



## **SCHOOL OF LAW**

**NLLB 308 LABOUR LAW**

**END OF SECOND SEMESTER EXAMINATIONS**

**APRIL/MAY 2024**

**LECTURER: MR N MAPHOSA**

**DURATION: 3HRS**

---

---

### **GENERAL INSTRUCTIONS TO CANDIDATES**

- 1. Do NOT write your name on the answer sheet.**
2. Write legibly.
3. Students **MAY NOT** take any material into the examination.
- 4. Answer ALL questions from Section A and TWO questions from Section B.**
5. You are advised to read all questions carefully before answering any.
6. Begin your answer for each question on a new page.
7. **CITE RELEVANT** authorities to support your arguments.
8. This examination paper consists of four pages.

## **SECTION A**

### **QUESTION ONE**

(a) Juliet Khan is being charged of negligence, disobedience and misuse of company property in terms of Sinotec (Pvt) Ltd's registered Code of Conduct and in terms of the Code these are automatic dismissal offences. The decision to dismiss Khan from employment is reached after it is found that she has two earlier written warnings in relation to negligence. Aggrieved by the decision to terminate her employment, Khan files a complaint of unfair labour practice against Sinotec. The dispute is referred for conciliation. It is her case that no proper investigations were conducted into the allegations levelled against her and further, that she was not granted the right to be heard before she was summarily dismissed. She thus claimed damages for unlawful dismissal totalling US\$23 253-34. Before the labour officer, the parties do not agree on Ms Khan's monthly salary, as Sinotec alleges that it was US\$750-00 while Ms Khan argued that it was US\$ 1500-00. The labour officer rules in favour of Ms Khan on this point and, having found that her dismissal from employment was unfair, orders Sinotec to reinstate her without loss of pay and benefits. Alternatively, Sinotec was to pay Ms Khan damages in lieu of reinstatement amounting to a total of US\$ 9000-00.

I. Advise Juliet Khan on the procedures to follow given that Sinotec does not comply with the labour officer's ruling. **[15 Marks]**

Sinotec is aggrieved by the decision of the labour officer and seeks to appeal against it. It argues in the main that the labour officer erred in simply assenting to Ms Khan's award of US\$9 000-00 as damages without fully addressing the principles of law to be applied thereto. It further argued that the labour officer made a ruling in favour of Ms Khan despite the fact that she was charged with disobedience of lawful orders, negligence and misuse of company property which led to her dismissal.

II. Advise Sinotec on where to lodge its appeal and the prospects of success on its claim. **[15 Marks]**

(b) Write detailed notes on S 65 of the Constitution of Zimbabwe, 2013. **[20 Marks]**

## **SECTION B**

### **QUESTION TWO**

John Dory was employed by Blue Ribbon as a mechanical foreman. On the 12th of December 2021 a screen problem developed at a production site. An examination revealed that there was discharge of pulp to a plate screen and that pulp was being discharged onto the floor. The mill was stopped to allow rubbers to be changed. After this process an inside rubber was found to be off position and, on the 14th of the same month John was tasked to attend to it. John attended to the rubber but did not secure it properly as he used to wear out bolts instead of new ones. The job had

to be re-done by other artisans and in the process Blue Ribbon lost an hour and a half worth of production time. As a result of this mal-performance, John was on the 16th of December 2021 charged with gross incompetence or inefficiency in the performance of his duties.

Prior to the disciplinary hearing that took place on 15 January 2022, [relating to the above mentioned alleged misconduct], John had, on the 4th of January been convicted of a misconduct involving negligence and had been given a final written warning as a penalty.

On 15 January 2022, he was convicted by the disciplinary committee ‘only’ of gross incompetence and was acquitted of the negligence charge. He was dismissed on the basis that he was already sitting on a final written warning which was given on 4th of January 2022. Part of the determination by the disciplinary committee read as follows:

“Although the offence amounts to gross incompetence/inefficiency but as the accused is already on a final warning, dismissal verdict awarded.”

Advise John on whether or not his dismissal is fair in terms of procedure and substance of the National Employment Code SI 15 of 2006. **[25 Marks]**

### **QUESTION 3**

(a) Bright Louw is employed by Dairiboard (Pvt) Ltd. It is company policy that employees can drink 500mls of fresh milk at the work place on a weekly basis. Bright has applied for 3 days leave and it is granted. Upon leaving the workplace he notices that his bottle of milk still has 160mls and he decides to carry the bottle with him and drink on the way since he was going on leave the next day. Upon being searched at the gate he is found with an opened 500ml bottle of Chimombe and therefore charged of theft although he tries to explain that his intention was to finish drinking his weekly allocation. At the hearing he is found guilty and dismissed because the employer alleged that he was a generally dishonest employee who often caused trouble and this was the best chance to get rid of him. Upon appeal the labour court sets aside the disciplinary authority's decision.

(a) Advise Bright on the appropriate remedy to seek before the Labour Court. **[20 Marks]**

(b) Write brief notes on constructive dismissal. **[5 Marks]**

### **QUESTION FOUR**

Due to the delta variant which is spreading in Zimbabwe Global logistics issues an ultimatum to all its employees that either they get vaccinated by the 30th of December 2021 or resign.

Jane Mary and Godfrey refuses to take the vaccination based on their religious beliefs and they refuse to resign. Global Logistics informs them that their actions have incapacitated the company from fulfilling its duties towards other employees of the company. Global Logistics also informs Jane Mary and Godfrey that their refusal is in violation of the duties they owe the company. Write

a legal opinion, fully supported with case law, for Jane Mary and Godfrey advising them of the duties they have breached towards Global Logistics and the duties they have indirectly caused Global Logistics to breach against the other employees. **[25 Marks]**

**END OF QUESTION PAPER**