with which there was no demurring, the respondents could now not seek to double dip as and when it struck them as convenient.
7. The arbitrator erred at law in finding that the persons attached in the schedule of the application were employees of the appellant when that was placed in issue and the respondent simply failed to show that the persons were employees.

The first ground of appeal raised by the Appellant is clearly merited. The Appellant raised the point that the Arbitrator had no jurisdiction to hear the matter and quantify allowances on the basis that the issue of allowances was a new matter not previously determined by the Arbitrator. The Respondent in reply submitted that the Council employees were entitled to the allowances and benefits as these are not grade based. The fact that the issue of grading system of health personnel was still pending would not have any effect on allowances entitled to the employees.

It is clear from a reading of the Arbitrator's award that in his first award dated 15 September 2011 the Arbitrator handed down a final and definitive judgment. The Arbitrator found that the Health Staff were council employees. He also found that in the absence of grading proper of the named employees the claim for arrear salaries could not succeed. The Arbitrator in his first award had not determined the issue of allowances. There is nowhere in his award where he co-relates the issue of salaries to allowances. There was nowhere in his award where he granted relief to the Respondent to approach him to have either the salaries or allowances quantified. In the absence of such an order the Arbitrator clearly had no jurisdiction to quantify allowances as he did in the second award dated 6<sup>th</sup> August, 2012. It is immaterial that the allowances and benefits are not grade based. It is also immaterial that they were separately provided for under the Collective Bargaining Agreement. The point is the issue of allowances was not claimed or raised in the first award. The Arbitrator thus had no mandate to quantify same. That is simply the end of the matter. The second arbitral award clearly cannot stand and ought to be set aside.

It is consequently ordered as follows:

1. The appeal be and is hereby allowed.
2. The arbitral award handed down on 6 August 2012 be and is hereby set aside.

***Wintertons*** – appellant’s legal practitioners

***Z R D C W U*** – respondent’s legal practitioners