



REPUBLIC OF NAMIBIA

MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT CREATION

NATIONAL ASSEMBLY QUESTIONS

**RESPONSE TO QUESTION NO. 144 RAISED BY HON. JENNIFER VAN DEN HEEVER
(PDM) ON 12 SEPTEMBER 2023**

BY HON. UTONI NUJOMA, MP

DATE: 21 September 2023

KEY FACTS ON CASE:

Before answering the questions raised by Hon. Van Der Heever, I would like to briefly present facts of this case as follows:

(a) The applicant initially referred two cases to the Labour Commissioner. The first referral was made on 19 April 2017 and included claims of unfair labor practices, severance pay, refusal to bargain, and unfair discrimination. The second referral was made on 19 December 2017 and pertained to unfair dismissal. On 22 January 2018, the applicant requested that the disputes be consolidated and heard by one Arbitrator. This request was granted, and all disputes were assigned to one Arbitrator. The first hearing for the consolidated disputes took place on 12 March 2018.

(b) After the consolidation of the disputes, the respondent raised a preliminary point, arguing that the unfair dismissal dispute had prescribed, meaning it was referred beyond the prescribed time period. The Arbitrator heard this matter and made a ruling on 14 August 2018. The applicant was dissatisfied with the ruling and applied for the Arbitrator's recusal, but the application was dismissed.

(c) The applicant then filed a review application with the Labour Court to review the decision made by the arbitrator. On 20 March 2020, the Labour Court ordered the arbitrator to recuse herself from the matter and for another arbitrator to be assigned to hear it. The new arbitrator was appointed on 27 March 2020 and is currently handling the case.

(d) Two unsuccessful conciliation meetings were held on 26 May 2020 and 31 August 2020. Consequently, the matter was scheduled for arbitration on 7 October 2020. However, on that date, the applicant's representative applied for the Arbitrator to hear the previously dismissed dispute of unfair dismissal.

(e) On 11 February 2021, the Arbitrator dismissed the application and ordered the matter to continue on 18 and 19 May 2021. On 18 May 2021, the applicant appeared with a new representative who raised the same issue regarding the unfair dismissal dispute being referred beyond the prescribed time. The Arbitrator once again dismissed the application.

(f) The applicant submitted a copy of the notice of appeal to the Labour Commissioner on 17 December 2021. The Labour Court heard the matter on 28 July 2022 and delivered a judgment dismissing the applicant's appeal on 9 December 2022.

(g) The applicant informed the Labour Commissioner of the court judgment on 2 March 2023 and requested a new date for the continuation of the case, excluding the unfair dismissal disputes. The hearing for the remained disputes was then scheduled for the 28 June 2023.

Based on the above facts, it is concluded that the delay in the case was not caused by the Office of the Labour Commissioner. Additionally, specific details regarding the matter of the case cannot be divulged as it is sub judice, meaning it is currently under judicial consideration and not appropriate for public discussion.

With this background, I now answer the questions posed as follows:

- 1. The first female Conciliator/Arbitrator that was assigned and appointed by the Office of the Labour Commissioner was recused by the Labour Court of Namibia on 20th March 2020 due to her lack of adjudicate properly over the dispute and gross procedural irregularities she committed as an Arbitrator. Are the competencies of the Conciliators/ Arbitrators up to standard and how are their performance assessed and monitored?**

It is good to know that the arbitrators involved in the case underwent a recruitment process that included meeting the required qualifications and going through interviews before their appointment. It is also commendable that they have received various pieces of training, including in-service training, to enhance their abilities to handle labour disputes effectively.

The fact that the Ministry of Labour, Industrial Relations and Employment Creation prioritizes the training of arbitrators, even with limited budget constraints, demonstrates a commitment to maintaining a competent and well-equipped Alternative Dispute Resolution System.

The regular assessment of arbitrators' performance through weekly and quarterly reports is a valuable practice. This allows for monitoring their progress, identifying any areas that may require improvement, and ensuring that they consistently meet the expected standards in handling labour disputes.

Overall, these measures indicate a commitment to professionalism and the continuous development of arbitrators to provide fair and effective resolution of labour disputes.

- 2. The second Conciliator/ Arbitrator that was assigned and appointed by the Office of the Labour Commissioner refused and denied the Applicants their Constitutional Right as set out by Article 12 (1)(a) right to present their material evidence before the Arbitrator during the arbitration proceeding. How will this unjust practice be resolved?**

Under the provisions of the Labour Act, Act No. 11 of 2007, arbitrators are mandated to hear and determine disputes in a fair and timely manner. The Act emphasizes the importance of ensuring a fair and efficient resolution process for all parties involved.

If any party feels that the arbitrator has not fulfilled their obligations of fairness and expediency, they have the right to seek appropriate relief by approaching the Labour Court. The Labour Court serves as a higher judicial authority that can review and address any concerns regarding the conduct or decisions made by arbitrators.

By providing these rights and avenues for redress, the Labour Act aims to uphold the principles of fairness and justice in labour dispute resolution processes. Parties involved in labour disputes can rely on these provisions to ensure that their rights are protected and that they have access to a fair and impartial resolution of their disputes.

- 3. How will your Office ensure that the unfair dismissal of Ms. Shireen Rooi during her maternity leave is resolved and she is fairly compensated?**
- 4. How will your Ministry ensure that the unfair retrenchment of Ms. Jolean Louw during her annual leave is resolved and she is fairly compensated?**

In addressing question 3 and 4 regarding the unfair dismissal of Ms. Jolean Louw and Ms. Shireen Rooi, apart from their unfair dismissal disputes, which was already disposed of by the Labour Court which is more superior than the Office of the Labour Commissioner Tribunal in hierarchy, the remainder of their disputes referred will be treated on its own merits.

It is essential to note that each case referred to the Labour Commissioner, including the one in question, is treated on its own merit. This matter is being handled independently by a designated arbitrator assigned to it. The arbitrator's responsibility is to carefully analyse the evidence adduced before him/her and make a determination based on the facts and applicable labour laws.

The arbitrator's role is to maintain impartiality and make a fair judgment without any external influence. They will assess the evidence, listen to both parties' arguments, and make an independent decision based on the merits of the case.

This approach ensures that each case receives due consideration and is resolved in accordance with the principles of fairness and justice. The Labour Commissioner's office

aims to provide an impartial and equitable dispute resolution process for all parties involved in labour disputes.

5. Will the other four employees who are also unlawfully dismissed be reinstated and compensated?

It is highly irregular and inappropriate to predetermine the outcome of any dispute before it is heard and determined. In the legal process, it is essential to allow the presentation of evidence and so on before reaching a decision. Henceforth, the outcome of a dispute can only be determined after a fair and thorough examination of the evidence and arguments presented by both parties. Presuming or predetermining the outcome of a dispute undermines the principles of fairness, due process, and impartiality. It is therefore crucial to respect the integrity of the legal process and allow each case to be decided based on the evidence and arguments presented during the proceedings before the designated arbitrator.

6. Honorable Minister, written complaints have been submitted to the Labour Commissioner Mr. Henri Kassen as well as the Deputy Labour Commissioner Ms. Kyllikki Sihlahla during December 2018 and again during March 2023. Until this present date, your Office as well as the Office of the Labour Commissioner has not yet reverted to Ms. Jolean Louw regarding her formal complaint on how the Office of the Labour Commissioner as well as the Arbitrator have administered and adjudicated over her dispute filed on 19th April 2017. When will your office address this already long overdue Labour Dispute as a matter of urgency?

I have been informed that Ms. Louw has received communication from the Labour Commissioner and the Deputy Labour Commissioner, including a phone call from the Deputy Labour Commissioner which indicates that her complaint has been acknowledged and attended to. The matter was set to be heard on 18 September 2023 and despite having received prior notice well in advance, the matter could not proceed on the said date as Ms. Louw requested for a postponement and a new date has already been given.

7. Can your Office please provide this August House with an overview of the general performance of the Office of the Labour Commissioner, the number of unresolved Labour Disputes, the challenges encountered, and how these challenges can promptly be addressed?

A total of 5938 cases were processed through the labour dispute resolution mechanism, out of which 2843 were resolved successfully while 3106 remain pending as of 31 March 2023, primarily due to postponements.

The Office of the Labour Commissioner is facing staffing shortages due to budgetary constraints and this poses significant challenges in handling the workload, especially when there is a constant flow of disputes and cases. It is therefore crucial for this August House to advocate for increased budget allocation to the Office of the Labour Commissioner in particular and the Ministry of Labour, Industrial Relations and Employment Creation in general, considering its importance in resolving labour disputes and upholding workers' rights.

1. What measures does the Office of the Labour Commissioner have in place to ensure compliance from different employers on the rulings made by the Labour Commissioners Office?

The Labour Act in terms of section 90 empowers the Labour Inspectors to enforce the Arbitration Awards issued by the arbitrators. Parties with decisions i.e. Arbitration Awards that are not executed are at liberty to approach the Labour Inspectors for enforcement.

Hon. Speaker, with the above mentioned, I thank you

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