

IN THE INDUSTRIAL RELATIONS COURT
HOLDEN AT NDOLA

COMP/94/2012

BETWEEN:

NICHOLAS CHISANGA

SIBALE JOHN

SINKOLONGO JOHN

BENFORD NYONDO

MWANSA SIMEON

KALENGA PHILIP

CHINKUPWILA MANASE

MANJABILA JOSEPH

SIMWIZYE DAVIES

CHISABI FRANK

SINYENGA ALICK

CHIKONTWE AUBREY

NG'AMBI RODGERS

MWANSA MICHAEL



1ST COMPLAINANT

2ND COMPLAINANT

3RD COMPLAINANT

4TH COMPLAINANT

5TH COMPLAINANT

6TH COMPLAINANT

7TH COMPLAINANT

8TH COMPLAINANT

9TH COMPLAINANT

10TH COMPLAINANT

11TH COMPLAINANT

12TH COMPLAINANT

13TH COMPLAINANT

14TH COMPLAINANT

AND

MOPANI COPPER MINES PLC

1ST RESPONDENT

JOSEPH CHEWE (Sued in his capacity as General
Secretary for Mine Workers Union of Zambia)

2ND RESPONDENT

STEPHEN MUKUKA (Sued in his capacity as
General Secretary for National Union of Miners
and Allied Workers)

3RD RESPONDENT

NGWILA MAPOPA (Sued in his capacity as General
Secretary for United Miners' Union of Zambia)

4TH RESPONDENT

CORAM: HON. JUDGE Dr. W. S. MWENDA - DEPUTY CHAIRPERSON
HON. J.M. BWALYA - MEMBER
HON. W.M. SIAME - MEMBER

For the Complainants: Mr. N. Simwanza of Messrs Kitwe Chambers
For the 1st Respondent: Mr. H. Pasi, In-house Counsel, Mopani Copper
Mines Plc
For the 2nd Respondent: Mr. K. Mwiinga of Messrs William Nyirenda
and Company
For the 3rd Respondent: Mr. E. Mwansa of Messrs Mwansa, Phiri and ✓
Partners
For the 4th Respondent: Mr. C. Kaela of Messrs Katongo and Company

JUDGMENT

Cases referred to:

1. Kelvin Lukonde & Others v. Mopani Copper Mines Plc. SCZ Appeal No. 165/2010
2. Wilson Masauso Zulu v. Avondale Housing Project Limited (1982) Z.R. 172 (SC)
3. Zambia Airways Limited v. Gershom Mubanga (1990 - 1992) Z.R. 149 (SC)

Legislation referred to:

The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia (Sections 3 and 101 (2))

The Complainants herein filed into Court a Notice of Complaint on 3 October, 2012 which was amended with leave of Court on 8 January, 2014. The grounds on which the complaint was presented were that:

- (1) On or about the 17th day of February, 2012, the Complainants herein were all summarily dismissed.

- (2) The dismissal was a result of a meeting called by the 2nd, 3rd and 4th Respondents who were the union representatives of the Complainants over discussions on wages and conditions of service.
- (3) The Complainants were all informed that the said meeting called by the 2nd, 3rd and 4th Respondents was legal as the 1st Respondent was aware of the same and had approved it.
- (4) The communication to the Complainants was by word of mouth, phone calls and sms.
- (5) Some of the Complainants had even reported for duty to go underground but were stopped by the Mine Supervisor and told to go to the meeting. The Complainants specifically averred as follows:
- (i) That Nicholas Chisanga attended the meeting during off day and on the instructions of the 2nd, 3rd and 4th Respondents.
 - (ii) That Joseph Manjabila, who was also a Shop Steward, was instructed by the 2nd, 3rd and 4th Respondents to guide miners to Central Offices for the meeting and to ensure that they were orderly and in obedience.
 - (iii) That Alick Sinyenga, Ng'ambi Rodgers, Philip Kalenga, Benford Nyondo, Aubrey Chikontwe, Sinkolongo John and Chikupwila Manase reported for duty on 1st February, 2012 but were directed to attend the meeting of Central Offices by Union officials. However, Frank Chisabi, Alick Sinyenga, Benford Nyondo and Aubrey Chikontwe did not go to the Central Offices.
 - (iv) That Mwansa Simeon was off duty on 1st February, 2012 and therefore did not attend the meeting.
 - (v) That Davies Simwizye attended the meeting while off duty.
 - (vi) That John Sibale received a text message from NUMAW Mindolo Branch Chairman, Mr. T.Z. Banda dated 31-01-2012 asking him to inform miners about the 17% wage increase.

- (6) In dismissing the Complainants the 1st Respondent did not consider that there existed recognition agreements between the Unions and themselves which gave them an implied right to organise meetings.
- (7) The instruction given by the 2nd, 3rd and 4th Respondents was that the meeting was lawful and legally called by the union representatives of the Complainants.
- (8) The meeting having been called by the said unions, they have a duty to represent/protect their members who complied with the instruction to attend the meeting.
- (9) That in the event that the said meeting was unlawful or illegal, which is denied, the 2nd, 3rd and 4th Respondents must be held responsible and compensate the Complainants.

Consequently, the Complainants are seeking the following relief:

- (a) Reinstatement to their various positions.
- (b) Payment of salary arrears from the date of dismissal to the date of payment.
- (c) In the alternative, an order for compensation as against the 2nd, 3rd and 4th Respondents.
- (d) An order that the 2nd, 3rd and 4th Respondents have a duty to protect the Complainants whom they represented as unions.
- (e) An order for compensation to the Complainants for being misled by the 2nd, 3rd and 4th Respondents and failure to adequately represent them.
- (f) Costs

The 1st Respondent filed an Answer supported by an Affidavit deposed to by one Crispin Mwango, the Senior Employees Relations Advisor (SERA) in the 1st Respondent Company. The 1st Respondent's defence as averred in the Answer and supported by the Affidavit is that the Complainants were indeed employed by the Respondent on divers dates until they were dismissed by the 1st

Respondent on 28 February, 2012 for one or more of the offences of unconstitutional industrial action, giving false information and/or non-compliance with established procedures. The 1st Respondent averred that the Complainants were all union represented employees having been members of the Mine Workers Union of Zambia (MUZ), the National Union of Miners and Allied Workers (NUMAW) and the United Miners Union of Zambia (UMUZ).

On 1st February, 2012 the union shop stewards were scheduled to attend briefing meetings on the outcome of the negotiations for improved salaries and other terms and conditions of employment between the 1st Respondent and the various unions. The meeting for Mindolo Sub-Vertical Shaft shop stewards was to be held at the MUZ Mindolo Union Branch Office where union officials were scheduled to brief their shop stewards so that they in turn could brief their members, including the Complainants. The 1st February, 2012 meeting for shop stewards was the only meeting sanctioned by management on that day between unions and their members concerning the collective bargaining outcome.

The 1st Respondent further averred that the 1st, 2nd, 3rd, 7th, 8th, 9th, 12th and 14th Complainants participated in an authorised demonstration at the 1st Respondent's Corporate offices to complain about the outcome of the negotiations which had culminated into the signing of the Collective Agreement for 2012 on 1st February, 2012 between the 1st Respondent and the various unions. All the Complainants referred to above were captured in a mob on the 1st Respondent's Closed Circuit Television (CCTV) which is stationed at the Corporate Offices.

Further, the 4th, 6th, 7th, 8th, 11th, 12th and 14th Complainants absconded from work and gave false information by clocking in for work purporting that they were working during their shift when in fact not.

The 1st Respondent averred that the 5th Complainant absented himself from work and gave false information that he was given leave by his Section Boss when the 1st Respondent's check point system did not indicate that he was on leave. Further, the 3rd, 10th and 13th Complainants took part in an illegal work stoppage to protest the outcome of the collective bargaining process by absconding from work. All three Complainants went home before their shift was over.

The 1st Respondent contended that the Complainants, in common and in a concerted action, because of the outcome of the Collective bargaining process, did not work on 1st February, 2012 in violation of their contractual obligations. They also failed to follow the laid down grievance procedures contained in the 1st Respondent's Grievance Procedures Code.

It was the 1st Respondent's further contention that the Complainants participated in an action which caused a general feeling of unrest and acutely disrupted the 1st Respondent's operations both at the Shaft and Corporate Offices thereby costing the 1st Respondent in terms of production.

The Complainants were charged with the subject offences and asked to exculpate themselves. They did so and were dismissed as a result of their conduct in accordance with the Respondent's Disciplinary Code. All the Complainants appealed but their appeals were unsuccessful and they were informed of the same in letters of final notification of summary dismissal on or about 28 February, 2012.

The 1st Respondent averred that the dismissal of the Complainants had merit and was neither unlawful, wrongful, illegal nor unfair.

The 2nd Respondent filed an Answer to the Amended Complaint wherein it averred that it only called for a meeting of its branch officials who were in turn to address shop stewards regarding the outcome of the negotiations. Further, that the 2nd Respondent was not privy to the contents of the purported address by a Mr. Crispin Mwango and that it does not negotiate in the fashion that involves bringing in the Labour Minister into negotiations as alleged.

The 2nd Respondent further averred that there was no industrial discord or illegal strike at Nkana Branch to involve the 2nd Respondent's Nkana Branch Chairman.

It was the 2nd Respondent's contention that the claim in paragraph 10 (f) of the Amended complaint would amount to unjust enrichment in light of the claim in paragraph 10 (a) and (b) since the same is not claimed in the alternative. That in any event, the dismissals had everything to do with the alleged illegal strike and the 2nd Respondent denied ever being associated with the purported strike and calling for a meeting which the 2nd Respondent attended.

The 2nd Respondent's Answer was supported by an Affidavit in Support of Answer to Amended Notice of Complaint deposed to by Joseph Chewa, the General Secretary for the 2nd Respondent which basically restated the averments in the Answer.

The 3rd Respondent filed an Affidavit in Opposition to Complaint deposed to by one Stephen Mukupa, the National Secretary for the 3rd Respondent wherein he averred that meetings were held at various branches of the Respondent unions where members were briefed by union leaders about the outcome of the negotiations with the 1st Respondent. He averred in addition that workers protested about the amount of salary increments the 1st Respondent proposed to pay the unionised workers in the Company and at that point the national

leadership of the Respondent unions moved in and requested the membership to go back to work while they pursued the matter with the 1st Respondent. The members went back to work and negotiations resumed.

According to Stephen Mukupa, following continued negotiations, the 1st Respondent agreed to improve the salary increment for the workers from the initial offer of 12% to 17% and all the parties to the negotiations agreed to this increment, whereupon the national leadership sent branch officials to brief the general membership about the agreed position on the salary increment. On 27 January, 2012 a meeting to brief members took place at Cocoa House for employees who work at Mindolo Shaft and the members were duly briefed.

The following day the Complainants who were all from Mindolo Shaft matched to Central Offices, without the authority of the union leadership, to protest the agreed increments. The Complainants refused to heed the advice of the union leadership that if they wanted further clarification they should go to Cocoa House instead of Central Offices.

The deponent deposed that it was during the illegal match that the Complainants were caught on CCTV cameras as well as on Zambia National Broadcasting Corporation (ZNBC) cameras and identified by the 1st Respondent who later charged them for taking part in an illegal strike.

Stephen Mukupa further deposed that during the hearing of their disciplinary cases by the 1st Respondent, the Complainants who belonged to the 3rd Respondent union, namely John Sibale, Michael Mwansa, Benford Nyondo, John Sinkolongo and Simeon Mwansa were all represented by the 3rd Respondent. The 3rd Respondent had nothing to do with the rest of the Complainants since they did not belong to the union.

According to Mukupa, the Complainants were dismissed by their employer, the 1st Respondent and that had nothing to do with the 3rd Respondent union. Therefore, the 3rd Respondent neither had anything to do with the dismissal of the Complainants nor could it have complied with the rules of natural justice being on the side of union members it represented. That consequently, the 3rd Respondent does not accept any liability from the Complainants in this matter.

The 4th Respondent filed an Answer supported by an Affidavit sworn by Wisdom Mapopa Ngwila, the union's General Secretary. The 4th Respondent denied that there was a meeting called by union representatives of the Complainants to discuss wages and conditions of service. It averred that after a bargaining meeting with the 1st Respondent, the 4th Respondent informed the branch officials about the outcome of the bargaining meeting and encouraged them to disseminate the information to shop stewards. The Complainants were not instructed to assemble and/or protest. As such they are not entitled to any relief or at all.

In his Affidavit Ngwila Mapopa repeated most of the averments in the Answer. In addition he deposed that no request and/or communication was made to the 4th Respondent by its affected members about representation at the Disciplinary hearing and further, that the 4th Respondent cannot take responsibility for a meeting it did not sanction.

At the hearing of the matter, five Complainants testified on behalf of the other Complainants as well as on their own behalf. The Complainants who testified were the 1st Complainant Nicholas Chisanga, the 8th Complainant Joseph Manjabila, the 2nd Complainant John Sibale, the 4th Complainant Benford Nyondo and the 5th Complainant Simeon Mwansa, respectively, who testified in that order. For ease of reference, we shall hereinafter refer to them as "CW1" up to "CW5", respectively.

In his testimony, CW1 (Nicholas Chisanga) gave a detailed account of the events that led to their dismissal. However, we shall only give a summary of the salient aspects of his testimony.

It was CW1's evidence that between December, 2011 and January, 2012 the 1st Respondent, Mopani Copper Mines, Plc was engaged in salary negotiations with the three respondent unions, namely, the Mine Workers Union of Zambia (MUZ); the National Union of Miners and Allied Workers (NUMAW) and the United Miners Union of Zambia (UMUZ). As the negotiations went on, the MUZ Branch Chairman and his committee called for a meeting of all workers at Mindola Shaft. The meeting was scheduled to take place at 12.00 hours on 27 December, 2011. This meeting took place at Cocoa House and was also attended by the 1st Respondent's Employee Relations Officer who told them that the meeting was backed by management and urged them to participate freely. This meeting was called by the unions to brief the members on the progress of the negotiations which were going on.

The union members were informed by their representatives that the 1st Respondent had given them a 12% salary increment. They were not happy with the increment. While still in the meeting information reached the members that employees of the 1st Respondent from other shafts were at Central Offices where those from Mindolo Shaft should also have been present but for the fact that they came from underground late.

They were informed that the employees who had gathered at Central Offices had been addressed by the then Minister of Labour, Mr. Chishimba Kambwili who had told them to exercise patience and go back to work and await the outcome of the negotiations.

According to CW1, they went to Central Offices but found that the meeting with the Minister was over. They were addressed by Central Shaft MUZ Branch Chairman Collins Nkole who was flanked by officials from the other unions. Nkole told them that they had engaged the Minister of Labour and management had agreed to sit down again with the unions and negotiate further. The workers were urged to be calm and await the negotiations and also, to go back to work and those who had knocked off, to go home. The workers dispersed.

CW1 testified that on 31st December, 2011 around 21.00 hours he received a text message (sms) from Mr. T.Z. Banda, the NUMAW branch chairman that the 1st Respondent had given miners a 12% increment, no more, no less and that a briefing would take place the following day. However, under cross-examination it emerged that the amount of increment indicated in the sms was 17% and not 12%.

On 1st January, 2012, the meeting took place at Central Offices. CW1 testified that although he was on leave on 1st January, 2012 he ended up attending the meeting at Central Offices because he was interested in knowing the outcome of the negotiations. He told the Court that all employees present were from Mindolo Shaft; that there were no employees from other shafts present at Central Offices.

In cross-examination, CW1 admitted that only Mindolo Shaft employees marched to Central Offices. He also admitted that normal union meetings took place at Cocoa House and not at Central Offices. He testified that the procedure was properly followed for the first meeting which took place on 27 December, 2011.

Under further cross-examination, CW1 said that he was not given any charge and even at the time he was testifying he still did not know what he was

charged with. However, when shown exhibit "CM2" attached to Affidavit in Support of 1st Respondent's Answer, which was a Statement Form where he indicated that he admitted the charge, he said he admitted going to Central Offices and also not knowing what offence he was charged with. He stated under further cross-examination that he was dismissed because he was seen on CCTV. CW1 testified that after he was summarily dismissed he appealed twice and both appeals were unsuccessful. He said they were advised by their unions to beg for their jobs at the last appeal because it was the final appeal and they could not continue denying the charges. CW1 stated that he pleaded for his job because he had no choice if he was to keep it. He admitted that his union (MUZ) helped him with the process of the last appeal.

In re-examination, CW1 testified that he was not charged with any of the offences which Counsel for the 4th Respondent had shown him on exhibit "CM1" of the Affidavit in Support of 1st Respondent's Answer namely, Section 3.2 category 2(h) and Section 3.3 category 3 (f) (f) and (h). He reiterated that he did not write the statement shown at exhibit "CCM2" but was merely asked to sign it. He said he was asked if he was at Central Offices and he admitted being there. That is what he signed for.

CW2 (Joseph Manjabila, the 8th Complainant)) was Branch Treasurer for the Mindola UMUZ branch at the material time. He testified that on 27 January, 2012 they were called for a meeting by the branch Chairman of UMUZ who informed them about the 12% salary increment which they were to explain to the workers. Three unions attended this meeting and the 1st Respondent was represented by Mr. Mwangi (The SERA).

This meeting took place at Cocoa House where union meetings normally took place. While at Cocoa House the MUZ Chairman, a Mr. Lufumpa told them to go to Central Offices. This was the first time that a union meeting was to be held

at Central Offices. According to CW2, the group of employees assembled at Central Offices was big and consisted of about 150 people who were protesting and singing solidarity songs. When they reached Central Offices most of the people had dispersed but they found the Branch Chairman for MUZ Wusakile Branch who told them to return the following week on 1 February, 2012 for a meeting.

According to CW2, on 1 February, 2012 the workers were told by the branch union chairmen of the three unions to go for a meeting at Central offices. When they arrived, the leaders told the workers that there should be no riotous behaviour but that they should just hear what the meeting was all about. The workers were singing solidarity songs, a normal practice when going underground. After being informed that they had been given a 17% salary increment, everyone was happy and they dispersed.

It was CW2's testimony that on 16 February, 2012 he was made to sign a document which he was stopped from reading and was informed by management that he was being dismissed. He was given a charge sheet and told to appeal the following day. He lost the appeal and was given a chance to appeal for the second time. He also lost that appeal.

Under cross-examination, CW2 stated that they used to have meetings at Cocoa House but on this occasion the union leaders told them to go to Central Offices. It was the first time to have a meeting there. He said that it was the 1st February, 2012 meeting which led to his dismissal. He also said that before he joined UMUZ he was a shop steward in MUZ for almost seven months. He also testified that only workers at Mindolo Shaft and union chairmen were at Central Offices on 1st February, 2012. He reiterated that people went to Central Offices because they were not happy with the proposed increment.

In re-examination, CW2 said that the three union chairmen told them to go to Central Offices. These were Mr. Musonda for UMUZ, Mr. T.Z. Banda from NUMAW and Mr. Lufumpa from MUZ. CW2 said that they were told to go to Central Offices because that was where the meeting at which they would be informed about the increment would take place. He also said that they were not surprised that the three chairmen told them to go to Central Offices because they had been informed earlier that there would be a meeting on 1st February, 2012.

CW3 (John Sibale, the 2nd Complainant) was a shop steward for NUMAW, Ndola Branch. He testified that on 26 January, 2012 he received a message to the effect that all the unions should assemble on 27 January, 2012 at 07.00 hours. These unions were NUMAW, UMUZ and MUZ. He received the message because he was a shop steward for NUMAW. This message came from the Chairman of NUMAW, Mr. Banda.

According to CW3, the meeting that followed informed shop stewards that the 1st Respondent had offered miners a 10% salary increment and that the shop stewards should inform the other miners about the increment and the briefing which was to take place at Cocoa House. When the miners were informed about the 10% increment they refused it and wondered what kind of leaders the union leaders were.

Let it be noted that the evidence on record and from other witnesses showed that the first increment was 12% and not 10% as stated by CW3 in his evidence.

It was CW3's evidence that while the meeting was going on a MUZ official by the name of Mr. Lufumpa received a message that there was another meeting at Central Offices and the miners should go there. They went to Central Offices accordingly but were informed that the meeting was over. They were also

informed by fellow shop stewards about the one-week period during which the 1st Respondent would revise the increment. The workers complained a bit and later dispersed.

CW3 testified that on 1 February, 2012 after he had gone underground to work, he noticed that his fellow miners were not coming underground. Upon enquiring, he was informed that they had gone for a meeting. When he went to the surface around 07.30 hours, he found Mr. T.Z. Banda and Mr. Lufumpa directing miners to go to Central Offices for the meeting.

Upon enquiring from Mr. T.Z. Banda as to what was going on, Mr. Banda asked CW3 if he had not seen a message on his phone from him. When he checked the message it said "17% given no more no less, roll this to miners if you can." CW3 said that he informed the few miners who had remained behind at the mine about the 17% increment and got on a bus to go to Chamboli but dropped off at Central Offices where he found miners from Mindolo Shaft seated peacefully. He told the miners about the 17% increment and they wondered why they had not been briefed about this increment at the plant. They said had they been so briefed they would not have gone to Central Offices.

It was CW3's testimony that two weeks later he was summoned to go to the Human Resources Department where he was asked if he had gone to Central Offices on 1st February, 2012. After admitting that he had gone there, he was forced to sign on a piece of paper and told that if he did not sign the paper, he would make things difficult for himself, so he signed it. He said he signed a statement that he went to Central Offices. He was taken to see Mr. Charles Lupiya to go and exculpate himself. He did that but was dismissed for failure to follow laid down grievance procedure. He appealed and was represented by the Chairman of NUMAW, Mr. T. Z. Banda who confirmed to the panel that he

had sent CW3 a text message and asked for leniency on his behalf. That intervention notwithstanding, the appeal was unsuccessful.

When shown the statement which he signed, exhibit "CM3" in the Amended Affidavit in Support of Respondent's Answer, CW3 still maintained that he was not given any charge. He denied some of the contents of exhibit "CM3". He disputed the Job Title, Grade and the part on authenticity but said everything else was okay.

CW3 said that he was a shop steward for close to five years and worked for Mopani Copper Mines for twelve years and never attended a meeting at Central Offices during that time. He was also aware of the collective bargaining procedure.

Under further cross-examination, CW3 said that there is no procedure anywhere in the Disciplinary and Grievance Procedure Code which allowed miners to show their displeasure by going to Central Offices to protest.

It was CW3's evidence that the usual place to disseminate information was Cocoa House. He said the two union chairmen (of MUZ and NUMAW) told the employees to go back to work and therefore any employee who did not work on 1st February, 2012 was to blame for the consequences.

CW3 reiterated that the Human Resources Officer did not read the statement to him after he wrote it down but just forced him to sign it. He agreed that he met Mr. T.Z. Banda when he emerged from the cage on 1st February, 2012. He admitted that he did not mention this fact in his statement.

CW3 further admitted that the sms which informed him about the 17% increment did not tell him to go to Central Offices. He said that the reason he

went to Central Offices was to brief his fellow miners because some of them had no phones. He agreed with Counsel in further cross-examination that the unions helped them in their disciplinary cases. They were on their side and he was happy that his union tried to mediate for him.

In re-examination CW3, said that when he met the SERA he did not know that it was a disciplinary meeting. He said he was not in any way involved in organising any meeting. He reiterated that he went to Central Offices because the Chairman, Mr. T.Z. Banda and Mr. Lufumpa asked him to go there.

CW4 (Benford Nyondo, the 4th Complainant), was a member of NUMAW. He testified that on 1st February, 2012 he left home at 05.30 hours to go for work. Upon arrival at the plant, he put on his personal protective equipment and went to check himself in at the check point. Thereafter he proceeded to the shaft and went underground where fellow miners on night shift told him that Mopani miners reporting for the day shift were not working but were gathering at Central Offices. He looked around and only saw essential workers and contractors. He then went back into the shaft and up to the surface. When he arrived he found people gathered near the cage, one of whom was Mr. T.Z. Banda. Mr. Banda told him to go and change into his home clothes and go for a meeting at Central Offices.

It was CW4's evidence that he hid somewhere within the plant and started thinking. He later went to change into his home clothes and started waiting for transport. He was with Frank Chisabi and Alick Sinyenga (the 10th and 11th Complainants, respectively). After reading messages from colleagues who attended the meeting at Central Offices that they had been given a 17% salary increment, CW4 went home around 12.00 hours to eat. He returned to work between 13.00 hours and 14.00 hours. At 14.00 hours it was officially announced that they had been given a 17% salary increment. After the

announcement those who were in the afternoon shift went to work, while others, including himself went home.

CW4 testified that on 17th February, 2012 he found a call-out slip which directed him to go and see Mr. Crispin Mwango, the SERA. When he went to Mr. Mwango's office, the latter asked him if he had worked on 1 February, 2012. CW4 narrated to Mr. Mwango what happened whereupon he was asked if he had admitted not working on 1st February, 2012. CW4's reply was that he had admitted not working on that day. He was charged for absconding and told to exculpate himself. He was suspended pending the hearing of the case.

The date of hearing came and he was dismissed for not working on 1st February, 2012. When he indicated that he wanted to go home, Mr. Mwango told him to appeal. He said he refused to appeal because he had been dismissed. However, Mr. Mwango wrote the appeal on his behalf and prepared a statement which CW4 was just told to sign. It was not read to him. After the shop steward representing CW4 complained that what had happened was not fair and that he (the shop steward) should be allowed to read the statement, he was given the statement which he read. CW4 appealed to a senior man, a Mr. Howard Lutawa who confirmed the dismissal. He was given the opportunity to appeal for the second time.

He appealed to the Mine Manager, Mr. Jacob Banda who asked him if he had anything in mitigation. He said something in mitigation but Mr. Banda upheld the dismissal. Upon receipt of the final dismissal letter, CW4 observed that he was dismissed for taking part in an illegal strike and giving false information.

CW4 said that he did not take part in any illegal strike or give false information. He also said that the offences of taking part in an illegal strike and giving false information were not mentioned in any of the case hearings.

In cross-examination CW4 said that he knew what led to his dismissal; he was dismissed because he did not work on 1st February, 2012. He said he did not work because the union said he should attend a meeting. However, he did not attend the meeting.

CW4 admitted under further cross-examination that he did not get permission from his supervisor to miss work. He testified that he clocked-in to show that he had reported for work and clocked-out when leaving the premises. He agreed that there was no dispute declared by the union. The union just called for a meeting. He agreed that a strike was not called for by the union. When referred to his statement exhibited as "CM5" in the Amended Affidavit in Support of Respondent's Answer, CW4 identified his signature but stated that he admitted the charge of not working on 1st February, 2012. He said that he was not told that the system showed that he had worked the whole day.

CW4 testified in further cross-examination that he was aware that his offence was unlawful withdrawal of labour due to union activity, namely, union meeting. He said he hid after emerging from underground because he did not want to hear what his fellow miners were saying. This was due to the fact that as an elderly person he did not want to participate in the childish behaviour exhibited by his fellow miners.

In further cross-examination CW4 said that it was not his desire to go to Central Offices but decided to do so because it was a directive from the union. Regarding the issue of representation by union officials at the hearings, CW4 admitted that his union representative was present throughout the proceedings. However, he did not explain the process but just took him from one office to the other. According to CW4, this was probably because he had already admitted the charge. CW4 said that it was only once during the first

appeal that the shop steward told the administering official to read the charge to CW4.

CW4 admitted that the shop steward was present throughout the disciplinary process until dismissal.

CW4 conceded in further cross-examination that the union could not charge or dismiss him because that could only be done by his employer, the 1st Respondent.

CW4 also conceded that the reason for his dismissal had nothing to do with going to Central Offices. He said that was not the issue, the issue being that he did not work on 1 February, 2012.

CW4 said in further cross-examination that he checked-in and went underground because he was unaware of what was going on.

In re-examination, CW4 said that nothing was happening at Mindola Shaft. He heard rumours of the meeting when he went underground.

He also said Mr. T.Z. Banda told him to change into his home clothes so that he could go to the meeting.

CW5 (Simeon Mwansa, the 5th Complainant), was a member of NUMAW. He testified that his job with the 1st Respondent involved blasting rocks. It was his evidence that he was given a day off on 1st February, 2012 by his section boss, a Mr. Gershom Mupeta. Since he was off-duty on 1st February, 2012 he was at home and reported for work on 2nd February, 2012.

On 17 February, 2012 he was called to the office of the SERA where he was asked about his whereabouts on 1st February, 2012. He explained that he had taken a day off with permission from his section boss. He was then called to the Mine Captain's office where he was asked if he attended the illegal strike. He denied attending the strike. He was told that he was lying and that he was fired. Later he appealed to the Superintendent who dismissed the appeal. He appealed for the second time to the Mine Manager, a Mr. Jacob Banda who upheld the dismissal. According to CW5, his section boss, Gershom Mupeta was not called to confirm or deny that he had given him a day off on 1st February, 2012.

In cross-examination RW5 said that he was forced to sign a statement by the SERA who had prepared it. He did not know the intention of the SERA in making him sign the statement. He explained the procedure for going off duty and said it was followed in his case. He therefore did not know why the record showed that he was absent. He was not sure if the person on duty at the check point forgot to indicate that he was off duty.

In further cross-examination CW5 admitted that he was earlier charged for absenteeism. He agreed that at the hearing for the earlier charge of absenteeism and the later charge of participating in an illegal strike, he was represented by shop stewards. He insisted that he did not attend the meeting at Central Offices on 1st February, 2012 and the earlier meeting at Cocoa House on 27 January, 2012 because he was underground.

CW5 stated under further cross-examination that he was dismissed for allegedly attending an illegal strike and not for not reporting for work or giving false information.

He admitted that union representatives used to attend disciplinary hearings and were representing members but felt that in his case they did not assist him enough.

CW5 was not aware that some colleagues were dismissed for telling lies or giving false information. He said that if they gave false information, then the unions cannot be blamed. He agreed under further cross-examination that the role of the union is to ensure that its members are given a fair hearing. He said that in his case, the shop steward did not explain things to him which he felt was the same as being on the same side as management.

CW5 agreed that he personally was supposed to give an explanation regarding the charge to management and that he needed to do the explaining because he was the only one who knew the truth. He agreed that the union could not talk on his behalf about his absence but said it should have been there all the same to ensure that he was treated fairly. He however, conceded that the union was present from the beginning of the disciplinary process to the end.

This marked the close of the case for the Complainants.

All four respondents called witnesses to testify on their behalf. The 1st Respondent called one witness (RW1) while the 2nd Respondent called two witnesses (RW2 and RW3). The 3rd Respondent called two witnesses (RW3 and RW5) and the 4th Respondent called one witness (RW6).

Crispin Mwango, RW1 was the Senior Employee Relations Advisor (SERA) for the 1st Respondent, Mopani Copper Mines Plc. He testified that his work involved the interpretation of conditions of service to both management and employees and assisting in the administration of disciplinary matters. He recalled that there were negotiations at the material time between the 1st Respondent and the

three respondent unions and in January, 2012 a need arose for the unions to consult their members regarding the progress in the negotiations. A meeting was therefore arranged for the branch chairmen to brief their shop stewards. The meeting took place on 27 January, 2012 at MUZ branch office, although it was for all three unions. Later on the same day another meeting was convened at Cocoa House to brief the general membership about the outcome of the negotiations.

It was RW1's testimony that his job was to facilitate the meeting with shop stewards. He was present at both meetings. The 12% salary increment offered by management was rejected and the union representatives were tasked by their members to go back and negotiate a higher salary increment with management. The meeting ended and the employees dispersed but others went to Central Offices without being told to do so by any union official. It was RW1's evidence that no disciplinary action was taken arising from the events of 27 January, 2012.

RW1 testified that another meeting was scheduled for 1 February, 2012 for branch chairmen to brief shop stewards of all unions. The meeting took place as scheduled but the shop stewards were not happy with the 17% salary increment offered by the 1st Respondent. RW1 said that when he reported for work on 1 February, 2012 he found a few people chanting that they wanted to go to Central Offices while Mr. T.Z. Banda was dissuading them from going and urging them to go back to work instead.

RW1 testified further that a second meeting for unions to consult their members was held in the afternoon of 1 February, 2012 at 14:00 hours at Cocoa House which meeting was sanctioned by management and he was in attendance. According to RW1 even at that meeting tempers were charged because the members were still not happy with the 17% salary increment and

wanted their representatives to go back and negotiate for more. The union officials advised their members to go back to work. It was RW's testimony that some workers went back to work but others refused and marched to Central Offices to protest. These workers were caught on CCTV while demonstrating at Central Offices and union officials were seen advising the workers to stop their demonstration and go back to work.

RW1 testified that no meeting was called by the unions to be held at Central Offices and that in his fifteen years of service at Mopani Copper Mines Plc no such meeting had ever been held at Central Offices. The employees eventually dispersed after being addressed by union officials.

In relation to disciplinary procedures, RW1 testified that charges were laid against 135 employees but during the ensuing investigations, 21 cases were dropped against those who were either on leave or on a day off. He testified that the normal procedure for day off was that the section boss would raise the day off slip which would be passed to the shift boss for authorisation. The slip would then be deposited at the check-point so that the same could be put on record to show that the particular employee was off duty on a certain day.

It was RW1's testimony that evidence to prove that Simeon Mwansa, the 5th Complainant was given a day off was not there. Management asked Mwansa's boss by the name of Tembo whether or not Mwansa was given a day off. As far as Tembo was aware, Mwansa was absent as he had no day off slip.

Regarding the offence of non-compliance with established procedures, RW1 testified that the offence was provided for under Section 3.2 (h) of the Disciplinary and Grievance Procedure Code. He said that the Complainants did not follow the grievance procedure.

RW1 denied forcing anyone to sign the charge sheet and said that all statements were signed voluntarily. He took great exception to the allegation that he forced employees to sign statements and added that in fact employees had a right to refuse to sign a charge sheet.

RW1 testified that everything possible was done to ensure that only those guilty of offences were punished. He said employees were treated fairly in the circumstances because the Company followed existing procedures. According to RW1, the Complainants were charged before the statements were taken.

It was RW1's further evidence that as a result of the withdrawal of labour on 1st February, 2012 the 1st Respondent lost 1080 man hours. Loss of production for the day shift amounted to about US\$ 533,000.

In cross-examination RW1 clarified that the meetings at MUZ offices and Cocoa House were scheduled meetings intended to brief miners on the progress made during negotiations. He maintained that disciplinary action was only taken against those who went to Central Offices on 1st February, 2012. He agreed that union representatives represented their members at all stages of the disciplinary process including asking management for leniency for those who admitted the charges. He reiterated that the disciplinary Code was followed when conducting the case hearing for the Complainants.

This marked the close of the case for the 1st Respondent.

The first witness for the 2nd Respondent was Joseph Chewa (RW2) the General Secretary of MUZ. He testified on the procedure his union takes in order to communicate with the ranks and file members. He recalled that two strike actions by Mopani Copper Mines Workers took place within the month of January, 2012 and that the second strike took place a day after the unions and

management had concluded salary negotiations and agreed on a 17% salary increment. This strike action related to Mindolo Shaft only as other divisions had accepted the 17% salary increment. The workers mobilised themselves without the knowledge of the union.

It was RW2's testimony that union meetings are never held at Central Offices but at designated places and notices are normally sent out for such meetings. RW2 testified that union representation for MUZ members was given at the first, second and third hearings. After the second appeals were lost, the Complainants went to MUZ offices for assistance. MUZ decided to write to the 1st Respondent to seek for clemency for its members but the 1st Respondent declined to exercise leniency on them.

In cross-examination, RW2 insisted that what took place at Central Offices was a strike and not a meeting. He confirmed that the "meeting" outside Central Offices was not sanctioned by the union and was not in accordance with the established procedures of the union. He maintained that disciplinary procedures were followed by the 1st Respondent.

It was RW2's evidence that T.Z. Banda was a member of the negotiating team and was given instructions to communicate effectively to shop stewards. He confirmed that the message sent to shop stewards by T.Z. Banda was the correct message which the team wanted to be rolled down to the workers. RW2 testified that the meetings which followed after the 17% offer were just to inform the workers about the outcome of the negotiations.

He confirmed under further cross-examination that the meeting held by the then Minister of Labour Mr. Chishimba Kambwili with the workers was not sanctioned by the unions. He also confirmed that out of five branches of the union the problem only came from one branch, namely, Mindolo branch.

RW2 testified that shop stewards are also employees of the 1st Respondent and therefore, when they attend union meetings they have to formalise their requests for permission to attend the meetings.

The second witness for the 2nd Respondent was Kelly Lufumpa (RW3), a member of MUZ. He testified that he was a branch chairman for Mindolo MUZ from 2010 to 2014 and attended the 27 January, 2012 meeting at MUZ branch office for shop stewards. He said he did not tell anyone to go to Central Offices and the union was not involved in the meeting with the Minister of Labour at Central Offices.

It was RW3's testimony that a Mr. Chewe and himself went to Central Offices to try and persuade workers to go back to work. Some workers went back to work while others did not. He testified that there was tension among the workers at Central Offices and some used unpalatable language to express their displeasure.

In relation to disciplinary procedures RW3 testified that the union gave workers effective representation from the beginning of the process up to the manager's level. The union was there from the beginning up to the appeals. He told the Court that he represented MUZ members during the appeal stages and pleaded for leniency for the Complainants belonging to MUZ.

RW3 categorically denied telling or directing anyone to go to Central Offices. It was his evidence that they did not organise any meeting at Central Offices because union meetings never took place there. They normally held their meetings at the union branch offices.

In cross-examination, RW3 told the Court that he represented about five members of his union at appeal stage. Shop stewards represented them below that level.

It was RW3's evidence that if a member did not want to be represented by a union, he could represent himself.

RW3 stated that as union representatives they were supposed to advise their members on how to write statements and also represent the members. According to RW3, during case hearings, the role of the union was to be present and hear both sides. He emphasised that the outcome of the case hearing had nothing to do with the union. He said that members of other unions were also given representation by their unions.

This marked the close of the case for the 2nd Respondent.

The first witness for the 3rd Respondent was Stephen Mukuka (RW4), the National Secretary for NUMAW. This witness identified two meetings that took place, the first one being the briefing of union members about the 12% salary increment offer by management which the members rejected and the second one being the meeting which took place when the union leaders addressed members about the agreed 17% salary increment. According to RW4, this was the final offer from management but a group of employees from Mindolo Shaft were not satisfied with the increment.

It was RW4's testimony that the protest at Central Offices was not sanctioned by union officials because unions never had a sanctioned meeting at Central Offices because every mine site or shaft has a designated area for union meetings.

RW4 testified further that branch union leaders represented their members during the hearing of the disciplinary cases and pleaded for leniency for the affected members after they realised that their members did not have a strong case.

In cross examination RW4 stated that there was no dispute declared by the unions and the unions did not at any time call for a strike. He also alluded to the fact that the unions did not have any complaint regarding the disciplinary procedures which were followed by the 1st Respondent. According to RW4, he did not come across any information to the effect that someone told the miners to go to Central Offices for the meeting.

The second witness for the 3rd Respondent was Tom Zuze Banda (RW5), also known as T.Z. Banda, who testified that in 2012, he was Branch Chairman of NUMAW Mindolo Branch. RW5 was part of the negotiating team for the salary negotiations that took place in January, 2012. According to RW5, when the general membership of the unions were informed about the 12% salary increment management had offered, they were not happy.

RW5 testified that negotiations with management went on and management made a final offer of 17% which they were instructed to relay to their members. The team briefed the shop stewards who in turn were instructed to brief the general work force.

It was RW5's testimony that it was not normal practice for miners to congregate and Central Offices but that union meetings were normally held at Cocoa House. He also testified that meetings with branch officials and shop stewards were held at the branch office.

In cross-examination RW5 denied that he directed workers to go to Central Offices for a meeting. He said that the sms which he sent on 31 January, 2012 was directed at shop stewards and branch officials to roll the news of the 17% salary increment to miners. According to RW5, rolling out to miners did not mean going to Central Offices.

It was RW5's further testimony under cross-examination that members of his union were adequately represented at all stages of the disciplinary process. He said he personally handled all the disciplinary cases of NUMAW members at the final appeal level. He was of the view that the administering officials were fair.

RW5 stated that unions asked for clemency from the company during the last appeal through the administering official.

In further cross-examination RW5 said that Mr. Chisanga (the 1st Complainant) was among the people he met on the material day. He advised him not to go to Central Offices with those who wanted to go. Later he discovered that Mr. Chisanga was among those who had gone to Central Offices.

In further cross-examination RW5 said he asked for clemency for Simeon Mwansa, the 5th Complainant.

He testified that the unions could not allow a protest to go ahead and they did not do so. He agreed that there was work stoppage by some Complainants before the Court. He said no dispute was declared with the 1st Respondent and no strike action was called and therefore there was an illegal strike by the Complainants. He agreed that the workers were not unfairly treated. He confirmed in further cross-examination that at the meeting of 27 January, 2012 there was no joint stand taken that miners would meet on 1 February, 2012 at Central Offices.

In re-examination RW5 stated that sometimes unions would communicate with other union officials and members via sms and to his knowledge no one complained about this mode of communication. He said in this instance sms was used because the meeting for salary negotiation with management ended late and it was difficult to communicate individually with all branch officials. He agreed that his union did its best to protect its members and that the 1st Respondent's management was the one that decided what punishment to mete out to members of the union.

This marked the close of the case for the 3rd Respondent.

The sole witness for the 4th Respondent was Jimmy Musonda (RW6), the Branch Chairman for UMUZ, Mindolo Branch. RW6 testified that as an interim chairman at the time he did not give any instructions to anyone to go to Central Offices for a meeting. It was his testimony that when the demonstration happened at Central Offices he was in Livingstone and was given updates on the developing events back at the mine by his colleagues from other unions.

RW6 testified that when he returned from Livingstone he found that the miners who attended the demonstration were charged by the Company. He was called by the SERA during the final appeal hearing of the Deputy Treasurer of UMUZ, Mr. Joseph Manjabila (the 8th Complainant) to witness his final appeal. He was again called to witness the final appeal hearing of three or four other UMUZ members.

RW6 testified that his role as chairman was to plead with management so that they would not dismiss his members. It was his testimony that contrary to Mr. Manjabila's testimony, he represented him.

In cross-examination, RW6 confirmed that there were initial hearings and appeals for the Complainants. He agreed that he pleaded for mercy for his members because he realised that they were wrong by not getting permission from management to go to Central Offices. He said that no person was disciplined for going to Central Offices on the day the workers were addressed by the Minister of Labour.

RW6 admitted that on 1st February, 2012 workers went to Central Offices to protest against the 17% salary increment. He reiterated that the meeting which led to the dismissals was not sanctioned by any union.

He also admitted that the 17% salary increment was accepted by all the unions. He confirmed that the miners who went to Central Offices on 1st February, 2012 to demonstrate were all from Mindolo Shaft.

This marked the close of the case for the 4th Respondent.

UNDISPUTED FACTS

After critically examining the evidence before us we have come up with the following as undisputed facts, namely:

- 1) The Complainants were employees of the 1st Respondent until their dismissal on or about 17 February, 2012 which dismissal was confirmed on 28 February, 2012 for one or more offences of unconstitutional industrial action - taking part in an illegal strike; giving false information and non-compliance with established procedures.
- 2) The Complainants were all union represented, having been members of the three respondent unions, namely MUZ, NUMAW and UMUZ at the material time.
- 3) The genesis of the matter lay in the negotiations which took place at the material time between management of the 1st Respondent Company and

the unions for improved salaries and other terms and conditions of employment which resulted in an initial salary increment of 12%.

- 4) A meeting was arranged on 27 January, 2012 at MUZ Mindolo branch for branch chairmen of the Respondent unions to brief their shop stewards on the outcome of the salary negotiations.
- 5) Later on the same day, another meeting was held at Cocoa House for shop stewards to brief the general membership on the outcome of the negotiations.
- 6) The 12% offered by management was rejected by the members who tasked the union representatives to go back to the negotiating table and negotiate for a higher salary increment.
- 7) Another meeting was scheduled for 1st February, 2012 for branch chairmen and shop stewards. This meeting which was sanctioned by management took place at Cocoa House and was attended by the 1st Respondent's Senior Employee Relations Advisor (SERA). Workers were still not happy with the 17% final increment which their representatives had clinched with management and the mood among them was highly charged.
- 8) Employees from Mindolo Shaft including some of the Complainants went to Central Offices on 1st February, 2012 where a demonstration against the 17% salary increment ensued.
- 9) Following the disturbances at Central Offices of 1st February, 2012 the Complainants were charged and dismissed for one or more of the offences of:
 - (i) Unconstitutional Industrial Action - taking part in an illegal strike
 - (ii) False information
 - (iii) Non-Compliance with established procedures.

ISSUES FOR DETERMINATION

Having outlined the undisputed facts, we shall now proceed to identify what we consider to be the issues for determination in the matter in casu.

It is our considered view that the issues for determination in this matter are as follows, namely:

- (i) Whether or not the Complainants' dismissal was as a result of a meeting called by the 2nd, 3rd and 4th Respondents held at Central Offices to discuss wages and conditions of service.
- (ii) Whether or not the 2nd, 3rd and 4th Respondents instructed the Complainants to attend a meeting at Central offices on 1st February, 2012.
- (iii) Whether or not the 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, 12th and 14th Complainants participated in an illegal strike on 1 February, 2012 at Central Offices.
- (iv) Whether or not the 4th, 8th, 12th and 14th Complainants absconded from work and gave false information to the 1st Respondent by clocking for work thereby purporting that they worked during their shift when in fact not.
- (v) Whether the 5th Complainant absented himself from work and gave false information to the 1st Respondent.
- (vi) Whether the 3rd, 10th and 13th Complainants took part in an illegal work stoppage
- (vii) Whether the complainants, in common and in a concerted action failed to work on 1st February, 2012 in violation of their contractual obligations and failed to follow the laid down grievance procedure as provided in the 1st Respondent's Disciplinary Code and Grievance Procedure for Represented and Non-Represented General Payroll Employees.

- (viii) Whether or not the 1st Respondent failed to follow the rules of natural justice during the Complainants' case hearings and/or did not follow the correct procedure.
- (ix) Whether or not the dismissal was unlawful, wrongful, illegal or unfair.
- (x) Whether or not the Complainants are entitled to the relief of reinstatement in their positions; payment of salary arrears from the date of dismissal to date of payment or in the alternative, compensation as claimed in the Notice of Complaint.

Learned Counsel for all parties expressed their desire to file written submissions. However, at the time of writing this judgment, only Counsel for the 1st, 3rd and 4th Respondents had filed their submissions. We are grateful to Counsel who filed their submissions for the reasoned arguments and authorities cited therein which we have found useful. We shall endeavour to refer to them as and when necessary.

WHETHER THE UNIONS CALLED FOR A MEETING AT CENTRAL OFFICES ON 1ST FEBRUARY, 2012

It is apparent from the Amended Notice of Complaint that the cause of action against the 2nd, 3rd and 4th Respondents who were the Complainants' union representatives arose from the purported directive to the Complainants to attend a meeting allegedly called by the said Respondents at Central Offices on 1st February, 2012 which culminated into their dismissal.

The Complainants allege further that the Respondents informed them that the said meeting was legal as the employer, 1st Respondent, was aware of the same and had approved it. The Complainants seek to be compensated by the 2nd, 3rd and 4th Respondents if they are not reinstated by the 1st Respondent and paid salary arrears from date of dismissal to date of payment. They also seek an

order of compensation against the 2nd, 3rd and 4th Respondents if the Court finds that they did take part in an illegal strike for having misled them and for failure to adequately represent them during the disciplinary hearings.

We have critically examined the evidence before us, both documentary and oral and it is our finding that there is nothing on record to show that the 2nd, 3rd or 4th Respondent unions' representatives or leaders called for a meeting to be held at Central Offices on 1st February, 2012 or gave a directive to the Complainants to attend the meeting.

The Evidence on record is to the effect that the branch chairman of NUMAW for Mindolo Branch Mr. T.Z. Banda (RW5) sent an sms to shop stewards on 31 January, 2012 informing them about the 17% salary increment which had been agreed upon by the negotiating team as a final offer and that the shop stewards were to roll the said information to all miners. The sms also informed the recipients that a briefing would take place the following day. This sms was sent at 19:36:39 hours as per the document exhibited in the Notice to Produce filed by the Complainants on 10 June, 2013.

In our view the sms from Mr. T.Z. Banda did not by any stretch of the imagination suggest that there would be a meeting at Central Offices and did not direct anyone to meet at Central Offices. The sms was simply meant to notify the recipient that a briefing was in the pipeline for the following day which was 1 February, 2012.

There is evidence that the only authorised meeting that took place on 1st February, 2012 was held at Cocoa House and was also attended by the 1st Respondent's Senior Employee Relations Advisor (SERA). It was at this meeting that the employees were informed about the 17% salary increment which was agreed upon by the negotiating team. The employees were apparently not

impressed by this increment and led to the decision by some of them to go to Central Offices to demonstrate against it.

Contrary to the allegations by the Complainants that they went to Central Offices in accordance with a directive from union leaders, the evidence shows the union leadership advised the members not to go to Central Offices as negotiations had been completed and the salary increment was agreed upon by all parties.

Further, the evidence before us shows that union leaders tried to stop the Complainants and other miners from Mindolo Shaft from going to Central Offices and also tried to persuade those who were supposed to be working to go back to work and those who had knocked off to go home. There is evidence that even at Central Offices the union leaders tried to stop the members from demonstrating. However, the miners, including the Complainants, ignored the advice of union leaders against going to Central Offices to protest the 17% salary increment. They also ignored the union leaders' advice to return to work.

RW5 (T.Z. Banda) the NUMAW Mindolo Branch Chairman denied in his testimony and even under cross-examination, that he told workers to go to Central Offices. He testified that he tried to dissuade the miners from going to Central Offices to no avail. RW1 also testified that union leaders tried to stop their members from going to Central Offices.

We find RW5's evidence in this regard credible as it is corroborated by the evidence of other witnesses such as RW1, RW3 and RW4. For the above reasons, we find that the 2nd, 3rd and 4th Respondents did not call for a meeting to be held at Central Offices on 1st February, 2012.

WHETHER THE 1ST, 2ND, 3RD, 4TH, 7TH, 8TH, 9TH, 10TH, 11TH, 12TH, 14TH
COMPLAINANTS TOOK PART IN AN ILLEGAL STRIKE

In the preceding section, we have made a finding that the demonstration at Central Offices by the Complainants who went there on 1st February, 2012 was not sanctioned by any of the unions and that the said unions did not instruct or direct the Complainants to go to Central Offices on that day. Thus having participated in an unauthorised demonstration, the Complainants went against the spirit of section 101 (2) of the Industrial Relations and Labour Relations Act, Chapter 269 of the Laws of Zambia which forbids employees or trade unions from taking part in any strike that has not been authorised by a strike ballot. They also acted contrary to section 3.3. (h) of the 1st Respondent's Disciplinary and Grievance Procedure Code which provides for the offence of unconstitutional industrial action which includes strike action.

In support of his submission on the issue, learned Counsel for the 1st Respondent cited a decision of this Court which was approved by the Supreme Court on appeal. This is the case of **Kelvin Lukonde & Others v Mopani Copper Mines Plc (1)**. Briefly, in that case the Complainants were accused of organising a meeting at the Respondent's premises during working hours aimed at overhauling the union leadership. It was alleged that the Complainants sought to cause confusion among the rest of the Respondent's employees by soliciting for them to attend the meeting, thereby threatening to disturb the mining operations. In agreeing with the decision of the Industrial Relations Court the Supreme Court held as follows:-

"The Industrial and Labour Relations Act, Cap 269 of the Laws of Zambia, gives employees the right to attend union meetings. Section 5 (1) (a) - (i) of this law confers specified rights to every employee in respect of trade union activities. Under this law, no employer should dismiss any person for exercising his/her right to attend meetings and activities. Attendance to union meetings and activities however, should not be unconditional and without order. One of those

conditions must, of necessity, be that the employee concerned should have the permission, of his/her supervisor; or the consent of the employer; and that such permission or consent should not be withheld without good reason."

In our view the right of employees to attend union meetings and/or activities without the threat of dismissal should not be overstretched to protect employees who organise union meetings and/or activities at the employer's premises without the consent and permission of their supervisors and management. To hold otherwise, would be promoting disorder, chaos, and disruption of work and paralysis of the employer's business. We, therefore, have not seen any justification for Mr. Mwewa's concern in the circumstances of this case where the Complainants did not seek the employer's consent"

In the case in casu, the Complainants have argued in paragraph 5 (c) of the Amended Notice of Complaint that Complainants numbers, 4, 10, 11 and 12 did not go to Central Offices and by implication, did not take part in the illegal strike. We agree with the submission by learned Counsel for the 1st Respondent that this argument is a misapprehension by the Complainants as to what constitutes a strike. Section 3 of the Industrial and Labour Relations Act defines a strike as:

"the cessation of work or withdrawal of labour contrary to the terms and conditions of a contract by a body of persons employed in any undertaking acting in combination; or a concerted refusal or a refusal under a common understanding of any number of persons who are so employed to continue to work or provide their labour."

The 4th, 10th, 11th and 12th Complainants may not have gone to Central Offices but they withdrew their labour on 1 February, 2012 in a common understanding with their colleagues who went to Central Offices. Their action, in our view, constituted a withdrawal of labour contrary to their terms and conditions of employment and amounted to a strike.

Applying the definition of strike action in section 3 of the Industrial and Labour Relations Act to the case in case, we therefore, find that the 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, 12th and 14th Complainants did participate in an illegal strike.

WHETHER THE 4TH, 6TH, 7TH, 8TH, 11TH, 12TH, AND 14TH COMPLAINANTS
ABSCONDED FROM WORK AND GAVE FALSE INFORMATION

The evidence on record shows that the 4th, 6th, 7th, 8th, 11th, 12th and 14th Complainants reported for work on 1 February, 2012. They clocked-in but did not work on that day. By clocking in they purportedly worked their full shift when in fact that was not the case. It is our view, therefore, that they were correctly charged with absconding from work and giving false information. We therefore find and hold that the said Complainants absconded from work and gave false information contrary to their terms and conditions of employment.

WHETHER THE 5TH COMPLAINANT ABSENTED HIMSELF FROM WORK AND GAVE
FALSE EVIDENCE

It is not in dispute that the 5th Complainant (CW5) did not report for work on 1st February, 2012. He alleged that he was given a day off by his section boss. The section boss was not called as a witness to enable the Court to verify the allegation through his testimony.

In response to the allegation, the 1st Respondent alleged that CW5 absented himself on the material day and further gave false information that he was given leave by his section boss despite the check point system not indicating that he was on leave. CW5 showed in his evidence that he knew the procedure to be taken when an employee was going on a day off. In his statement given on 17 February, 2012 (exhibit "CM8" in the Certificate of exhibits attached to the Amended Affidavit in Support of 1st Respondent's Answer, CW5 stated that

he had, through a Checker by the name of Tembo, put in a day off at check point and that the system showed that he was absent on that day because Tembo just forgot to put it there. CW5 testified that his boss was not called at the disciplinary hearing to confirm or deny that he was the one who gave him a day off. However, RW1 testified that Gershom Mupeta was called by the disciplinary tribunal and he denied giving CW5 leave.

In the face of conflicting evidence on the issue, we find RW1's testimony to be more credible because if indeed CW5 had been given a day off and had informed the Checker at check-point about it, the system would have indicated that occurrence. The claim by CW5 that the Checker forgot to enter the fact that he was given a day off is farfetched. If there was any truth in the claim CW5 would have endeavoured to have the Checker brought before court to testify to that effect on his behalf.

In any event, CW5 himself testified that the normal procedure followed when taking a day off is that the section boss personally goes to the check-point to inform the person in charge about the grant of a day off. Therefore, if CW5 had been given a day off by his section boss, the section boss would have personally gone to the check- point to inform the Checker that CW5 was given a day off.

In view of the above findings, we can only conclude that CW5 absented himself from work on 1st February, 2012 by clocking-in and leaving the work place soon thereafter. We also find that he gave false information by claiming that he was given a day off on 1st February, 2012 by his section boss when that was not the case.

WHETHER THE 3RD, 10TH AND 13TH COMPLAINANTS TOOK PART IN AN ILLEGAL WORK STOPPAGE

What clearly comes out from the evidence on record is that the 3rd, 10th and 13th Complainants reported for work on 1st February, 2012 but later stopped working in protest against the outcome of the collective bargaining that had taken place and which ended up with a 17% salary increment agreement. As earlier found, the said work stoppage was illegal and therefore, our finding is that the trio took part in an illegal work stoppage contrary to the laws and their conditions of service.

It is evident that the Complainants herein did not follow the laid down grievance procedures when airing their grievance over the 17% salary increment. No dispute was declared by the unions as is required by law before a strike ballot can be called and in addition, no strike ballot was called.

Further, the Mopani Copper Mines Plc Disciplinary Code and Grievance Procedure for Represented and Non Represented General Payroll Employees has an elaborate grievance procedure which employees with grievance are supposed to follow in order to air their grievances. This is provided in Section 8 part 2 at pages 14-15 of the Grievance Procedure. Clearly the Complainants failed to follow the laid down grievance procedure.

WHETHER THE COMPLAINANTS' CASE HEARINGS DID NOT ADHERE TO THE RULES OF NATURAL JUSTICE

The Complainants have alleged that the 1st Respondent did not adhere to the rules of natural justice during their case hearings and/or did not follow the correct procedure. Learned Counsel for the 1st Respondent submitted that the said allegation was not pleaded in the Notice of Claim but was only mentioned

in paragraph 22 of the Complainant's Affidavit in Support of Complaint. Counsel is correct in his submission but as a court of substantial justice, unfettered by strict rules of procedure, our view is that the failure by the Complainants to plead the issue in the Complaint notwithstanding, we will address the allegation of non-adherence to the rules of natural justice by the 1st Respondent in the interests of justice.

The rule of natural justice in issue is the *audi alteram partem* rule (hear the other side). Simply put, this principle states that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against him/her. Counsel for the 1st Respondent argued that the Complainants failed to show how the rules of natural justice were not followed or which procedure was not followed. We agree with him. Contrary to the Complainants' allegation, the 1st Respondent showed in its evidence that the procedures outlined in the Disciplinary Code were followed by the 1st Respondent. All the Complainants were charged and given a chance to exculpate themselves, which they did in the form of statements where some of them admitted the charges while others denied. Disciplinary hearings were held where the Complainants were afforded an opportunity to present their cases and be represented by their shop stewards. After being found guilty as charged, they were informed accordingly in writing and given the opportunity to appeal twice to senior management. At appeal level the Complainants were represented by their branch chairmen who went as far as begging the 1st Respondent to exercise lenience on the Complainants. The Complainants lost both appeals leading to the complaint before this court.

The 1st Respondent's evidence that procedures were followed and that the process was fair was corroborated by the union officials who testified in court that this was indeed the case.

In view of the overwhelming evidence that the 1st Respondent afforded the Complainants an opportunity to be heard, we find and hold that the 1st Respondent adhered to the rules of natural justice during the case hearings. Therefore, this claim fails.

GENERAL FINDING

Having made the above findings, we have come to the inescapable conclusion that the Complainants in common and in a concerted action failed to work on 1st February, 2012 in violation of their contractual obligations and failed to follow the laid down procedure as provided in the 1st Respondent's Disciplinary Code and Grievance Procedure for Represented and Non-represented General Payroll Employees.

WHETHER THE COMPLAINANTS ARE ENTITLED TO THE RELIEF THEY ARE SEEKING

Reinstatement

Counsel for the 1st Respondent submitted that reinstatement is only available where dismissal is unlawful, wrongful or unfair and even so, it is ordered only in exceptional circumstances. We agree. In the case in casu the Complainants have failed to prove that their dismissals were unlawful, wrongful or unfair, the onus of proving the same having been on them (see the case of **Wilson Masauso Zulu v Avondale Housing Project Limited** (2)).

The remedy of reinstatement is indeed made in exceptional cases as per the decision in the case of **Zambia Airways Limited v Gershom Mubanga** (3).

Having found that the Complainants have failed to prove that they were either unlawfully, wrongfully or unfairly dismissed, this claim fails too.

Claim for salary arrears

Having dismissed the claim for re-instatement, the claim for salary arrears must fail too.

Claim for compensation against the 2nd, 3rd and 4th Respondents

It is our finding that the Complainants have failed to prove that the 2nd, 3rd and 4th Respondents misled them or that they took part in an illegal strike at the direction or instance of the respondents. Learned Counsel for the 3rd Respondent submitted that the Complainants were truant members of the unions who refused to heed the advice of union officials particularly Mr. T.Z. Banda, against going to the Central Offices to protest against the agreed 17% salary increment. Indeed the evidence before this Court shows that the Complainants went ahead and took part in an illegal strike against the advice of their leaders, in particular, the NUMAW Mindolo Branch Chairman Mr. T.Z. Banda. As learned Counsel for the 4th Respondent rightly submitted, the function of trade unions is to represent their members and not to cause strife between the members and their employers. We agree with Counsel's further submission that the Respondents would have been responsible for the Complainants' dismissals if they had authorised the strike or illegal work stoppage. The evidence before this Court, however, clearly shows that the unions did not authorise the illegal strike or work stoppage. In view of our findings, the claim for compensation against the 2nd, 3rd and 4th Respondents must fail.

CLAIM FOR AN ORDER THAT THE 2ND, 3RD AND 4TH RESPONDENTS HAD A DUTY TO PROTECT THE COMPLAINANTS

Ordinarily, unions have a duty to protect their members. However, that duty goes only so far as protecting the members when they are carrying out lawful instructions and not when they are involved in illegal strikes or work stoppages.

We have already found that some of the Complainants took part in an illegal strike and some failed to follow established procedures or both. Therefore, this claim fails too.

CLAIM FOR AN ORDER FOR COMPENSATION AGAINST THE 2ND, 3RD AND 4TH RESPONDENTS IF THEY MISLED THE COMPLAINANTS AND FOR FAILURE TO ADEQUATELY REPRESENT THEM

We wish to repeat what we said earlier, that from the evidence on record, it is clear that the Complainants were not misled by any of the respondent unions. There is no evidence that respondents told or directed the Complainants to go to Central Offices on 1 February, 2012 to protest against the 17% salary increments negotiated and agreed upon by union officials and management. As for the claim that the respondents did not adequately represent the Complainants, this claim flies in the teeth of the overwhelming evidence on record that the union officials went out of their way to represent the Complainants and even begged management to reverse the dismissals. For these reasons, this claim too must fail.

The result is that the complainants' claims fail in toto and are dismissed for being without merit.

Each party to bear his/its own costs.

Informed of Right of Appeal to the Supreme Court within thirty (30) days of the date hereof.

Delivered at Ndola the ^{25th} 25... day of May, 2016.


W.S. Mwenda (Dr.)
DEPUTY CHAIREPRSON


J.M. Bwalya
MEMBER


W.M. Siame
MEMBER