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"THE PROVINCIAL LABOUR OFFICER"
Telephone: 04 :792751/2/3

MAKOMBE BUILDING COMPLEX

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HARARE
Form L.R.4



ZIMBABWE

Reference:
MINISTRY OF PUBLIC SERVICE LABOUR
AND SOCIAL WELFARE
P.O.BOX CY 572
CAUSEWAY
HARARE

Labour Act Chapter 28:01

Ruling on Matter

N.B (Three copies of this form shall be completed by the officer concerned of which one shall be retained by him and others and the others shall be served on the parties in the matter.

(ii) Any party who does not comply with this ruling shall be guilty of an offence and the ruling may be enforced against such party.

Name, designation and address of officer making the ruling:

MRS J.MATEKO
Makombe Complex,
Harare Region

Names and addresses of parties to matter in dispute:

ZIMBABWE TEA GROWERS ASSOCIATION

APPLICANT

AND

**GENERAL AGRICULTURE AND PLANTATIONS
WORKERS UNION OF ZIMBABWE**

1ST RESPONDENT

AND

**HORTICULTURE GENERAL AGRICULTURE
AND PLANTATIONS WORKERS UNION OF
ZIMBABWE**

2ND RESPONDENT

Date(s) on which matter heard: 16/02/17; 13/04/17



ISSUE IN DISPUTE

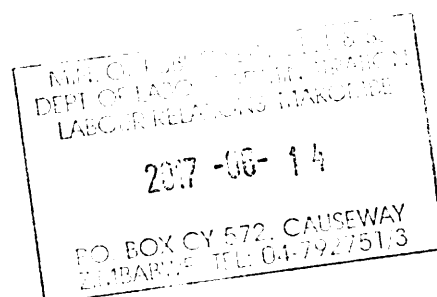
Wage deadlock between employers and employees for Tea and Coffee (a subsector of the Agro sector within the National Employment Council for the Agricultural Industry).

BACKGROUND INFORMATION

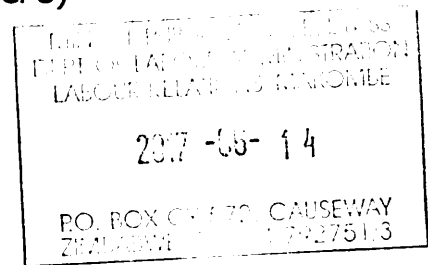
The National Employment Council for the Agricultural Industry of Zimbabwe referred a wage deadlock between employers and employees for Tea and Coffee (a subsector of the Agro sector within the National Employment Council for the Agricultural Industry). Conciliation hearings were convened in an effort to resolve the matter but the matter could not be amicably resolved resulting in a Certificate of No Settlement. Parties agreed on the timelines to submit their written positions. The employees raised a point in limine that the matter must be referred for arbitration since it was a dispute of interest. However, the tribunal dismissed this highlighting that the dispute emanated from collective bargaining and parties were negotiating on setting up a minimum wage for the industry and not increments. Therefore, the tribunal is of the view that the dispute is a dispute of right and should be resolved by a way of a ruling in terms of Section 93.

In attendance to the hearing were:

B.T. Kagondo	ZTGA
D. Madyausiku	NEC
L. Nhutsve	CFU
S. Jera	NEC
S. Marira	HGAPWUZ
E. Mashayamobe	GAPWUZ
A. Rajapu	HGAPWUZ



A. Muswere	GAPWUZ
N Nyikadzino	NEC
D. Madungwe	ZAEO
B. Magogo	Legal Practitioner for GAPWUZ
D. Chimbwanda	NEC Chairman (ZCFU)
G. Magwaza	GAPWUZ
Z.Mazarire	ZTGA
C. Maunga	ZTGA
B. Chatitiyara	NEC
F. Zondo	NEC- Vice Chairman (GAPWUZ)
I. B. Chidhakwa	ZFU
M. Mudyiwa	NEC



FACTS OF THE MATTER TO WHICH RULING RELATES

The tribunal will not regurgitate the parties' submissions word for word but will summarise the submissions highlighting the crucial aspects.

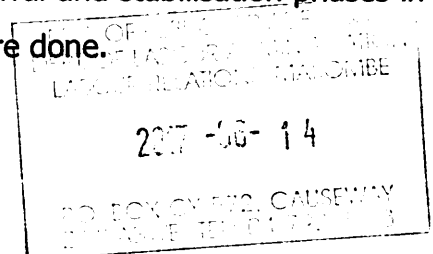
APPLICANT'S POSITION

The Applicant submitted that as at 20 November 2014, parties belonged to Agro Sector and that the minimum wage for Agro was \$90-00 as stipulated under S.I 130 of 2012. Applicant highlighted that the employers in the tea industry (ZTGA) could not afford to pay the minimum wage. It was the Applicant's submission that the minimum wage was then increased to \$95-00 in 2013 and they had to resort to applications for exemptions due to financial constraints. Applicant averred that parties then agreed to have a stand-alone Tea and Coffee Subsector which was established on the 20th of November 2014.

Applicant pointed out that Tea and Coffee Subsector is a stand-alone sector and that parties are supposed to negotiate a wage for Tea and Coffee which is not influenced by any other sector. Applicant submitted that the Tea and Coffee subsector attempted to negotiate a minimum wage and failed resulting in a resolution to exempt Tea and Coffee Subsector from paying \$95 to \$77 on the 10th of June 2015. The other exemption, according to the Applicant, was made on 16 June 2016. Applicant was of the position that there is no minimum wage negotiated for Tea and Coffee Subsector. Applicant was of the opinion that \$95-00 cannot automatically be transferred from Agro to Tea and Coffee Subsector. Applicant highlighted that at law, in the absence of a minimum wage for Tea and Coffee subsector, employees are entitled to \$95 but this does not make the minimum wage for Tea and Coffee Subsector. Applicant pointed out that even if the \$95-00 is the minimum wage, parties can still negotiate a lesser minimum wage in accordance to Section 74(4) of the Labour Act.

Applicant highlighted that the employers in the Tea Industry are burdened with heavy back pay after failing to pay the minimum wages that were set in the Agro sector and allowing the same state of affairs to prevail will result into insolvency of all the members of Zimbabwe Tea Growers Association. Applicant averred that the current high labour cost, shortages of working capital and absolute equipment among other factors has contributed to the demise of companies operating in the tea and coffee sector. It was the Applicant's submission that the sector is operating under 65% capacity utilisation. It was the Applicant's position that the minimum wage should take into consideration the performance of the sector. Applicant further stated that all the three companies within the sector have since started to retrench their employees.

It was highlighted that the sector is uncompetitive on international markets for the reason that the cost of production is, in the majority of cases, equal to and in other cases higher than the international prices. Applicant also pointed out that given that the cycle of maturity and or realisable value of any investment in Agriculture are not immediate, there is need to patiently go through the survival and stabilisation phases in the industry before any major adjustment to the wages are done.



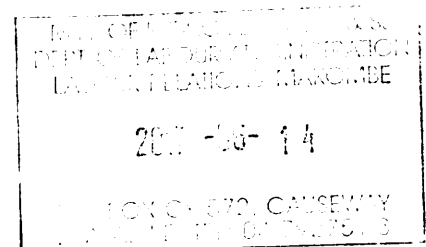
Applicant was of the position that the majority of the workforce in the subsector is field/ plantation based and that the wage should be aligned to General Agriculture where the minimum wage is currently \$72-00. Applicant was of the position that nothing has changed in terms of industry capacity to justify an increase from \$77-00. Applicant highlighted that the minimum wage is to be reviewed twelve months from date of granting the award.

RESPONDENTS' POSITION

Respondents raised a preliminary issue pertaining to jurisdiction highlighting that the Labour Officer has no jurisdiction to make a determination on the matter. Respondents argued that the wage negotiation collective bargaining dispute is not a dispute of right but of interest and as such cannot be determined on by a Labour Officer.

Respondents, in submission explained the background to the birthing of Tea and Coffee subsector. Respondents submitted that Tea and Coffee was established on 20 November 2014 not as a stand- alone sector but as a stand-alone sub sector of the Agro sector. Respondents highlighted that at the exit stage of the Tea and Coffee subsector from the Agro sector, the minimum wage was pegged at US\$95 and that rules were then set for future collective bargaining in the new sector.

Respondents submitted that the employers were mindful of the minimum wage and applied for exemption twice which was granted. The second exemption as submitted by the employees was to expire on the 31st of August 2016. Respondents submitted that Tea and Coffee subsector employees were being paid US\$95 effective 1 august 2013 and when parties agreed to secede the subsector from Agro, no new minimum wage was simultaneously set. Respondents were of the position that by operation of law and by parties' consensus, the minimum wage remained at US\$95. Respondents pointed out that any subsequent agreement on any future increase or decrease of the starting minimum wage was not to be based on any other sector or subsector's wage. Respondents were of the opinion that the Applicant's comparative submission to the



minimum wage of General Agriculture was a clear violation of the independence agreement.

Respondents were of the position that the negotiations for an exemption were a conscious exercise of rights flowing from an acknowledgement of the existence of a set minimum wage. Respondents submitted that no separate wage was simultaneously set when parties agreed to establish the subsector. Respondents pointed out that in both determinations, following the applications for exemptions, note was made and parties were in agreement that a minimum wage exists in the sum of US\$95. Respondents highlighted that the Applicant signed both exemption agreements without even querying the statement on the minimum wage. Respondents maintained that a minimum wage exists for the Tea and Coffee Subsector and that the minimum wage is US\$95.

Respondents submitted that collective bargaining must give effect to and not take away existing rights such as the right to fair labour standards and a fair wage. Respondents stressed that negotiations require absolute good faith and was of the position that Applicant is not negotiating in good faith because there is no justification of the US\$18 wage difference that the Applicant seeks to be effected. Respondents pointed out that when the exemption was granted, Applicant promised that things would normalise within the exemption period. Respondents were concerned with the fact that there was no mention of the effect of the heavy rains on production. Respondents were also concerned with Applicant's failure to give an update on the diversification of its operations since it requested time to diversify operations by growing other crops such as macadamia nuts and avocados

Respondents were of the position that Applicant has a duty to make full disclosure of its financial position in order to justify the downward variation from the minimum wage of US\$95. Respondents submitted that the summaries given pertaining to the companies' financial position does not amount to financial statements. Respondents pointed out that Applicant did not submit official documentation from the official statistical agency



pertaining to the current inflation rate. Respondents were of the position that there has not been a case made out for a decrease in the wage which is already way below the Food Poverty line for an average of five persons which was pegged at US151 as at the 31st of December 2016.

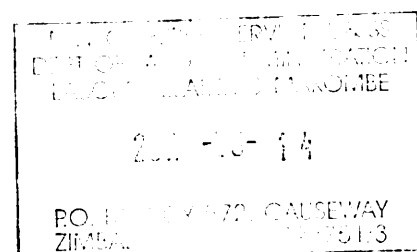
Respondents were of the position that the minimum wage remains the sustainable wage and prayed for the dismissal of the Application for the downward variation of the US\$95 minimum wage.

FINDINGS AND ANALYSIS BY LABOUR OFFICER

It is common cause that the parties to the dispute are partners to the National Employment Council for the Agricultural Industry. It is common cause that the NEC has a number of sectors and sub sectors and as at the 20th of November 2014, parties to the dispute belonged to Agro sector. The minimum wage for the Agro sector, as stipulated in S.1 130 of 2012 was US\$95-00.

Evidence availed before the tribunal prove that Tea and Coffee was established to enable a separate platform for negotiations for the conditions of service. Following the birth of Tea and Coffee, no minimum wage was set. The exemption wage that was signed on the 10th of June 2015 indicates that both the employers and employees arrived at the agreement to exempt the payment of USD95 (minimum wage) on Tea and Coffee Subsector wages. The Certificate of Settlement that was handed down on the 28th of May stated that the minimum wage was USD95. Applicant appended its signature to the documents which stated that the minimum wage was USD95. By appending its signature to the documents, Applicant was impliedly in agreement to the contents of the agreements including the minimum wage. By implication, the minimum wage is USD95.

However, it is of paramount importance to ascertain the reason why Tea and Coffee subsector was formed. Evidence availed before the tribunal proves that the employers in the Tea and Coffee industry (ZTGA) could not afford to pay the minimum wage. That



then gave rise to a need for a Tea and Coffee subsector which would have its own subcommittee for purposes of wage negotiations. The wages negotiated were to be independent of any other sector or sub-sector within the National Employment Council for the Agricultural Industry.

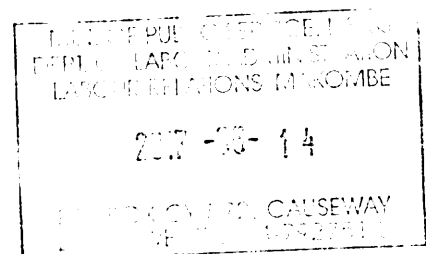
From the sequence of events, Tea and Coffee inherited the minimum wage from the Agro sector. Tea and Coffee sub-sector have not had its own minimum wage that has been negotiated and agreed on by its own sub-committee. Having a minimum wage is the main reason as to why the sub-sector was established. According to the parties' agreement, the wages are not to be based on any other sector or sub-sector's wage. The wages are to be independent from the USD 95 which was inherited from the Agro Sector.

This implies that in an effort to establish a sustainable minimum wage, focus should be on circumstances uniquely surrounding the Tea and Coffee subsector as submitted the parties.

It is pertinent to note that Applicant has not been able to pay the minimum wage of USD95 as evidenced not only by the exemptions agreement, but by the outstanding wages currently being owed to employees within the Sub-sector.

Currently, the industry is in decline and production is plummeted due to financial constraints.

Respondents made reference to Section 2A of the Labour Act and highlighted that the emphasis on improvements of the conditions of employment for the workers makes it imperative that before an employer is allowed to downwardly vary the employee's conditions of employment, it must have discharged the heavy onus it carries to justify such a variation. It is my humble position that the Applicant justified its position to downwardly vary the minimum wage. Applicant highlighted that shortages of working capital and absolute equipment among other factors has contributed in the demise of a



lot of companies within the sector. From the evidence submitted to me, the industry is not performing on its maximum capacity utilization.

Respondents were of the position that as a result of the exemptions, Applicant made a saving of USD180 000 per month. This position was not substantiated by documentary evidence and the audited accounts that have been submitted do not reflect such. It is my humble opinion that Applicant could not have made such a saving considering that prior to the exemption, employers within the Tea and Coffee subsector were still not affording to pay the minimum wage for USD95 as evidenced by the current outstanding wages.

In relation to the diversification of operations, I concur with Applicant that the realisable value of investment in Agriculture is not immediate or short-term. It is therefore important for Respondents to take this into consideration as well.

In as much as Zimbabwe has the perfect growing conditions for Tea and Coffee, our economy is currently struggling. It is therefore important for parties to have a wage which is sustainable to keep companies surviving awaiting a time when the economy improves.

Applicant availed documentary evidence in the form of Auditor's report for the year 2016. The Auditor's report is the latest and the 2017 report which takes into account the rains which were realised in 2016 and 2017 will be available and published. If in deed the reports will show financial improvement, employees can still make use of such when the wage will be revived.

Taking into consideration parties' positions, the sustainable minimum wage should be USD83 with effect from 1 May 2017.



RULING BY LABOUR OFFICER TO SETTLE THE MATTER

- The minimum wage be and is hereby set at \$83, 00 with effect from 1 May 2017.

I so determine.

Date of ruling..... 14-06-17

Served on parties concerned by hand/posted to the parties concerned on.....

J.MATEKO

..... Jmateko

MIN. OF PUBLIC SERVICE, I & SS
DEPT. OF LABOUR ADMINISTRATION
LABOUR RELATIONS-MAKOMBE
2017-06-14
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