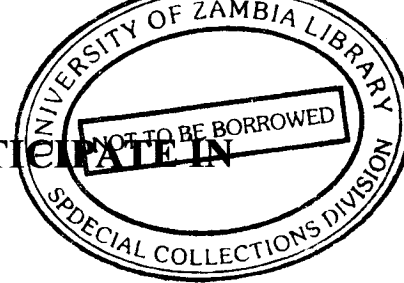


**THE RIGHT OF AN EMPLOYEE TO PARTICIPATE IN  
TRADE UNION MATTERS**



*ARE THE CURRENT LAWS ADEQUATE TO GUARD AGAINST  
DISCRIMINATION TO EMPLOYEES WHO PARTICIPATE AND  
THOSE WHO WOULD WANT TO PARTICIPATE IN TRADE  
UNIONISM?*

BY

CHIBWE BESA

AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF  
ZAMBIA LAW FACULTY IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS OF THE BACHELOR OF LAWS DEGREE

The University of Zambia

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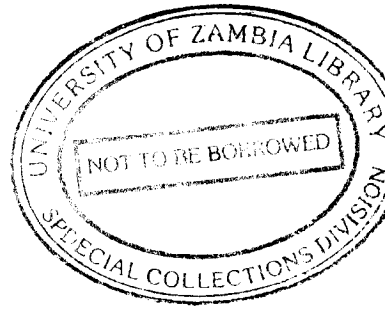
Lusaka

Zambia.

December 2005

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



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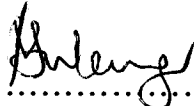
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Be accepted for examination. I have checked it carefully and I am  
satisfied that it fulfills the requirements relating to format as laid down in  
the regulations governing obligatory essays.

Date. 29<sup>th</sup> December 2005

Supervisor.....

Mr Geoffrey Mulenga

## **ACKNOWLEDGEMENTS**

First, I would like to thank the Lord God Almighty for sustaining me through this exercise.

Secondly, I wish to express my heartfelt and utmost gratitude to my supervisor, Mr Geoffrey Mulenga, for the amount of patience, keen interest and valuable time he spent going through my work as well as whose ideas, comments and suggestions have greatly improved this paper. He has given me a true learning experience for which I am greatly indebted.

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Lastly, to my family at large for affording me time out from family issues.

## **DEDICATION**

To my parents, the late Mr Phabian Oliver Chibwe and my mother Mrs Josephine Chungu Kalima Chibwe. This is specially for my late father who would have been proud to see me come to the end of this programme, for his continued support and encouragement until his untimely death on 31<sup>st</sup> December 2004. May his soul rest in peace.

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## INTRODUCTION

Labour relations and the law relating to employment in particular has now more than ever before assumed a very significant place in the policy and legal framework of how the employer -employee relationship should be.<sup>1</sup> There are fundamental questions in labour relations that employers and employees seek to have answers to, for example they would want to be guided on their rights, duties and responsibilities arising out of that status of being an employer, an employee, a trade union or other employers' organisations. Lack of ready answers to such questions lead to abuse of certain rights which may eventually lead to socially undesirable developments.

The rights of every employee to join a trade union of his choice is a fundamental one and touches on the very foundation of freedom of association as enshrined in Article 21 of the Republican Constitution.<sup>2</sup> There is a tendency in the Ministry of Education whereby, teachers who are not confirmed are not allowed to participate in the activities of the Teachers' unions. This in itself is a socially undesirable development and such development amounts to discrimination. This research will be based on trade unionism in the Ministry of Education. Freedom of association is guaranteed for every employee, whether confirmed or not, as this is his/her constitutional right and so he/she should not

be discriminated against when it comes to taking part in the lawful activities of the union which are done collectively.

It is the above and other related issues that have compelled the writer to undertake this research which although not exhaustive will, it is hoped, be an eye opener to many who have been affected and those likely to be affected by this practice. It is also hoped that this paper will be quite educative. In this regard, it is intended that Chapter one will discuss the employee and his rights. The Chapter will look at the definition of employee and then look at the rights this employee possesses in his employment. In chapter two, the trade union and the employee will be discussed. Under this head, issues like how protected is the employee if she/he participates in union activities, will be looked at. Chapter three will explore in greater detail the nature and basis of discrimination and discuss its various manifestations. Chapter four will discuss the adequacy of the current laws to guard against such discrimination. In the final chapter a sum up of the findings will be made and also recommendations on the guidelines that would sustain the relationship between employer and employee without anyone suffering a detriment.

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<sup>1</sup> Banda D A A Guide to Employment Law In Zambia Friedrich Ebert Stiftung, [1996] p1

<sup>2</sup> Chapter 1 of the Laws of Zambia [1996] edition



## CHAPTER ONE

### AN EMPLOYEE AND HIS RIGHTS

It is against the background highlighted in the introduction that we now want to look at the employee and his rights. Before we can go ahead to look at the rights of the employee, it is imperative that we look at the definition of the employee and see who qualifies to be called employee, who possesses the rights we will be discussing below.

"An employee is any person who has entered into or works under, a contract of employment with any employer whether such contract is express or implied, oral or written or serving a probationary period of employment, a casual employee, an employee specifically engaged on a temporary basis for work of an intermittent or seasonal nature."<sup>3</sup> This definition cuts across any form of employment one would find himself in and encompasses all employees even those serving on probation. The Employment Act<sup>4</sup> on the other hand defines an employee as **any person who has entered into or works under a contract of, whether the contract is express or implied, oral or in writing and whether the remuneration is calculated by time or by work done or is in cash or**

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<sup>3</sup> The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, Section 3

kind, but does not include a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act or a casual employee. This definition does not however include a casual worker. For the purposes of this study we will concentrate on every employee other than a casual worker and one employed under the Apprenticeship Act. Some of the important objects of the Apprenticeship Act are to regulate the employment of the apprentices in various trades; provide for the registration, transfer, modification and rescissions of contracts of apprenticeship; provide for the appointment of inspectors and specify their powers and provide for their making of regulations thereunder.<sup>5</sup>

An employee who is not confirmed is referred to as a probationer.<sup>6</sup> And in section 2 of the same Act probationer means a class I or II employee who has not been confirmed. The Act further says, this employee known as probationer is in permanent service.<sup>7</sup>

There can be labour relations without employers' associations though this would be difficult and very undesirable, but there can not be labour relations without trade unions.<sup>8</sup> Workers' organisations can not exist if workers are not free to join

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<sup>4</sup> The employment Act, Chapter 268 of the Laws of Zambia, section 3

<sup>5</sup> Preamble to the Act, Chapter 275 of the Laws of Zambia

<sup>6</sup> Section 2 African Education Act

<sup>7</sup> *ibid*

<sup>8</sup> Sir Otto Kahn- Freund [1977] **Labour and the Law** 2<sup>nd</sup> edition p 161

them to work for them and to remain in them. This is a fundamental human right, a civil liberty, which as such appears in the catalogue of fundamental rights in a number of constitutions. In our constitution this is provided for in Article 21(1) which provides that "**except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or to belong to any political party, trade union or other association for the protection of his interests**".

Freedom of organisation entails the absence of prohibitions or restraints and the presence of positive guarantees for its exercise.

"I call it a freedom and not a right because it does not involve any power to set in motion the judicial machinery of government."<sup>9</sup> All it means is that government does not intervene so as to impede a certain type of human activity.

The Industrial and Labour Relations Act<sup>10</sup> has laid down the rights of every employee in respect of trade union membership and its activities in section 5.

Some of these rights are:

- the right to take part in the formation of a trade union.
- the right to be a member of a trade union of that employees' choice.
- the right, at any appropriate time, to take part in the activities of a trade union, seeking election or accepting appointment, and if so elected or appointed, to

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<sup>9</sup> ibid p 166

<sup>10</sup> ibid Sir Otto Kahn- Freund p. 173

hold office as such officer subject only to the constitution of the trade union concerned.

Another source of obligation to consider is the International Covenant on Economic, Social and Civil Rights (I C E S C R), Article 8 of which provides for the right to strike provided it is done in conformity with existing laws of the land. While employed an employee enjoys threefold protection<sup>11</sup> outlined below.

1. He must not because he is a member of the union, whether recognised or not for example because he is a shop steward be put at a disadvantage in the conditions of his employment assigned to less well paid jobs, refused opportunities for overtime, passed over for promotion or confirmation as the case maybe. If such are proved the employer must show that it was not done for discrimination purposes.
2. He must not be prevented or deterred from union activity, that is, no employee must suffer a disadvantage in terms of his employment by reason of what he does in the interest of his union . The employer is under obligation to provide facilities which are indispensable for exercise of his function, if he doesn't he is preventing his employee from exercising it, an example is the use of the notice board, a desk or telephone.

3. An employee must not be dismissed by reason of his membership or union activity. If such happens, the reason is what in law is called "inadmissible". A dismissal for an inadmissible reason is an "unfair dismissal".

An unfair dismissal is a creation of statute. It was developed against the background of the rigid remedies that the common law provided to a wrongfully dismissed employee which are essentially limited to damages.<sup>12</sup> Unfair dismissal looks at the merits of the dismissal. The concept restricts the largely unlimited authority of an employer to dismiss his employees for whatever reason he thinks fit, except for reasons recognised by the law. In other words the courts will look at the reasons for the dismissal to determine whether the dismissal was justified or not.

Section 108(1) of the Industrial and Labour Relations Act provides that "no employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, sex, marital status, religion. Political opinion or affiliation, tribal extraction or status of the employee." It would be an unfair labour practice to dismiss an employee on any of the grounds outlined above. Employees who are aggrieved by an unjustifiable dismissal can lay a complaint before court.<sup>13</sup>

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<sup>11</sup> *ibid* p 173

<sup>12</sup> . W. S MWENDA [2004] *Employment Law in Zambia; Cases and Materials* p. 63

According to recommendation 119 of the International Labour Organisation, approved by the International Labour Conference at Geneva<sup>14</sup>," the basic principle is that termination of employment should not take place unless there is a valid reason for termination connected with capacity or conduct of the worker or based on the operational requirements of the enterprise." Other than those outlined in section 108(1) certain reasons are to be invalid reasons for termination, such as, participation in union activities or membership and taking in good faith of legal proceedings against an employer alleging a breach of some legal obligation.

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<sup>13</sup> Section 108(2) Chapter 269 of the Laws of Zambia

<sup>14</sup> Report of the International Labour Conference, 47<sup>th</sup> session, Geneva [1963]

## CHAPTER TWO

### THE TRADE UNION AND THE EMPLOYEE

The statutory definition of a Trade Union is contained in section 3 of the Act, which provides that a trade union is “any group or organization of employees registered as a trade union under this Act whose principal objectives are the representation and promotion of interests of the employees and regulation of relations between employees and employers.”<sup>15</sup> Away from statute, another author has written that, the expression ‘trade union’... means any combination, whether temporary or permanent, the principle objects to which are under its constitution statutory objects, namely the regulation of the relations between workmen and masters or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also for the provision of benefits to members.<sup>16</sup> A trade union is formed by a group of not less than fifty persons. The Act provides that, “an application to register a group of employees as a trade union shall be submitted to the Commissioner in such form as may be prescribed by the minister.”<sup>17</sup> It is a requirement of the law that the application to register be accompanied by two duly certified copies of the constitution of the proposed union and such other information or documents as may be required by the commissioner

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<sup>15</sup> The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

<sup>16</sup> Sylvester C Mwananshiku Obligatory Essay p.24 [1992] UNZA

by notice in writing addressed and delivered to the executive officer of the trade union with such period as determined by the commissioner and specified in such notice.<sup>18</sup>

Upon being satisfied that the application for registration has complied with the prescribed conditions and that the constitution of the proposed trade union has provision for matters set out in the schedule to the Act, the commissioner is under obligation to register the group of employees as a trade union and issue a certificate of registration in the prescribed form, upon payment of the prescribed fee.<sup>19</sup> A certificate of registration will be prima facie evidence that the provisions of the Act relating to registration have been complied with unless the certificate has been withdrawn or cancelled.<sup>20</sup> A group of employees will not be registered as a trade union under a name identical to or by which, any other trade union has been registered or so as nearly resembles such a name as to be likely to deceive its members or members of the general public.

## **EMERGENCE OF TRADE UNIONS**

Before 1997, the Zambia Congress of Trade Unions was the umbrella body of all trade unions in Zambia. However, with the enactment of the Industrial and Labour Relations (Amendment ) Act no 30 of 1997, the Zambia Congress of Trade Unions was continued, and still is, in existence as an incorporated body. The congress is

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<sup>17</sup> Section 9(1)

<sup>18</sup> Section 9(2)

<sup>19</sup> Section 9(3)

<sup>20</sup> Section 9(4)



deemed to be registered as a federation of trade unions under the Act. In other words, it is now one of the federations of trade unions in existence in Zambia.

The emergence of trade unions in the contemporary history of labour development has proved that employees can now negotiate their conditions of service through their elected representatives. By their collective force, trade unions do, in favourable circumstances, compel employers to concede to their demands more than the efforts of individual employees would. In Zambia today, a number of trade unions have been formed over the years with the view of regulating employee's conditions of service.

It is a matter of common notoriety that employees have had different interests and thus different pressure groups have emanated therefrom. To this end it is imperative to delve into the history of trade unions which represent different pressure groups aforementioned.

## **NATIONAL UNION OF PUBLIC SERVICES WORKERS**

The European Mine Workers of then Northern Rhodesia, set up the first mine union in October 1936 called the Northern Rhodesia Mine Workers Trade Union.<sup>21</sup> During the colonial period the interests of Africans were overlooked and their wages were a constant source of tension. Meanwhile, the European trade unionists

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<sup>21</sup> Annual Report of the Department of Natives 1938, p.17

who wanted to receive priority over Africans, actually entered a collective agreement with the mining companies in which a clause enforced a standstill on “native advancement”.<sup>22</sup> As a result the natives formed committees of tribal representatives in 1931, through which interests of African Miners’ were channeled. Mineworkers chose their fellow tribesmen on the mines to voice the workers’ grievances, although urban Africans did not take to the contention that tribal representation was the best form of communication. African miners organized strikes for higher wages and better working conditions, after a similar strike by European employees. The European strike was successful but the African demands were refused by the mining companies.<sup>9</sup> After the strikes the labour department, which is the forerunner to the present Ministry of Labour, was established by the colonial government to supervise relations between miners. A labour officer was appointed to man the Copperbelt towns and Kabwe (Broken Hill then) and in 1942 a second labour officer was appointed.

On June 27<sup>th</sup>, 1945, the British and Northern Rhodesia governments agreed that the policy objective of establishing the labour department at the time, was to create the advancement of Africans and subsequently in 1947 William Comrie a labour officer, was sent from London to educate Africans on collective bargaining .<sup>23</sup> By

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<sup>22</sup> Henderson I, **Labour and Politics in Northern Rhodesia**, University of Edinburgh, 1972 p.111

<sup>9</sup> Berger E.L. **Labour Race and Colonial Rule**, The Copperbelt From 1924 to Independence, [1972] p.81

<sup>23</sup> Henderson, op. cit p. 218

the beginning of 1948 many classes of African workers had begun to show a keen desire to hear about and to form their own trade unions.

Until 1953, remuneration and other conditions of employment for non-civil service employees of government were like other employees in the government service, regulated under the provisions of the employment of Natives Ordinance, 1929.

Non-civil service employees' affairs continued to be so regulated until the formation of the National Union of Public Services Workers Union in 1953.<sup>24</sup>

Membership was open to all non-civil service employees of government. The objectives of the union were to secure complete organization in the union of the Northern Rhodesia government and to obtain and maintain just and proper rates of wages, hours of work and other conditions of labour and generally to protect their interests.

## **CIVIL SERVANTS UNION OF ZAMBIA**

At the time of independence in 1964, the African civil servants did not have a union but organized themselves through an association known as the African Civil Servants Association. The association's dealings with the government were through the African Whately Consultative Council, which could be convened at the initiative of either party, that is, the official side (government) or the association.

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<sup>24</sup> National Archives of Zambia, NR 3/544

<sup>11</sup> Whately Council for African Civil Service

The members' grievances were brought to the attention of the government at the meeting of this consultative council at which each side was equally represented.<sup>25</sup> As the name implied meetings of the council of a consultative nature and decisions of this forum were not binding on either party. As a result the association was not effective and left a lot to be desired. In order therefore, to correct this situation civil servants in Lusaka held a general meeting in 1974 at the Ridge way Hotel at which sentiments were expressed to the effect that the association was not effective enough and that there no need for some change. The majority of those present felt that the association should be turned into a fully fledged trade union along the lines of the Zambian National Union of Teachers or any other trade union operating in a parastatal or private company. A committee was then put in place with a mandate to propose a change of name and amendments to the constitution so as to turn the association into a trade union. The committee reported its findings to an extra ordinary general meeting on July 24, 1975. The members voted and approved the new constitution and change of name from being an association to a union to be known as the Civil Servants Union of Zambia. The union was registered under the Industrial Relations Act on 29<sup>th</sup> September, 1976.<sup>26</sup>

Membership of the union was open to all civil servants either permanently or temporarily employed in the civil service of the Zambian government. The objectives of the union were the organization of civil servants employed by the Zambian government in order to pursue and protect the general and individual

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interests of its members; to seek for and safe guard reasonable salaries and conditions of employment; and to mediate in disputes between government and its employees.

## **ZAMBIA NATIONAL UNION OF TEACHERS**

Terms and conditions of service for the African teachers like all other employees in Northern Rhodesia; were regulated by the provisions of the Employment of Natives Ordinance 1929. Teachers organised themselves through an Association known as the African Teacher's Association. In 1949, the Copperbelt Teachers Association in Kitwe resolved at a meeting held in December, 1949 to emulate the miners and turn the association into a trade union.<sup>27</sup> The objects of the union were to organise the teachers in order to pursue and protect the general and individual interests of its members; to seek for and safe guard reasonable salaries and conditions of employment, and to mediate in disputes between government and its employees. On August 31, 1982, the government and the union signed a recognition agreement, which provided for a negotiating committee which comprised five members each nominated by both the government and the union. Like the Zambia Congress of Trade Union, the Zambia National Union of Teachers was the umbrella body looking out for the interests of teachers. 1988 marked the birth of the Secondary School Teachers Union of Zambia and later the Primary

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<sup>26</sup> Section 15(1) (a) 1 of Chapter 517, Certificate no 20 of September 29, 1976

Education Teachers Union of Zambia. The secondary school teachers argued that, the Zambia National Union of Teachers was dominated by people with primary school teacher qualifications and so their interests could not be properly represented. This has been a problem especially with large unions having a wide heterogeneous membership which includes workers of varying occupations, the Civil Servants Union being an example. Being the oldest union and having a membership cutting across the teacher unions, the Zambia National Union of Teachers still commands a lot of control and has a larger membership. It is believed that breakaway unions and new unions are smaller and weaker than old unions as they start out with little or no money at all as a result employers may be reluctant to recognise them.

When we look at the objectives of most trade unions it will be discovered that they all focus on, the representation and promotion of interests of employees and regulation of the relations between employees and employers. Hence the importance of the right to form voluntary societies which operate within the system and exert pressures on government, so that, there is more equitable distribution to all sectors. It is important for an employee to join and be part of such societies because it is from the activities of such groups that responsible governments are able to gauge the needs and wants of its people and so be able to discharge their responsibilities.

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<sup>27</sup> Trade Union African Teachers, National Archives of Zambia SEC/LAB/127

The activities of these organisations in society will most certainly lead to some opposition of some government policies. Most governments claim not to interfere with rights of trade unions in this respect and when they do they do, it is contended that, this is only done to regulate the proper running of trade unions in the country. But it is in the guise of regulatory measures that most governments interfere with the freedom of association of unions. Trade unions are similar to voluntary societies in some respects though the two differ on the basis that, trade union membership does not always operate on a purely voluntary basis.

The labour movement has further introduced democracy in industries. The practice of employers exercising arbitrary and dictatorial powers at places of work has greatly been reduced due to the efforts of the unions. Management and workers now jointly consider matters which previously were the exclusive prerogative of the employer. These include matters such as installation of new machinery, promotion, redundancies and so on. Thus the right to combine in the working place has brought about considerable advantages. One important aspect that should be noted is that, all of these activities of trade unions will not make much democratic sense unless trade union members play an active and prominent role in union organisation. This means that provisions must exist within the union structure which encourage this.

Now consideration will be given to an employee and how protected he is if he participates in union activities. Article 21 of the Republican Constitution<sup>28</sup> provides for the protection of assembly and association. In so far as the law is concerned an employee is not barred from being a member of a trade union. An employee is free to join a trade union of his choice. One he considers best represents his interests. There should also be a corresponding freedom to leave, join or refrain from joining any such grouping without threat of sanction. Other provisions of the law include section 5 of the Industrial and Labour Relations Act<sup>29</sup> which outlines a number of rights an employee enjoys in respect of trade union membership.

Other than the rights to take part in the formation of a trade union, to be a member and to take part in union activities, hold office, seek election or accept appointment, an employee also enjoys a right not to be dismissed, penalised or disciplined on the ground that the employee has been or is a complainant or witness or has given evidence in any proceedings against the employer or that the employee is entitled to a reward, benefit or compensation against any employer's organisation or class of employers to which to which the employee's employer belongs or against any other person, in consequence of a decision made by a court in favour of that employee or in favour of a trade union or class of employees to

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<sup>28</sup> Chapter 1 of the Laws of Zambia [1996] Edition

<sup>29</sup> Chapter 269 of the Laws of Zambia



which the employee belongs.<sup>30</sup> An employee is indeed protected by the law, if he engages himself in lawful activities of the union.

In the Ministry of Education an unconfirmed teacher is allowed to be a member of a union of his choice but when it comes to exercising the rights that go with membership, he or she is not allowed to participate. The law is very clear in its provisions. The constitution in Article 21(1) gives an unconfirmed teacher the right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

An unconfirmed teacher is an employee, and according to the Employment Act<sup>31</sup> "employee means any person who has entered into or works under a contract of service, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done or is in cash or kind, but does not include a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act or a casual employee." An unconfirmed teacher is not in apprenticeship, this is a fully trained teacher. The freedom and right to take part at an appropriate time in the activities of a trade union is guaranteed for every employee, whether confirmed or not. To stop this unconfirmed teacher from exercising his right as regards trade union matters is

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<sup>30</sup> Section 5(1)

discriminatory. An unconfirmed teacher is not in apprenticeship, he or she is a fully trained teacher, whose status as employee is not taken away by virtue of being unconfirmed. Some teachers work for as long as 10 years without being confirmed, is it right that a person who has worked for so long in an institution should not be allowed to exercise his constitutional rights?

Some trade union leaders put the blame on the immediate supervisors of these teachers. *Mr Nyambe Sefulo,<sup>32</sup> Chairperson for the Secondary School Teachers' Union, Lusaka Province had this to say, the supervisors of the unconfirmed teachers threaten them with charge letters on purely unfair and unjustifiable grounds. If any thing these people in authority are violating the rights of these poor teachers. Confirmed or unconfirmed, they carry out the same amount of work and perform similar duties in their places of work. Why should participation in the activities of a trade union be an issue when the work done by these teachers is the same, when they join and participate in trade union matters they are fighting for the same interests? According to the Secondary School Teachers' Union of Zambia Constitution, Rule 35(e), there shall be school representatives, who shall recruit new members in their institutions on behalf of the union and shall keep a register of all members in the institution. New members in these institutions are these same unconfirmed teachers. There is no under lining factor of a new member being confirmed, it is every one who has been taken on by the Ministry of Education to teach in government schools who is targeted for membership. By virtue of being on*

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<sup>31</sup> Section 3, Chapter 268 of the Laws of Zambia

*a government payroll and being a paid up member, an employee is supposed to enjoy being a part of the activities of the union. The members should be afforded a chance to attend meetings and be a part of the deliberations, so that, they can contribute in promoting the teacher's interests. Being unconfirmed does not make one disabled, these are young men and women who are able bodied and carry out their functions well enough. Rule 41(a)<sup>33</sup> states that only those members that shall be fully paid and are not in arrears for a period of three months shall be allowed to vote. It does not talk about one being confirmed or not.*

The law protects an employee who is a member of a trade union and participates in its activities. Anyone who would be unfairly treated can rely on the provisions of the law that have been discussed above in seeking redress.

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<sup>32</sup> Personal interview with Mr Nyambe Sefulo - Sestuz Chairperson, Lusaka Province, 10<sup>th</sup> July, 2005, Lusaka

<sup>33</sup> Secondary School Teachers Union of Zambia Constitution.

## CHAPTER THREE

### THE NATURE AND BASIS OF DISCRIMINATION

Discrimination of any form is prohibited under the laws operating in Zambia.

Article 23(2) of the constitution provides that "... , no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority."<sup>34</sup> Article 23(2) above, is an entrenched provision falling under part III of the constitution which contains the Bill of Rights, whose purpose is to control or limit the executive and legislative powers of government.<sup>35</sup> In other words where the legislature enacts a law which is discriminatory, a person who feels aggrieved by such law, can petition the High Court under Article 28 of the Constitution. Article 23(3) of the constitution defines the expression *discriminatory*, as affording different treatment to different persons attributable wholly or mainly to their respective descriptions, by race, tribe, sex, place of origin, marital status, political opinions, colour or creed where by persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or disadvantages which are not accorded to persons of another such description.<sup>36</sup>

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<sup>34</sup> Chapter 1 of the Laws of Zambia [1996] Edition

<sup>35</sup> W S MWENDA [2004] Employment Law in Zambia: Cases and Materials p. 12

The nature of discrimination in this study is that based on "status" as outlined in Section 108(1) of the Industrial and Labour Relations Act.<sup>37</sup> This section proscribes the determination of the services of any employee or imposition of any other penalty or disadvantage by an employer on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or status of the employee. Further the law has made specific provision in the Industrial and Labour Relations Act, for an employee who has reasonable cause to believe that he has been discriminated against on the grounds of race, sex, marital status, religion, political opinion, or affiliation, tribal extraction or status to lay a complaint before the Industrial Relations Court, within thirty days of the occurrence which gives rise to such belief.<sup>38</sup>

From the above propositions it can be said that an unconfirmed teacher in the Ministry of Education is being discriminated against when it comes to participation in trade union matters. This is because, he or she is not allowed to join in, a strike action, go slow and any other activities which members of the union who are confirmed participate in, such as being a school representative of the union. Because of his/her status of being unconfirmed this teacher is treated differently and subjected to restrictions of not taking part in the activities of the union.

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<sup>36</sup> *ibid* Chapter 1 of the Laws of Zambia

<sup>37</sup> Chapter 269 of the Laws of Zambia

<sup>38</sup> Section 108(2) of the Industrial and Labour Relations Act

Every legal system is a purposeful enterprise regardless of its ideology, in that, this purpose discloses itself in the notion of justice. Justice imports equality. Any legal system must aspire to achieve equality. Aristotle in his writings once said that "injustice arises when equals are treated unequally and also when unequals are treated equally." Justice entails restoring or maintaining the balance or proportion. For justice, what is looked at is the administration of the law and the substantive law itself. The law has made specific provisions in the Industrial and Labour Relations Act to guard against discrimination in employment. The principle of justice is to treat like cases alike and treat different cases differently. The criteria for determining the likes and differences must be relevant. Relevance relates to capacity of persons for specific functions. If the capacities are the same then they should be treated alike, if different then the treatment should be different.

## **THE BASIS OF EMPLOYING A TEACHER IN THE MINISTRY OF EDUCATION**

On this subject the author spoke to the Deputy Head Teacher of David Kaunda National Technical High School, Mr Lloyd Yamboto who made the following remarks. The basis of employing one as a teacher in the Ministry of Education is professional qualification, except in a few cases where they employ untrained teachers to handle pupils in Primary Schools. In Secondary Schools one must have either a diploma in education or a degree in education. One who successfully obtains a diploma from a teacher training college or a degree in education from the

University of Zambia has capacity to be employed as a teacher in the Ministry of Education. When the Ministry of Education takes on an individual with such qualifications, it is expected of such an individual to execute his teaching effectively and any other responsibilities without much difficulty. In the schools they are operating, these teachers confirmed or unconfirmed perform similar functions, they teach the same number of periods, those involved in sport coach school teams and others are patrons of different clubs obtaining in schools and they are members of various trade unions. When one successfully undergoes a teacher's training he or she becomes a teacher and this should be the basis of determining the likes and the differences. Whether one joins the Ministry of Education today or yesterday, he or she is a teacher and when he or she becomes a paid up member of a trade union, it is his or her constitutional right to join in the activities of the union being done by other members collectively, for as long as they respect the laws of the land.

The defining criterion for one to be employed as a teacher is one's diploma or ~~one's~~ degree in education. When we take the example of the Secondary School Teacher's Union of Zambia, membership of the union is open to all degree holders and diploma holding teachers employed in secondary and basic schools or on secondment to colleges and all full-time officials and staff.<sup>39</sup> Rule 4(e) provides that, a new member shall upon payment of the entrance fee receive a membership

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<sup>39</sup> Secondary School Teachers' Union of Zambia Constitution Rule 4(a)

card and a copy of the constitution.<sup>40</sup> In this regard all one needs, to qualify to be a member is a diploma or a degree in education. This should be the same criteria to use to determine whether one can participate in union activities or not because it is relevant to the teaching profession. If for example, it is said that, no civil remedy will be available at the instance of an aggrieved person, if that person has been injured by a cabinet minister, this would be unjust because the factors are irrelevant. So even in this discussion, being confirmed or not is irrelevant to taking part in the activities of the union.

## MANIFESTATIONS OF DISCRIMINATION

Perelman in his book *Justice* postulates that, " the only factor common to the various conceptions of justice was formal justice, equality of treatment of all the members of one and the same essential categories."<sup>41</sup> In Zambia, the Industrial and Labour Relations Act and the Employment Act governs the affairs of employees. This means that, where an employee faces dismissal contrary to the laid down rules and procedures, the Court can declare that dismissal null and void.

Now we turn to case law and see how discrimination manifests itself in different situations. In the case of *Lloyd Mwiya Milupi v Zambia Seed Company Limited*,<sup>42</sup> the appellant was an employee of the respondent company and an active member

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<sup>40</sup> *ibid*

<sup>41</sup> Chaim Perelman [1967] *Justice* p.



of the works council. The respondent dismissed him on the ground that he obtained an advance from one of the their clients without their permission, contrary to the company's financial regulations. The applicant, then filed a complaint under section 66 of the Industrial Relations Act for the court to nullify the decision taken by the respondent to dismiss him on the grounds, which they stated, because in his view the reason for his dismissal was because of his membership of the works council and his involvement with the works, party and sports committees. He prayed to the court to nullify the decision and reinstate him to his former post in the respondent company. In his testimony it was heard that, the usual procedure is for the applicant to get permission before obtaining loan facilities when out of station. But there were a number of employees of the respondent company who because of problems of communications first of all, obtained loan facilities and then got a green light from the respondents later. In such cases the respondents would deduct from their salaries in order to receive monies owed. None of the employees was ever sacked over such practice. The court having analysed the evidence before it, reminded itself of the terms of section 66 which provided that, "no employee shall be discriminated against or made to suffer any penalty or disadvantage by reason of his membership of a council". The court held that the applicant was discriminated against on social grounds, that is , his membership of the works council. There was no evidence to show that any other employee prior to this incident has been dismissed. So the court ordered re-employment.

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<sup>42</sup> Complaint no 19 of 1984 (I R C) Unreported

In another case of *Kangombe v Attorney General*<sup>43</sup> a teacher was dismissed by the president, while the latter was exercising his powers under the then constitution.

Initially the Teaching Service Commission had established that the teacher had no case to answer but the president nevertheless stepped in and dismissed him. It was held that the dismissal was ultra vires because the president's powers were delegated to the commission. It was further held that, the president could not override the decision of the commission. In this case, it can be seen that discrimination was coming from the president because of this teacher's social status, that is, his political affiliation.

Mr Nyambe, speaking of some of the events that occur which he has witnessed had this to say. Most incidences in the Ministry of Education end at the teacher receiving a charge letter or being surrendered back to the Ministry where a teacher will be posted to another school. Here a teacher who comes on board is told that he or she is free to join a trade union of his choice but if not confirmed, because of that status one can not take part in union activities. Now, this is discouraging because confirmation is not as automatic as it appears on white paper. People have stayed for as long as 10 years without being confirmed, those who are in a hurry, use bad means as corruption to get confirmed, people who follow the proper channel are kept waiting for as long as it takes. After a strike for example, the benefits that the members enjoy are the same, in that a pay rise will be effected to every member of that organisation signifying that there should be no such thing as

one being confirmed before they can take part because at the end of the day there is no reason why those who are not participating to the cause should get a pay rise when they have not been involved in the fight. Union activities should be done collectively. If this be the case then, what this means is that, those who are not confirmed do not deserve a pay rise if it is initiated by the unions because they continue teaching while their colleagues are on go slow. But when these individuals are teaching as the case may be, they are only doing it under duress, for fear of being charged with some disciplinary offence. Union activities are meant to be done collectively and should not be left to a few individuals alone. Paying subscription to a union is not enough, that is why the authorities should stop the discrimination and allow all teachers regardless of whether they are confirmed or not to be actively involved so as to improve a teacher's welfare. Unfair and undesirable labour practices should be done away with.

Asked what the union is doing to protect these individuals from such kinds of treatment, Mr Nyambe said, unfortunately most people do not use the union to complain about this kind of treatment. Some of these incidents are brought in the open if it happens at a school where there are active union representatives and who are always close to their members because they are able to advise them. He also added that some of the union leaders are as ignorant about this as the people they lead. Asked how this is possible, Mr Nyambe put the blame on democracy, he said

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<sup>43</sup> [1972] ZR 177

these leaders are elected and when the people vote, its one with the highest votes who takes the day. Otherwise, individual teachers do not come forward when they are faced with such cases. There is a three man committee in every school and teachers are supposed to take their complaints to this committee which is based right in their school for convenience. When the committee receive such a complaint, it must report it to the National Executive who will take up the matter and see to it that the teacher involved receives the help he or she needs. If nothing is brought to our attention as National Executive we take it all is well. The schools are just too many for us to to conducting site visits every now and then, besides we are also teaching, so the amount of work involved is overwhelming for the executive, hence the idea of a three man committee in every school.

The author conducted two other separate interviews with two unconfirmed teachers in the ministry of education, who both spoke on condition of anonymity. The first was with a male teacher at a secondary school in Lusaka. When this teacher was at college he was a student union representative and thought after leaving college he would be a member of one of the teachers' unions. He was registered as a member of the Secondary School Teachers Union of Zambia. Six months later the union officials declared a go slow, claiming that government had failed to fulfil its promise concerning housing allowance for teachers, which was long over due. This teacher was also entitled to receive the housing allowance for three months. The issue at hand concerned him and besides he was a member of the union which had

made this declaration. On the same day when he returned home after work he received a message that his brother had been shot at and that he was fighting for his life in Ndola Central Hospital. The message indicated that he travels to Ndola immediately this news got to him. He travelled to Ndola. He however wrote a letter to the school head informing him of his problem. He spent three days in Ndola and returned for work on the fourth day. The school head was not in school that day and his deputy was attending a workshop. So the teacher went to the one who was left in charge of the school and reported back. The union officials called up a meeting with all their members, this teacher joined the group that went for that union meeting. A week later he received a letter in which he was told to exculpate himself and state why disciplinary action should not be taken against him: (1) For being away from work without permission and (2) For taking part in union activities when he is not confirmed. In his reply he made reference to the letter he had written to the head teacher, informing him of his brother's accident and his leaving for Ndola. On the second point he said he was a member of the union and the issues that were discussed at the meeting concerned him so he needed to be there to hear for himself. In the meantime news had gone round that he was not coming for work because of the go slow and that he was very vocal because of his involvement in union activities whilst at college. Two months later he was surrendered back to the ministry and he was posted to a school in a rural area. At the time of writing (November 2005) he was pursuing a degree program at the University of Zambia.

The second interview was with a lady teacher who suffered a somewhat similar fate. She too was surrendered back to the ministry, because of her involvement in union activities. In her case she was accommodated by the school and was asked to leave the house immediately because she was no longer offering her services to the school and that the ministry should take over the responsibilities of her accommodation problem. She wrote back to the head and said she was not ready and was not going to move out until alternative accommodation was provided for her. She is now teaching at a private school in Lusaka.

The two teachers interviewed, when asked why they agreed to be treated that way both said they did not have powers over a head teacher. In fact they did not even know that they were being discriminated against. They thought that, that is how the system works. Many people do not even know that the law exists, that which would protect them from such practices.

## **CHAPTER FOUR**

### **ADEQUACY OF THE CURRENT LAWS TO GUARD AGAINST DISCRIMINATION**

An employee has the right to participate in trade union activities as shown in chapter one. In this chapter, we will endeavour to establish whether the current laws are adequate in as far as protecting an individual subjected to disabilities or restrictions to which persons of one such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description. To start with, we will identify the laws that relate to this proposition, then go ahead to see what they say and lastly compare what the laws say to what is obtaining on the ground.

#### **THE CONSTITUTION**

Article 21(1) provides that, "no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests."

Article 23(1) provides that, "no law shall make any provision that is discriminatory either of itself or in its effect."

Article 23(2) provides that " no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any other public authority." And Article 23(3) gives the meaning of the expression discriminatory as affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinion, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

When we look at the provisions of the law in Article 21(1) an individual is free to associate with whosoever he wishes, he can form or belong to a political party, trade union or any other association for the protection of his interests. By a collective force, trade unions do, in favourable circumstances, compel employers to concede to their demands more than the efforts of individual employees would.<sup>44</sup> It is for this reason that most employees opt to join trade unions so that they can secure their interests. The law is very clear in its provision, that a person will not be hindered from enjoying his freedoms and rights. A person's interests can only be known if this person participates in the activities of the union, being a



member only is not enough for one to make known their interests or other issues relating to a person's welfare in their employment. So the law guarantees protection to an individual's freedom of assembly and association. As this individual departs from this point of protection, other issues which are the result of his involvement in union matters follow. These issues are; those who are not confirmed can not take part in a go slow for example. This in itself becomes discriminatory, because different treatment is now being attributed to the teachers (confirmed and unconfirmed). Mr Apton Sitali a union representative at David kaunda Technical High School in an interview with the author revealed that, non confirmation of teachers is not due to the fact that they are inefficient, these are teachers who are always scoring ninety percent plus pass rate for their pupils. When they submit their papers for confirmation, they will be told a certain form is missing from their file, which form the school registry may not even be in possession of, so this teacher has to go round looking for this form when found and submitted, something else will still be missing or they will be told all is well the file will be submitted to the Teaching Service Commission during their next sitting. Others will later receive their confirmation letters and apparently some people will remain without being confirmed and it so happens that it is the same individuals who remain without being confirmed. These individuals eventually will get frustrated so much that they would stop making the submissions and numerous years go by passing without their being confirmed.

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<sup>44</sup> Killian Ives Mulenga [1990] The Emergence of Trade Unionism and the Process of collective bargaining in the

## **THE PROCEDURE OF CONFIRMING A TEACHER IN THE MINISTRY OF EDUCATION**

In trying to ascertain the procedure adopted in confirming a teacher, the author conducted another interview with the Human Resource Manager at the Ministry of Education Headquarters, Ms Judith Kandeke who stated the current procedure regarding the process of confirmation.

Basically the process starts from an individual application which is in a prescribed form and it varies according to qualifications one has attained. Primary school teachers are required to complete T S form 2 while a secondary school teacher completes TSC form 1, the difference being that, upon successfully completing their studies from the various teacher colleges and university a primary school teacher obtains a Certificate in Education whereas a secondary school teacher obtains either a Diploma in Education or a Bachelor of Arts/ Bachelor of Science in Education. These forms are completed by the teacher whilst at college, this is because the form has a part where the principal of the college has to give consent that the teacher trained from that particular institution. The Ministry of Education will then send to successful applicants a letter of appointment which in this case is

TS form 3. Ts form 3 contains the date of appointment of a teacher in the Ministry of Education. The probationary period is six months. Previously it used be one year. After six months of working as a teacher in the Ministry of Education the teacher is eligible for confirmation and is required to complete a form called the Annual Confidential form. This form is used to assess the performance of a teacher during the six months, it must be stated that this form is not only completed by this new teacher alone but also by all the teachers already in the service and all public service employees at the end of each year for each employees' assessment. Another form that needs to be completed is Ts form 8. It is the requirement of the Ministry of Education that a teacher due for confirmation undergoes a medical check up before he or she is recommended for confirmation. The reason being that, after working for some time an individual might for example have problems with his sight, which could have an effect in his teaching. The Head teacher, who is his immediate supervisor makes the assessment and writes to the District Education Board Secretary recommending that the teacher be considered for confirmation. The District Board Secretary in turn also writes to the Provincial Education Board Secretary. The Provincial Education Officer will also write to the Permanent Secretary. The Permanent Secretary facilitates the process by also writing to the Teaching Service Commission to seek their authority to go ahead and confirm a teacher. The Teaching Service Commission is the authorising body for teacher confirmation and promotion after their sitting, they write back to the permanent secretary authorising the teachers' confirmation. The Permanent Secretary then

writes to the teacher using form 9, known as confirmation slip, informing the teacher of his confirmation. The confirmation date will be with effect from the date of the teachers' appointment.

This process is cumbersome and can unnecessarily take long. It has been suggested that correspondence of this kind, run from the Head teacher, to the District Education Secretary and then direct to the permanent secretary but nothing has changed the same old route is preferred by the people responsible. Professional documents such as, degree, diploma, certificate and a grade twelve certificate are sent along in this journey. In the absence of any one form authority for confirmation can not be granted. For one who gets into the system with the zeal to see to it that things get done in the shortest time possible, tend to despair and that is how most people have found themselves working for as long as ten years without being confirmed. A question then can be asked, is it right to restrict people who have worked this long from taking part in union activities, when it is not their fault that they are not confirmed? Such propositions fall below the provisions of the law and as far as the law is concerned it is discriminatory. The latin maxim *lex injusta non est lex* an unjust law cannot be law consolidates Article 23(1).<sup>45</sup>

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<sup>45</sup> Chapter 1 of the Laws of Zambia [1996] Edition

## **II. THE INDUSTRIAL AND LABOUR RELATIONS ACT**

Section 108 (1) provides that " no employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or status of employee."

Section 108 (2), any employee who has reasonable cause to believe that the employees' services have been terminated or that the employee has suffered any other penalty or disadvantage, or any prospective employee who has reasonable cause to believe that the employee has been discriminated against, on any of the grounds set out in subsection (1) may within thirty days of the occurrence which gives rise to such belief, lay a complaint before the court provided that the court may extend the thirty day period for a further three months after the date on which the complaint has exhausted the administrative channels available to him.

The common form of discrimination obtaining against an unconfirmed teacher is that of his or her status. The status comes in issue when this teacher wants to take part in activities that are trade union related. Most supervisors in these institutions of learning, that is, secondary schools, basic and primary schools do not even know that laws that give one the right to take part in such activities exist. Those that know of their existence use most commonly section 101, which talks about

prohibition of lock outs and strikes in the negative sense. Section 101(2) provides that, no employee, trade union or other person shall take part in a strike which

(a) has not been authorised by a strike ballot taken in the manner provided by the constitution of a trade union under this Act... The section will not be quoted in full but will only be quoted ending with ...shall take part in a strike. They will then go ahead to quote section 101(4), Any employee, trade union or other person who does any act or incites any person to do any act in contravention of subsection (2) shall be guilty of an offence and shall be liable upon conviction -

(b) in the case of an employee or other person, to a fine ...and may be prohibited from holding office in a trade union for such period as the court may determine.

These supervisors concentrate more on intimidating union members and threatening those that are vocal as regards the fate that would befall them if they continue being vocal. Some head teachers go to the extent of threatening the poor teachers that they would not be recommended for confirmation. In instances where strikes are called, a head teacher feels he or she is better off having more of unconfirmed teachers than confirmed ones. This is because unconfirmed teachers continue teaching while their counterparts down tools. Some head teachers actually do not recommend their teachers for promotion because of this same factor. Others do it as a form of punishment to those they have failed to handle. While in actual fact they are infringing on those peoples' rights and freedoms.

### III. THE EMPLOYMENT ACT

The Employment Act provides for disputes to be referred to a labour officer. Section 64(1) states that, "subject to the provisions of subsection (2) whenever an employer or employee neglects or refuses to comply with the terms of any contract of service or whenever any question difference or dispute arises as to the rights or liabilities of any party to such contract as to any misconduct, neglect or ill-treatment of any such party or concerning any injury to the person or to property of such party aggrieved may report may report the matter to a labour officer, who shall there upon take such steps as may seem to him to be expedient to effect a settlement between the parties and in particular, shall encourage the use of collective bargaining facilities where applicable." And section 64(2) states that, the provisions of this section shall not apply whereby or under any law, the matters referred to in subsection (1) may or are required to be settled in the manner provided in such law.

There are several channels through which an employee who is aggrieved can address his grievances. As provided above one can refer his matter to the labour officer. But because people do not know of the existence of these laws they do not make use of them. Though not absolute these laws are adequate. Whatever activity takes place must be done within the law. The laws are there for every one.

After establishing that these labour practices are indeed discriminatory, it would be important to answer the following questions: Are the people who find themselves unfairly treated by either impeding their participation or by being given charge letters afterwards aware of the existence of the laws that guard against such practices? How much do they use these laws to protect their rights and interests?

The major set back is that a lot of people do not know their rights as regards trade union participation and activities. Worse still they do not know where they can get the copies of these laws, as if this is not enough the copies of these laws are not affordable. It becomes difficult for those that have an idea of the existence of these laws to support their arguments with the law because they do not have the copies and as a result they give in to intimidation and join the fear of being dismissed from employment. A number of people interviewed state that, lack of knowledge makes them give in even in instances where they are correct about an issue. Because of lack of knowledge most people do not even question the actions that they are subject to undergo and use the means available to address their grievances. If such can be done then the adequacy of the law will be seen.



## **CHAPTER FIVE**

### **RECOMMENDATIONS AND CONCLUSION**

In the colonial times, the state as employer had the sovereign power to take unilateral decisions on a number of issues. Under the doctrine of privilege, the government imposed restrictions deemed necessary to protect its sovereignty, because government employment was not a right but a privilege held at the pleasure of the government. Trade union activities were limited and so were an employees' rights to participate in union activities. Since the attainment of independence the Zambian government has exercised a dual influence on the development of trade unionism. This can be witnessed through the provisions in the Constitution of Zambia Article 21(1), which gives an employee the right to join a trade union of his choice. Article 21, is in accordance with the provisions of the International Freedom of Association and Protection of the right to Organise Convention no. 87 of 1948, ratified by Zambia on 2 September 1996. Article two of the International Labour Organisation Convention provides that "workers and employers should have the right to establish and join organisations of their own choosing, and that workers and employers should exercise freely the right to organise, respectively." Employees have a constitutionally enshrined right to organise, which cannot be overridden by any government official or any one. To bring in a distinction as to

who takes part and who does not take part in union activities is discriminatory and retrogressive. Every employee irrespective of one's status falls under this foundation of freedom of association.

It is my considered view that the employee seems to have a problem with union leaders. These leaders do not provide means by which the different occupational groups can be able to influence decisions affecting their own interests. The union leaders at the top have lost touch with the interests of their members. Other than that, they have not done much in trying to help their members understand their positions as regards union activities in their work places. They just concentrate on recruiting new members who they do not meet to introduce themselves to them and sensitize them of the provisions of the law as regards unionism. A good number of their members have not even seen the constitutions and as a result they stay away from activities when they feel threatened because they are not armed with the knowledge they need to justify their acts and neither do they have any documentation to support them. If the members were to pay subscriptions from their pockets, most of these employees would be reluctant to pay their dues. But this is done at source. So there is no escape for anyone.

In the recent past we have experienced union breakaways. The major complaint against most of the unions is that employees' interests are not adequately

represented. The union leaders have also lost it in that, all they think about or rather the major activities they perform in these offices are mostly centred on collective bargaining. When they go to bargain they go with their views on the matter and not what the members would like. This is because they do not consult their members to get their contributions as regards the issues at hand. Members could have different and better views on some issues not consulting them is tantamount to dictatorial tendencies which imposes systems on the people without the regard for their wishes. As a result the school managers are now able to manipulate the situation to make unconfirmed teachers work while their colleagues are on strike. There is so much that these leaders can do for their people than just negotiate pay rise. It is here recommended that they should embark on programs such as collection of brain stormed problems members seem to be having in the Ministry of Education, they can help the unconfirmed teachers get confirmed by tendering papers on their behalf and also assist with members promotions. The Secondary School Teachers union of Zambia Constitution rule 4(e) provides that, a new member shall upon payment of the entrance fee receive a membership card and a copy of the constitution. Most members have not seen any of these documents. It is time union leaders took to sensitizing their members on their rights as regards union activities and equip them with the information that will help them so that they are not intimidated because they will have known their stand.

In as much as some trade unions can satisfy themselves with breakaways and having a membership, they should learn from the mother bodies they broke away from. If they fail to deliver the expectations of their members there will result a proliferation of unions. And this has its own disadvantages. It would result in the overall weakening of the union movement. In addition it would bring about delays and conflicts in bargaining between management and the several unions would increase the likelihood of interunion disputes and a lot of time would be lost by the unions fighting among themselves instead of the employer. Break away unions form new unions and are usually smaller and weaker, than the old unions, starting out with little or no money. Employers may be reluctant to recognise them for fear that they might press for improved conditions more forcefully than the old unions.

The pluralistic perspective accepts that it is legitimate for employees to combine in formal organisations in order to express their interests and to seek to influence management decisions and achieve their objectives. There is such belief that such legitimacy is founded, not just on industrial power or management but on social values which recognise the right of the interest groups to combine and have an effective voice in their own destiny.<sup>46</sup> In line with Fox, Minister of Labour and Social Security, the Ms Edith Nawakwi, made this statement at the official launch

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<sup>46</sup> Fox A [1966] *Man Management* p.33

of Union Network International at Andrews Motel<sup>47</sup> *urged union leaders to mobilise themselves in the large global economy and have a more effective impact by merging. This will make us fight for the rights of our employees being exploited and make our voice heard loud and clear.*

The Zambian government recognises the fundamental role that trade unions play in industrial peace and has put in place laws to guard against discrimination of any kind in work places. It has also given individual rights of participating in trade union activities. This can be traced from way back in Kaunda regime. In his speech to the National Assembly of 7<sup>th</sup> January 1979, President Kenneth Kaunda( as he was known then) stated that;

**" Our policy in Zambia still remains one of encouraging trade unionism... Denying workers the right to form trade unions is a worst form of rejecting their rights."**<sup>48</sup>

Leaders of these unions should be selfless and give themselves out to helping their members. Individuals who are not aware of such rights should be helped by the union leadership so that such individuals can also make a contribution to the employees' welfare as regards trade unionism. The adequacy of these laws can only be seen when they are used. It is not enough to have the laws in place because they may appear to be adequate when in actual fact they are not. If they are tested the

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<sup>47</sup> Zambia Daily Mail, 22 February, 2000

<sup>48</sup> Presidential Speech to the National Assembly [1979]

lacunas will be seen and then the laws can be consolidated to protect individuals from unfair labour practices.

It would also be good for the union leaders to interact with their members especially those in the grassroot so that they can win their confidence. They also need to assure their members of their support and help where the members fall victims of unfair labour practices. It is through such interactions that the members would be willing and free to talk about their experiences.

## REFERENCES

1. BANDA A.D [1997] The Trade Union Situation in Zambia; An Overview of the Law, Practice and the Way Forward.  
Lusaka, Friedrich Ebert Stiftung
2. BERGER E.L [1974] Labour, Race and Colonial Rule  
Oxford, Clarendon Press
3. FOX A [1966] Man Management, Hutchinson Press
4. HENDERSON I [1972] Labour Politics in Northern Rhodesia  
Edinburgh, University of Edinburgh
5. KAHN-FREUND OTTO [1977] Labour and the Law, 2<sup>nd</sup> edition  
London, Stevens
6. MWANANSHIKU CHIBANGU SYLVESTER [1992] The Democratic Principle of Freedom of Association and How It has Operated in Zambia.  
Lusaka, Unza
7. MWENDA W.S [2004] Employment Law in Zambia : Cases & Materials  
Lusaka, Unza Press
8. PERELMAN CHAIM [1967] Justice  
New York.

## STATUTES

1. THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA
2. THE EMPLOYMENT ACT, CHAPTER 268 OF THE LAWS OF ZAMBIA
3. THE INDUSTRIAL AND LABOUR RELATIONS ACT, CHAPTER 267
4. THE AFRICAN EDUCATION ACT, CHAPTER 135
5. THE SECONDARY SCHOOL TEACHERS' UNION OF ZAMBIA - CONSTITUTION
6. THE APPRENTICESHIP ACT, CHAPTER 275



## **CASES**

1. **Kangombe V Attorney General [1972] ZR 177**
2. **Lloyd Mwiya Milupi V Zambia Seed Company (Unreported) 18/ IRC 1994**