

SIT-INS, LOCK-OUTS AND WILDCAT STRIKES: THE LAW OF PRACTICE OF COLLECTIVE JOB ACTION IN ZIMBABWE

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Abstract

Industrial relations is about the employment relationship. The dynamics of that relationship involves issues of control, conflict and its resolution and the strategic choices adopted by the parties in handling the employment relationship. It is a field of study in which the employment relationship is analysed. It is therefore a range of interactions between employers/managers and employees/their organisations. It is actually more than just what happens between employers and employees as the field deals with broader issues of employment relationship: i.e. those factors which exist outside of the workplace, but which may have a profound influence on how that relationship works out in the work place.

Key Words: employment relationship, conflict, resolution, broader issues, work place.

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Introduction

The skillful management of industrial conflict and co-operation calls for knowing when to advance, when to concede and when to stand firm against the pressures exerted by the other side. Makings (1985) says that it is the essence of good industrial relations. A system of “good industrial relations” is not in which there is an absence of overt conflict or in which management or unions enjoy a preponderant power, which ensures compliance. It is a system in which both sides have learned from experience how to exercise their limited power with restraint – but to good effect. In short, it is a system in which the actors have developed a measure of mutual respect by recognizing their mutual interdependence. The expertise can only be acquired by the painful experience of learning how to manage “industrial conflict.”

In a word, the relationship between the employer and the employee is one, which is characterized by conflict and accommodation. The conflict manifests itself in a variety of ways. The most dramatic expression of this conflict is the collective job action but there are a lot of others. Accommodation also assumes a variety of forms as well. The subject matter of this paper is to:

- attempt to explain some of the major causes of collective job action by the employees;
- explain collective job action in the legal system of Zimbabwe; and
- provide suggestions of how industrial relations practitioner should deal with collective job action when it has broken out and, better still, before it breaks out.

The three aspects are closely related and should not be seen as separate and distinct from each other. For instance, the causes of collective job action are closely linked with the ways of dealing and preventing such in future.

Since the passing of The Labour Act No. 16 of 1985 in Zimbabwe, companies have witnessed a number of collective job actions, most of which have been declared illegal. However, isolated and sporadic forms of collective job action have continued. The reasons have been many and varied and some of them are discussed hereunder:

- failure or delay by management to implement timeously agreed wages or changes to the terms and conditions of employment;

- perceived insensitivity of the part of management in dealing with the problems affecting workers in their working environment;
- communication breakdown manifesting through failure by management to explain issues to the workers, leading to misunderstanding and creating fertile ground for speculation and rumours;
- dictatorial, and autocratic styles of management failing to realize that they are dealing with adults who have families of their own and have dignity and ego to protect in spite of their social position in the enterprise;
- the absence of swift, efficient and impartial dispute settlement machinery, which not only reacts but is also proactive. It is imperative that whatever dispute settlement system established, it must not only be just but that it must be seen to be so; and
- perceived injustice and unfairness in the choice of personnel for training schemes, the granting of benefits, dismissals, retrenchment, and generally the unsatisfactory working conditions.

Background to the study

It is known that collective job action has a cost to the worker through loss of wages, risk of victimization and even dismissal (Brown and Rowe, 1985). Therefore the decision to go on strike is one which workers would not readily make, but one which is virtually imposed upon them because of some of the above reasons. This qualification is not intended to absolve workers of any blame. In some cases their resort to collective job action is rather premature or could have been avoided by resorting to a machinery which is effective and less disruptive. Whatever causes workers to engage in collective job action, it is interesting to note that management's standard response has been that the strike is illegal or that the workers have not followed the correct procedures. Dabscheck (1987) says that matters culminate to collective job action stage without the management knowing anything, is a manifestation of a communication problem within the enterprise.

In very few circumstances does management condemn the collective job action as having no cause or basis whatsoever or that the workers are being frivolous. Implicit in management's

response is a concession that the workers have cause to complain but the complaint or dissatisfaction must not manifest itself in such an emotional, antagonistic and disruptive manner (Labour Act No. 16, 1985). This therefore calls for a skillful, creative and sensitive management of industrial relations which allows management to have knowledge of the sentiments, feelings and vibes at shop floor level. Whatever the cause and irrespective of management's response, it is important always to bear in mind that we now live in a society in which people cannot engage in self help, in order to correct wrongs against them or to provide themselves with remedies. The legal system takes account of conflict situations, such as those arising in industrial relations. The law regulating collective job action in Zimbabwe is to be found in:

- the Labour Act No. 16 of 1985 Part XIV; and
- the Emergency Powers Act Chapter 83. The regulation of collective job action is done through the Maintenance of Essential Services Regulations, Statutory Instrument 160A of 1989.

All the above Sections of the Labour Act of 1985, prohibit collective job action in essential services whose definition is very wide and includes the commerce, industry and finance of Zimbabwe. Non-essential service employee can engage in collective job action only in two situations:

- in defence of the existence of trade unions and worker's committee; and
- in response to an occupational hazard.

From the above, it is clear that the aforesaid law does not recognize the right to engage in collective job action.

Dufty and Fells (1989) state that it must be quite clear that the provisions in the law do not necessarily provide a mechanism or vehicle for solving the problems underlying collective job action. To prohibit is not to solve. Prohibitions which do not provide an inbuilt mechanism for solving disputes do not lay the foundations for stable industrial relations.

It has been remarked that the organisation of conflict makes its solution manageable by employers. Grievances are brought into the open, channelled to the appropriate authorities,

expressed in a form which makes compromise possible and articulated by a bargaining partner with whom an agreement can be reached, which employees will feel some commitment to observe. Thus, open conflict has its positive side in that it is easy to remedy the problem, unlike where the conflict is channelled into less manageable form.

Research Methodology

Methodology is defined in two major ways. In one form, methodology is identical to a research model employed by a researcher in a particular project including basic knowledge related to the subject and research methods and the framework employed in a particular context (Lathor, 1992). In this sense, every investigation has a distinct approach and every researcher employs his/her approach which might vary from study to study. Another definition relates to the nature of approach to a theoretical and more abstract context and perceives it in conjunction with distinctive undimensional and mutually exclusive theoretical principles (Westhuizen and Ahrahams, 2002).

Here, an approach offers the research principles which are related closely to a distinct paradigm translated clearly and accurately down to guidelines on acceptable research practices. The approach is determined not by the research model but rather by principles of research entailed in a paradigm. The approaches that result from this definition are the qualitative approach and the quantitative approach. As this study applies qualitative approach, below it is going to be discussed briefly.

Qualitative Approach

The study which is under review is a qualitative or case study one. Denzin and Lincoln (1994) define qualitative research as a multi-method in focus, involving an interpretive and naturalistic approach to its subject matter. Creswell (1994) defines qualitative research as an inquiry process of understanding, based on distinct methodological traditions of inquiry that explore a social or human problem. Qualitative research is invariably conducted in the field and for this reason, it is sometimes referred to as field research (Dooley, 1992). Guba and Lincoln (1992) say that qualitative research is sometimes referred to as case study research.

This means that the qualitative researchers, study things in their natural settings, attempting to make sense of or interpret phenomena in terms of the meanings people bring to them. Qualitative research involves the use and collection of a variety of empirical materials – case study, personal experience, introspective, life story, interview, observational, historical, interactional and usual texts that describe routine and problematic moments and meaning in individuals' lives.

Sources of Data and Sampling Method

The study employed two sources of data collection and these are primary and secondary sources. Secondary sources included relevant academic journals, text books and publications by employment agencies. The primary sources involved the use of well-structured questionnaires administered on 600 randomly selected respondents from Bulawayo City Council and Harare City Council. By the nature of their working conditions that they are riddled with political environment, the workforce doubt of job security. The data collected were analysed with the aid of qualitative methods which included the use of tables and frequency distribution.

Discussion

In the contractual framework to guard against wild-cat strikes and other forms of collective job action, hereunder are the following suggestions.

1. The setting in motion of a tripartite consultative machinery involving management, the trade union and the workers' committee to consult and discuss matters of mutual interest, particularly those with implications on the breaking out of collective job action. This machinery can also work out procedures for dealing with such disputes and the consequences for failure to abide by the procedures. This machinery's functions will in some cases, no doubt, overlap with those of the Works Council. Undoubtedly, the tripartite machinery will be more effective than the Works Council in preventing collective job action, especially if it is in a framework of a general strategy of conflict management.
2. The use of mediators or arbitrators. The law does not provide a method for the selection of such people but leaves it to the parties involved. The use of arbitrators is becoming increasingly important in the resolution of disputes in Zimbabwe, in preference to the

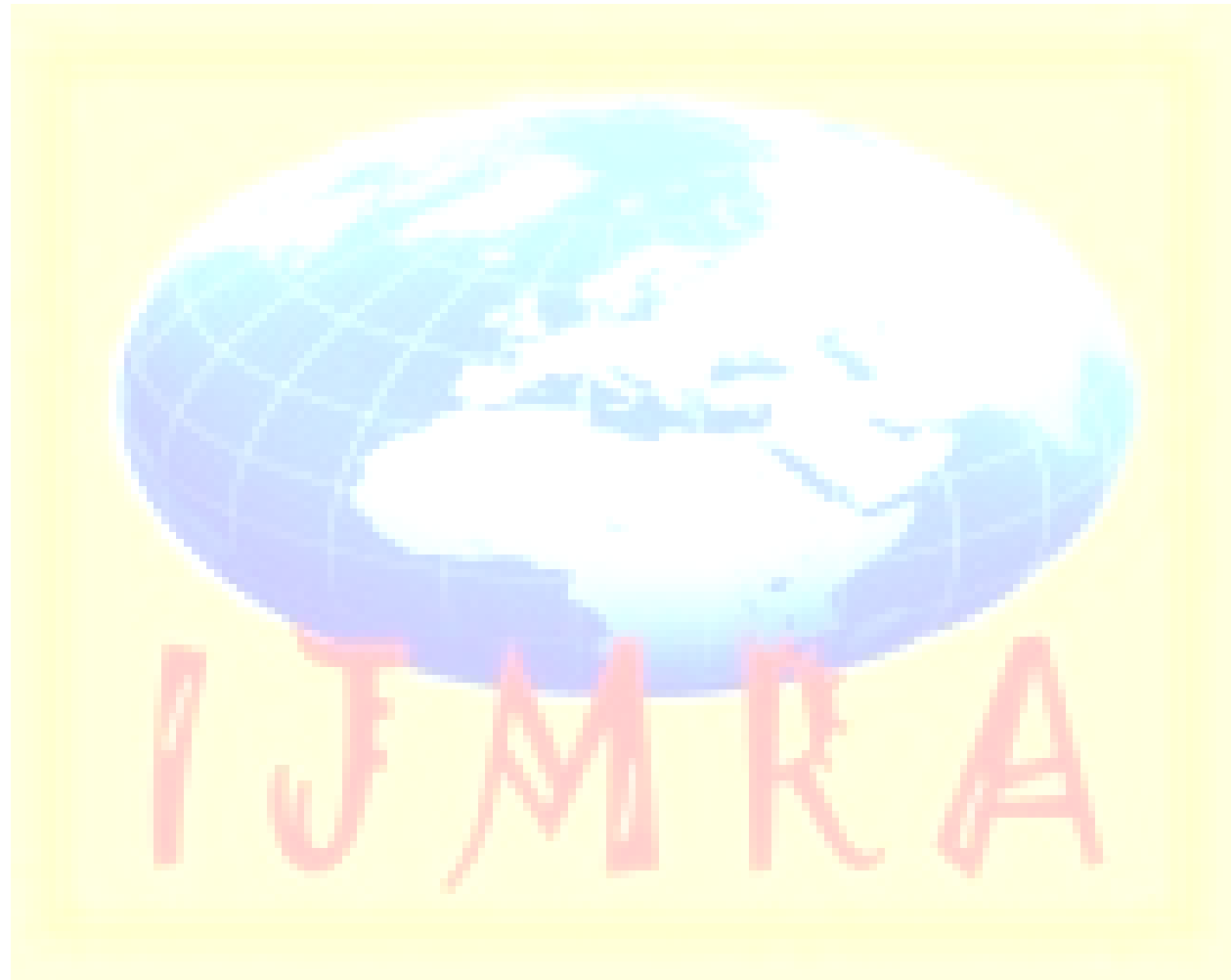
normal judicial system. Most parties cannot wait that long and therefore resort to arbitrators without necessarily denying themselves recourse to the judicial system, if necessary. The advantages of arbitration are that it is fast, cheap and, in a lot of cases, efficient.

The circumstances under which arbitration can be resorted to, should be provided for in the collective bargaining agreement or in some other legally binding document. The arbitrator or mediator should also be agreed to in advance and should be vested with the necessary powers to determine and mediate the dispute in an equitable manner.

3. Only upon failure by the consultative machinery and the external, third party intervention to resolve the dispute be taken. Under such a set-up, workers would be charged for not following the correct procedures or channels because it would have collectively created acceptable and free-flowing channels whose violation by either party prima facie, amounts to breach of good faith.
4. When and unforeseen strike breaks out, management is urged to avoid:
 - aggravating the situation by taking a confrontationalist and antagonistic attitude. It will not help to intimidate anyone.
 - seeking out the people behind the industrial action. The conspiracy theory of industrial action will not necessarily solve the problem. Research in Europe has shown that the rooting out of shop floor “trouble makers” and militants led to a fall in strike figures. This means that the suppression of certain symptoms of conflict produces an aspirin effect, i.e. removing the symptoms without curing the underlying cause of the symptoms. The problems will be merely redirected into different channels. Such an exercise tends to undermine any confidence necessary for open and frank discussion of any problems in the enterprise.
 - Calling the Ministry of Labour to intervene. When representatives come, some will invariably invoke the letter of the law by declaring the strike illegal and urging the workers to go back and have their grievances solved while production continues. This approach, even though it restores normality, may leave a sour taste and create suspicion and an element of being coerced into a status-quo which is unacceptable. There are better and more acceptable ways of achieving the same result without the workers feeling any defeat.

Conclusion

It can accurately be said that employees, through their elected leaders, do participate on an equal footing with company representatives in the Tripartite Consultative Committee negotiating labour agreements and processing grievances. The union leaders who usually are company employees, help make decisions regarding pay rates, seniority rules, pension plans, order of lay off, benefit plans and hours of work.



References

- Brown. B. and Rowe. L.G., (1985), Industrial Relations in Australia, Hyde J. Nurick
- Dabscheck. L., (1987), New right or wrong? Ideology and Industrial relations, The Journal of Industrial Relations, Vol, 29, No. 4 December pg 425-449.
- Dufty. N.F. and Fells. R.E. (1989), Dynamics of Industrial Relations, Prentice Hall.
- Fowler. A. (1986), Effective Negotiation, Institute of Personnel Management, London.
- Fox. C.B. and Howard. W.A., (1995), Industrial Relations in Australia, Longman
- Labour Relations Act No. 16, Zimbabwe
- Makings. G., (1985), Guides to Labour Relations Act 1985, Zimbabwe
- Westhuizen. G., and Abrahams., (2002), Research Paradigms in cognitive Education, Vista University

