

DAVID WHITEHEAD TEXTILES LIMITED v (1) CHARLES MABIKA (2) JOSEPH
MUSAUSO NYARWIRO (3) JOHN MUZUMALA

SUPREME COURT OP ZIMBABWE,
DUMBUTSHENA, CJ, BECK, JA & GUBBAY, JA,
HARARE, MAY 30 & JUNE 4, 1985.

F.O. Blackie. S.C., for the appellant

No appearance for the respondents

BECK, JA: In December 1983 the appellant, having in terms of s 4 of the Employment (Conditions of Service) Regulations, 1981, and s 4of the Emergency Powers (Termination of Employment) Regulations, 1982, obtained the prior approval of the Minister of Labour and Social Services to do so, terminated the employment of the respondents on notice given to each in accordance with the terms of their respective contracts of employment with the appellant. Each of the respondents was paid for the whole of his period of notice and each of the respondents was not required to work during that period. These facts were common cause.

On the basis of these facts the respondents applied to the High Court on Notice of Motion for an order directing the appellant to re-instate the respondents as employees in the same capacities as before and to pay them their respective wages up to the date of re-instatement. The respondents interpreted the above-mentioned facts as constituting summary dismissal, which they alleged - because no reasons were given for terminating their employment - was arbitrary, unjustified and contrary to natural justice.

In resisting the application, the appellant simply relied on the undisputed facts that I have set out above and denied in the light of these premises that the respondents were summarily dismissed but averred that their employment with the appellant had been duly and lawfully terminated on proper notice in terms of their contracts of service and with due observance and fulfillment of the statutory provisions to which I have referred.

The learned judge a. quo was of the view that there was a conflict of evidence, with the respondents saying that they were wrongfully dismissed and the appellant saying that they were not. Considering that this conflict could not be resolved without the aid of oral testimony the learned judge ordered that the matter proceed to trial, the affidavits to stand as pleadings. In addition the appellant was directed to file reasons for the termination of the respondents' employment.

With the leave of the court a quo the appellant has appealed against that order, the propriety of which Mr Blackie has attacked on various grounds, only one of which needs to be mentioned for it is conclusive: that is that there was and is no factual conflict to be resolved.

The appellant's denial of the respondents' assertion that they were unlawfully summarily dismissed does not give rise to any conflict of evidence at all, *for* the averment of unlawful summary dismissal is no more than a conclusion based upon the facts that were, as I have said, common cause. And it is clearly a wrong conclusion in law, which is why it was denied. The undisputed facts show, not that the respondents were summarily dismissed at all, but that they were given due notice of termination of their employment, for which notice of termination no reasons need in law be given. There is no purpose to be served in receiving oral, or any, evidence as to the reasons for the appellant's action in giving such notice.

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The papers therefore revealed that the respondents' complaint of unjustified summary dismissal was groundless. It was not a dismissal at all, but due termination in accordance with the contracts of service and with proper regard to relevant statutory requirements.

Accordingly the appeal is allowed with costs and the order of the court a **quo** is altered to reads:-

"Application dismissed with costs".

DUMBUTSHENA, CJ: I agree

GUBBAY JA: I agree

Gill, Godlonton & Gerrans, appellant's legal representatives

D. W Aitken & Co. , respondents' legal representatives