REPORTABLE ZLR (2)

Judgment No. S.C. 5/99
Civil Appeal No. 1/98

ZIMBABWE UNITED PASSENGER COMPANY

vs KENNEDY CHISVO

SUPREME COURT OF ZIMBABWE
McNALLY JA & MUCHECHETERE JA
HARARE, FEBRUARY 1, 1999

T Magwaliba, for the appellant

F G Gijima, for the respondent

McNALLY JA: It is a real human tragedy that this simple case should have taken over six years to resolve. The respondent ("Chisvo") was a bus-driver/conductor employed by the appellant ("ZUPCO"). He was dismissed for issuing 70c tickets to seven passengers and charging them $1.40 each, thus allegedly pocketing 70 cents in each case. He was also found to be $6.55 short at the end of the day when his tickets and takings were reconciled.

The evidence that he committed the first and more serious offence is simply not there. There is no statement from any of the passengers as to what they paid and what tickets they were given. Eight torn tickets were produced, but whether they came from the floor of the bus or from passengers we do not know. It is said that one 70c ticket consists of a piece of paper on which the figures "70c" appear twice. But that is self-evidently not so, since there are separate serial numbers

accompanying each "70c". In other words, if a passenger holds a piece of paper with two "70c" appearing on it, he has a receipt for $1.40.

As to the alleged second offence, he paid in the sum as soon as it was pointed out. Shortages and probably also occasional surpluses must be a common occurrence on busy routes, and we cannot believe that it is a dismissable offence unless there are special circumstances (frequency of the error, size of the deficit, etcetera).

In any event, this alleged offence seems to have been thrown in as a make-weight. The stress was on the first allegation, which was utterly unproved.

We agree entirely with the decision of the Labour Relations Tribunal ("the Tribunal"). They have certainly not grossly misdirected themselves on the facts, which would be the only basis upon which we might be able to interfere "on a point of law".

The appeal must therefore be dismissed with costs. It is perhaps appropriate that we should make some comment on the order of the Tribunal which was an order for reinstatement with an alternative of damages.

We are aware that the alternative of damages is an essential part of any order of reinstatement, in terms of the clear provisions of s 96(1)(c) of the Act [*Chapter 28:01*]. But there must be cases, and this would appear to us to be one of them, where reinstatement is the obviously equitable solution, unless of course the

employee does not want to be reinstated or has for health or other reasons become incapable of reinstatement. There is no question of there being any difficulty or awkwardness in the relationship between employer and employee if he is reinstated. And one may also venture to say that no amount of damages can make up for a long-term job unjustifiably lost.

The Act makes no provision for a basis upon which damages are to be calculated, and this is unsatisfactory. The question has never come before this Court, and we are not aware of the principles which the Tribunal applies in calculating damages in such cases.

Since we have not heard specific argument on the question - what principles should be applied in determining damages - we do not propose to make any ruling on the point. However, it would appear to this Court that the *quantum* of damages in a case like the present should be sufficiently high to suggest to the employer that reinstatement is the more appropriate and equitable alternative.

The appeal is dismissed with costs.

MUCHECHETERE JA: I agree.

Winterton, Holmes & Hill, appellant's legal practitioners

F G Gijima & Associates, respondent's legal practitioners