CHAPTER THREE

3.0 THE NATURE OF PART-TIME EMPLOYMENT

3.1 Introduction

According to Rotchford and Roberts, part-time workers are almost a forgotten class of the labour force in terms of importance and are completely missing persons in organisational research\(^1\). They indicate that most studies that focus on part-time employment in economic and popular literature are exclusively unsupported, subjective and managerial reports that tend to focus the discourse on the basis of their hours of work, employee characteristics or employment opportunities. This chapter shall inquire into the nature of part-time employment. This will be done by establishing whether part-time employees are employees or independent contractors. This inquiry will necessitate a finding as to whether or not part-time employees are covered under the labour laws in Zambia. In other words, it will be essential to demonstrate a higher level of precision whether they are under a contract of employment or for employment. If the nature of the contract of employment (as elucidated in the preceding chapter) shares an inextricable relationship with part-time employment or indeed part-time is analogous to contract of employment, they are undoubtedly, employees within the meaning of the definition of employee in the Employment Act\(^2\). If however, on the other hand, the co-relation in as far as part-time employment is concerned tilts towards independent contractors, then part-time employees are outside the ambit of the employment legislation.


\(^{2}\) Section 3 of the Employment Act, Chapter 268 of the Laws of Zambia
3.2 Discussion of the Convention on Part-Time Work

According to the Convention on Part-Time Work, a part-time employee is defined “as any an employed person whose normal hours of work are less than those of comparable full-time workers\(^3\). Paragraph (b) of the said convention provides that the normal hours of work referred to in paragraph (a) may be calculated weekly or on average over a given period of employment. Paragraph (I) further provides that the term “comparable full-time worker” refers to all part-time workers who have (i) the same type of employment relationship; (ii) who are engaged in the same or similar type of work or occupation; and (iii) is employed in the same establishment, or when there is no comparable full-time worker in that establishment, in the same enterprise, or when there is no enterprise, or when there is no comparable full-time worker in that enterprise, in the same branch or activity\(^4\). It was established in the preceding chapter and it is reiterated here that the classification of part-time or full-time employees does not go to define the employees’ entitlements but is simply indicative of the time one spends at the work-place. In order to establish whether part-time employees are under a contract of employment or for employment, reference will be made to the factors discussed in the second chapter.

3.3 Do part-time employees fall under contracts of employment or for employment?

It was noted earlier that for one to be under a contract of employment, certain elements must be present. Much more importantly, the factors under consideration are those discussed under the multiple test theory both express and the implied ones. In the case of *Ready Mixed Concrete*

---

\(^3\) Article 1 (a) Part-Time Work Convention, No 175 of 1994

\(^4\) Article 1 (c) Part-Time Work Convention, No 175, 1994
(South-East) v Minister of Pension and National Insurance, the court stated that in order for one to be under a contract of employment he or she must agree in consideration for a wage or other remuneration that he or she will provide his/her own work and skill in the performance of some service for the master. This point is in no way at variance with what happens in part-time contracts. It must be understood that employees undertake to provide their own services and by themselves in exchange for remuneration, and most importantly to note is that employees do not delegate the performance of their services, and even if they would want to, employers would not countenance such an act. This is in recognition by both part-time employees and employers that they are in a contract of employment which is personal in nature and to which delegation or subcontracting is alien.

The next element the court pointed out was that one must agree expressly or impliedly that in the performance of services, he will be subject to the control of the master in a sufficient degree so as to make the other the master. Control is an undeniable element of part-time employment during the time employees are scheduled to perform the services contracted for. The employer has control as to when the services shall be performed and the place of performance. In most instances, if not all, part-time employees are required to attend meetings where the employers tend to share the vision of an organisation and the goals that must be achieved. This is a concession on both the employer and the part-time employee that a contract of employment connotes submission as well as subordination.

---

5 1968 2QB 497

6 Freund, Labour and the Law, 45
The last element the court stressed in the case of *Ready Mixed Concrete (South-East) v Minister of Pension and National Insurance*\(^7\) is that the other provisions must be consistent with there being a contract of employment. It should be noted that this element enables the courts as emphasised in the preceding chapter, to look at other factors that may be of great guide. Elements such as the potential one has to benefit from the work he or she is offering over and above the salary or wage or the extent of exposure to the financial risk as was decided in the case of *Henry Denny& Sons v Minister for Social Welfare*\(^8\) tilts the balance towards a contract for employment. Part-time employees do not have opportunities to benefit beyond their contractual salary or wage regardless of how the employer’s business fares. As long as the employee has performed his contractual obligations, he or she is entitled to receive the consideration. The fact that the employer has made losses in that particular month or week is inconsequential to the part-time employee’s dues and conversely, if the employer has made profits beyond projections should not be of interest to a part-time employee to the extent that a wage variation may be effected.

The next element pertains to the provision of the equipment and materials necessary for the performance of the work. Customarily, part-time workers like full-time workers are supplied with the necessary tools for the performance of the work contracted for. This is essentially because part-time workers are not in business on their own account but simply provide services as employees hence the employer bears the responsibility of providing all materials necessary to do the work.

\(^7\) 1968 2QBD 497

\(^8\) 1998 IR 34
The other factor necessary to consider here is the aspect of paying tax. Part-time employees like full-time employees, have their tax burdens carried out by the employers. What this simply means is that when it comes to the tax obligation of part-time employees, the law requires that employers to deduct the tax due on behalf of their employees for purposes of remitting to the authorities (withholding of tax from the source). Part-time employees are in no way responsible for their own tax affairs but independent contractors are. Further, the attitude of the court towards party categorisation unequivocally confirms that part-time employees are under contracts of employment. When the courts are looking at how parties have categorised themselves as either being under a “contract of employment” or “contract for employment”, the court considers only those categorised as “independent contractors” as being outside the protective labour legislation and not whether one is full-time or part-time employment as seen in the case of Ready Mixed Concrete (South-East) v Minister of Pensions and National Insurance\(^9\).

It is therefore safe to state that categorisation that one is “part-time” or “full-time” has no bearing on the applicability of the protective labour legislation. What has a bearing on the applicability of the labour legislation is whether one is an independent contractor or an employee. In the case of Henry Denny & Sons v Minister for Social Welfare\(^10\), the court adopted the principles laid down in the case of Ready Mixed Concrete (South-East) v Minister of Pensions and National Insurance\(^11\) in as far as sifting a contract of employment from a contract for employment is concerned.

---

\(^9\) 1968 2QBD 497

\(^10\) 1998 IR 30

\(^11\) 1968 2QBD 497
The landmark case of *Mathews v Kent Medway Authority*\(^{12}\) in the United Kingdom, is very instructive on part-time employees in relation to equality with their comparable full-time colleagues. In this case, part-time and full-time workers were paid differently. Full-time fire fighters responded to emergencies and were engaged in educational, preventive and administrative tasks while part-time fire fighters did not do administrative work. The House of Lords held that the two tests or requirements for comparability are that (a) there is the same type of contract (contract of employment) and, (b) similar type of work is being done (not the same terms). The court further stressed that it did not matter that the full-time fire fighters did a few extra tasks (administrative tasks) because their jobs were still broadly similar and therefore the part-time fire fighters were entitled to every benefit that full-time fire fighters were entitled to.

This case clearly demonstrates that it is not the classification of “part-time employee” or “full-time employee” that must define one’s entitlement to the protective labour legislation, the determinative factor is whether one is under a contract for employment or of employment.

In another important case of *O’brien v Ministry of Justice*\(^{13}\), the European Court of Justice handed down a watershed decision in dispelling the notion of preferential treatment between full-time and part-time employees. The facts of the case are that Mr O’Brien, a former part-time Judge had originally presented before an employment tribunal a claim alleging that he had been discriminated against on the ground that he was a part-time worker. This action was brought pursuant to the provisions of Part-Time Workers (Prevention of Less Favourable Treatment)
Regulations, 2000\textsuperscript{14}. The claimant contended that as a part-time Judge, he should be entitled to the same pension as full-time and salaried Judges.

The Court of Appeal decided that although the claimant’s claim was within time, the claimant was not protected by the regulation in question as Judges were not workers within the meaning of the regulation. For purposes of clarity, a worker is defined in this regulation as;

\begin{quote}
An individual who has entered into or works under or (except where a provision of these regulation otherwise requires) where the employment has ceased, worked under-
\begin{itemize}
\item a contract of employment; or
\item any other contract, whether express or implied and if (it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of a client or customer of any profession or business undertaking carried on by the individual.\textsuperscript{15}
\end{itemize}
\end{quote}

The case went to the Supreme Court on appeal, where the Court stated that “judicial office” partakes most of the characteristics of employment. However, the Supreme Court declined to express itself conclusively as to whether Judges were workers within the meaning of the regulation in question as domestic law would not be disentangled from European Community law. It was found necessary for the case to be decided upon by the Court of Justice of the European Union since the matter touched on European Community law and the matter was properly falling within the jurisdiction of the Court of Justice of the European Union. The Court of Justice of the European Union in its holding abhorred preferential treatment between part-time and full-time Judges unless such a difference is justified by objective reasons. The court held that a part-time Judge should not be treated any different from a comparable full-time Judge. The

\textsuperscript{14} Section 1 (2) (a) and (b) Part-Time Workers (Prevention of Less Favourable Treatment) Regulation 2000, United Kingdom

\textsuperscript{15} Section 1 (2) (a) and (b) Part-Time Workers (Prevention of Less Favourable Treatment) Regulation 2000, United Kingdom
principle in this case is that the classification of “part-time” employment should not be a ground to afford less favourable treatment to a part-time worker than his or her comparable full-time workers. In other words, part-time employees are entitled to the same benefits as full-time employees but on a pro-rated basis, that is to say, in the same proportion as their assigned weekly hours of work compared with the normal weekly hours of work of full-time employees.

It can also be clearly seen that the Part-Time Workers Convention takes the view that part-time employees are under contracts of employment. Firstly, it defines a part-time employee as distinguished from a full-time employee exclusively on the basis of the hours of work. This is a clear acknowledgment of the fact that the only gulf between the two classes of workers is the number of hours they work. It further provides in article 1 that measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers. It extends protection to part-time employees in aspects such as the formation of unions as well as the right to occupation, safety and health. The employer has the duty to ensure a sound environment in which employees are working without distinction as to status, (that is to say whether one is part-time or full-time). Further, the Convention provides that measures appropriate to national law shall be taken to ensure that part-time workers do not, solely because they work part-time, receive a basic wage which calculated proportionately on an hourly performance related or piece rate basis is lower than the basic wage of comparable full-time workers, calculated according to the same method. The Convention is lucid and its tone unambiguous in demonstrating that part-time workers are employees employed under a contract of employment. In fact, a further perusal of this Convention which is declaratory of the principles to govern the labour market and those nations committed to promoting social justice,
becomes very clear that the Convention does not envisage any circumstances under which part-time employees would be regarded as “independent contractors”.

The Convention therefore is unwavering in pinpointing the fact that part-time employees are as much protected under the protective labour conventions and entitled to the benefits as full-time employees, save that the benefits of part-time employees are prorated. The cardinal point to note is that the difference in a job being full-time and part-time is simply a matter of hours. In the case of *Sharma and Others v Manchester City Council*[^16^], the Employment Tribunal demonstrated that part-time need not be the sole reason for discrimination for a claim to succeed. The facts of the case are that Miss Sharma and her colleagues were employed as part-time lecturers for Manchester City Council's Adult Education Service. Their contracts contained a term that allowed the council to reduce their hours, subject to a minimum annual total of one-third of the hours worked in the previous year. Not all part-timers were subject to this term. By way of a cost-saving exercise, the council triggered the reduction in hours for the part-time employees who were subject to this specific term and many of their hours were substantially reduced.

Sharma and her colleagues complained to an Employment Tribunal that the reduction clause, and the reduction itself, amounted to less favourable treatment, as this term did not apply to full-time employees. The tribunal rejected the claim on the basis that the claimants' part-time status was not the sole reason for the treatment – other reasons applied as well, such as the fact that the part-time contracts contained the reduction clause. The claimants appealed to the Employment Appeal Tribunal (EAT). The Employment Appeal Tribunal allowed the appeal and dismissed the "sole reason" test that the tribunal had adopted. The Employment Tribunal held that part-time status need not be the sole reason for less favourable treatment in order that a successful claim.
could be brought under the regulations. For less favourable treatment to be potentially unlawful, the part-time status need only be a partial reason (or one of a number of reasons) and not the whole or only reason. The tribunal further stressed that it did not matter if other part-time employees were not also subject to the less favourable treatment if their part-time status is a reason for the adverse treatment. The key implications of this decision is that employers will no longer be able to rely on the argument that as long as they treat some part-time employees proportionately equal to full-time comparators, the law will not protect the part-time employees who are treated less well.

When one looks at the cases cited, a question may obviously arise to the effect that these cases are based on the Part-time Workers’ Regulations promulgated in the United Kingdom and therefore inapplicable to Zambia and as such the relevance of the cases cited becomes highly doubtful. Certainly, the cases are based on the law of the United Kingdom in question. However, an introspective look at the corpus of these decisions would reveal that decisions of this nature in Zambia today are possible principally because the key and overriding factor in all these cases is that a worker must be under a contract of employment to be entitled to the benefits that full-time workers are. Therefore having established that part-time workers are under contracts of employment, it follows that the cases that have been decided mainly on the principle that part-time employees are under contract of employment and as such need no unfavourable treatment are applicable to Zambia’s current situation. Besides we need to note that the reason why the law in question governing part-time employment was passed, was not necessarily that less favourable treatment was widespread, it was essentially to propel the development of a flexible labour market, encouraging the greater availability of part-time employment and increasing the quality

---

17 Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, United Kingdom
and range of jobs which are considered suitable for part-time employment and partly to end residual cases of less favourable treatment\textsuperscript{18}.

In other words, had this legislation only confined itself to the proscription of less favourable treatment for part-time employees, one would be justified in stating that the said piece of legislation is superfluous as this class of workers was already ably covered by the term “employee\textsuperscript{19}” in the primary labour legislation as the situation is in Zambia\textsuperscript{20}. However, for avoidance of doubt, the law may be deemed necessary and especially that it seeks to foster other objectives as already touched on.

\subsection*{3.4 Conclusion}

In summary, the chapter has demonstrated that the nexus between a contract of employment and part-time employment is inextricable. In other words, the two are inextricably bound together. An individual working on a part-time basis is an employee working under a contract of employment and entitled to all the benefits that comparable full-time employees enjoy on a prorated basis.

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\textsuperscript{19} Section 230, Employment Rights Act of 1996, United Kingdom
\end{flushleft}

\begin{flushleft}
\textsuperscript{20} Section 3, Employment Act, Chapter 268 of the Laws of Zambia
\end{flushleft}