

IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA

BETWEEN:

Zambia Consolidated Copper Mines Ltd	Appellant
and	
Kunda Kalifungwa	1st Respondent
and	
Paul Chanda Kabuswe	2nd Respondent

**Coram: Gardner, Sakala and Chaila JJS.,
23rd May, 1995 and 22nd May, 1996**

S. L. Chisulo ZCCM for the appellant.
A. J. Mumba J.B. Sakala & Co. for the respondents.

JUDGMENT

Gardner J.S. delivered the judgment of the court.

Cases referred to: (1) Zambia National Broadcasting Corporation and Tembo and Ors SCZ Judgment No. 9 of 1995.

This is an appeal from a judgment of the High Court awarding compensation to the respondents for discrimination.

The facts of the case are that both respondents were employed by the appellant. Towards the end of 1991 they both stood in the general parliamentary elections as candidates for the United National Independence Party. In December, 1991 the respondents were called to the General Manager's office and asked if they had stood as United National Independence Party candidates in the general elections. When they replied in the affirmative they received letters giving them six months notice of early retirement.

The appellants complained to the Industrial Relations Court which found that they had been wrongly discriminated against on the grounds of their political

affiliation. The court found that, as both respondents were over 52 years of age, it would not be in the interests of the parties to order reinstatement. The court ordered that the respondents be deemed to have reached the normal retirement age of fifty-five years and that the first respondent be paid compensation for loss of employment of five years salary, and the second respondent compensation of three years salary, representing the remaining years they would have worked before attaining the age of fifty-five years. Interest was awarded at the current bank lending rate with effect from the date of the purported retirement. It is against the quantum of that award and interest that the appellant now appeals.

In the course of his argument Mr. Chisulo, on behalf of the appellant, asked this court to find that the amounts of compensation were excessive having regard to the order that the respondents be deemed to have reached the normal retirement age, which necessitated additional payments to the pension fund and resulted in increased sums payable to the respondents. He said that, in all, the order to deem the respondents to have reached retirement age would cost the appellant an additional sum of over K350,000.00 in respect of the first respondent and over K70,000.00 in respect of the second respondent. He also argued that the proper interpretation of the order of the court was that the respondents be deemed to have reached full retirement age on the 2nd December, 1991. Finally Mr. Chisulo argued that the appropriate rate of interest should be the average bank deposit rate over the relevant period.

Mr. Mumba on behalf of the respondents, conceded that the interest should be as suggested by Mr. Chisulo. As to the date at which the respondents should be deemed to have reached full retirement age, he argued that this should be the date of the judgment of the court below. He further argued in favour of the amounts ordered by that court.

We are satisfied that the proper interpretation of the order of the Industrial Relations Court is that the date when the respondents should be deemed to have reached full retirement age is the 2nd December, 1991. This is so because to order otherwise would result in partial reinstatement, and we agree with the court below that such an order would be inappropriate in this case.

We agree with both parties that there is no reason to depart from the usual practice, and that the rate of interest should be at the average bank deposit rate over the relevant period.

As to the amount of the awards, we accept that the order that the respondents be deemed to have reached retirement age resulted in additional expense to the appellant and the benefit to the respondents of receiving full pension payments in advance of the normal dates. Although the respondents were prevented from earning future salary

and allowances we note that they had reached the age when they could have been called upon to take early retirement with reduced benefits, and, taking all these factors into account, we consider that the only payment for compensation which should be awarded is for the wrong done to the respondents by wrongful discrimination. In this respect we agree that the sums awarded in the lower court were so high that this court must interfere. The proper award for compensation for the wrongful discrimination is twelve months' salary in each case.

Mr. Chisulo in the course of his argument, suggested that the award should be taxable. This is not the case, the reference to twelve months' salary is for calculation purposes only and the awards are of damages, and not of income.

This is not an appropriate case to order, as we did in the case of Zambia National Broadcasting Corporation and Tembo and Ors (1) SCZ Judgment No. 9 of 1995, that the six months' salary paid in lieu of notice should be deducted from the award.

For the reasons we have given the appeal is allowed. The award of the Industrial Relations Court is set aside and, in its place, we order that each respondent shall be deemed to have reached full retirement age on the 2nd December, 1991, and that each respondent be paid compensation of twelve months' salary with interest thereon at the average bank deposit rate from 2nd December, 1991 until the date of this judgment. This is a proper case in which to make no order as to costs.

B. T. Gardner
SUPREME COURT JUDGE

E. L. Sakala
SUPREME COURT JUDGE

M. S. Chaila
SUPREME COURT JUDGE