

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LABOUR AND EMPLOYMENT LAW-LLB309

DURATION: 3 HOURS

13 NOV 2019

INSTRUCTIONS TO CANDIDATES

1. Answer any **two** questions from Section **A** and any **two** questions from Section **B**.

INFORMATION FOR CANDIDATES

1. Credit shall be given for referring to case law, statutes or any other authorities wherever applicable.
2. Notes, handouts and textbooks are not allowed into the examination.
3. Cellphones are not allowed into the examination room.
4. Begin each answer to a full question on a fresh page.

SECTION A

QUESTION 1

Tongai was a senior guard at Big Catch Investments. He always complained that he was not given appropriate protective clothing and defensive equipment during night duties. During his spare time, he also worked as a part time builder. When Tongai refused to continue working until the above issues were addressed, he was removed as a Senior Guard and was appointed as a messenger and ordered to stop his part time job as a builder. He refused to comply with the orders and was suspended followed by a disciplinary hearing in which he was charged with insubordination and conduct inconsistent with the express or implied terms of the contract of employment. He was given 6 hours' notice of the hearing. He was not allowed to bring his legal practitioner or witness. He was found guilty and dismissed. The company had no registered employment code.

Required

With reference to statutes and decided case law authorities, discuss the rights and obligations of the parties. [25 marks]

QUESTION 2

National Mine Workers' Union is an affiliate of National Federation of Trade Unions. In December 2016 it had a dispute with Mass Printers of Zimbabwe which employs three hundred members who belong to the Union. The employer was refusing to pay the employees their bonuses which were equivalent to each employee's one-month salary. The Union referred the matter to a Conciliator and there were serious disagreements between the parties and a certificate of no settlement was issued, referring the matter to the arbitrator after consulting the parties. The arbitrator who was appointed to hear the matter was Mr. Moyo, a legal practitioner from Chengeta and Company Law Firm. The National Mine Workers' Union did not know that a senior legal practitioner from Chengeta and Company, Mr. Chengeta was representing Mass Printers of Zimbabwe in another labour matter before the Labour Court. The Union only became aware of this fact after an award had been granted against them.

Required

Advise the National Mine Workers Union on the following;

- a) The remedies which it must seek from the above situation. (12)
- b) The procedure which it must follow in order to get those remedies. (13)

[25 marks]

QUESTION 3

Makomba Mine decided to retrench its employees so as to reduce its operational costs and notified the employees of its intention to do so. Negotiations then took place in terms of the procedures laid down by the Labour Act [Chapter 28:01], culminating in the approval, in terms of Section 12 C of the Act, of the retrenchment by the Minister of Labour. The retrenchment was approved subject to the payment of a specific retrenchment package. The company then notified the employees that, due to the high costs of the retrenchment package, the retrenchment process would be deferred until further notice. The employees were ordered to return to work but they only turned up at work for two days and thereafter refused to work on the grounds that the retrenchment had been finalized. Proceedings were brought against the employees and they were dismissed from their employment.

Required

Advise Makomba Mine on its rights in the above matter.

[25 marks]

SECTION B

QUESTION 4

Assess the importance of the duty of good faith in collective bargaining.

[25 marks]

QUESTION 5

To what extent has the Bill of Rights in the new Constitution of Zimbabwe Amendment (number 20) Act, 2013 affected the labour relations in Zimbabwe?

[25 marks]

QUESTION 6

Discuss the factors which must be considered in quantifying damages for breach of an employment contract.

[25 marks]

END OF PAPER