

LABOUR LAW ABOUT PROMOTION OF AN EMPLOYEE BY AN EMPLOYER AT WORK IN ZIMBABWE

By Caleb Mucheche¹ LLB Hons (UZ), LLM Commercial Law (South Africa), LLM Labour Law(Zambia)

©Caleb Mucheche 2024

Introduction

Promotion of an employee by an employer at work is a very important part of career development. In simple terms, promotion means elevation of an employee from a lower position or grade to a higher position or grade. Generally speaking, promotion is a privilege available at the discretion of the employer and not a legal right but if the right to promotion is contained in a contract of employment or legally binding collective agreement (CBA) or human resources manual policy document, then depending on the wording of such workplace document, promotion becomes a legal right.

Definition of promotion at work

According to the Oxford Learner's dictionary, promotion is a move to a more important job or rank in a company or organisation. Similarly, according to the Collins dictionary, promotion in a job means getting a more important rank in the organisation in which one works. Some sources describe a promotion as a type of reward that employers may give employees that are positively exceeding the expectations of their current role. Promotion may come in the form of a pay rise, a new job title or additional responsibilities, though sometimes they can be a combination of all the three. Promotion is also the advancement of an employee to a better job in terms of responsibility.

Constitution of Zimbabwe status about promotion at work

There is no legal provision relating to promotion at work in terms of the labour rights embedded in terms of section 65 of the Constitution of Zimbabwe. The main thrust of section 65 of the Constitution is to afford every person the right to fair and safe labour practices and fair labour standards and to be paid a fair and reasonable wage.

Labour Act of Zimbabwe status about promotion at work

There is no legal provision for an employee legal right to a promotion in the Labour Act [Chapter 28:01] or statutory instruments made under it. In terms of the particulars for a contract of employment contained in the Labour Act², promotion is not there on the list. However, this does not bar an employer and an employee from concluding a written legal agreement creating legal fetters on both parties concerning promotion at work.

Supreme Court of Zimbabwe judgments dealing with legal principles about promotion at work

The Supreme Court of Zimbabwe lucidly enunciated the law about promotion at work by pronouncing legal principles that promotion is not a right but a privilege unless it is contained in a contract of employment signed between the employer and employee or some other legal provision binding between an employer and employee. In **Montclair Hotel and Casino SC 68/18**, the Supreme Court had this to say about promotion:

¹ Paper done in September 2024

² See section 12 (2)(i)-(j) of the Labour Act

“ His contract of employment does not give him an entitlement to promotion nor does it inhibit the promotion of any employee ahead of him. The respondent’s refusal to obey the Finance Manager’s orders on account that he was previously his subordinate has no basis in law because promotion is at the discretion of the employer. In the absence of an express or implied term in his contract of employment entitling him to a promotion, the respondent had no right to promotion or to block other employees from promotion. His contract of employment does not entitle him to any particular office or laptop. An employee given the employer’s property for use in the course of employment does not acquire ownership or exclusive dominion over that property. It remains the employer’s property with full rights of ownership.”

In the case of **Muwengwa v PTC 1997 (2) ZLR 483 (S)**, the Supreme Court succinctly and graphically underscored an important legal principle that promotion at work is not a legal right but a privilege at the discretion of an employer in the following words:

“ Indeed, it could be contended with some persuasion that promotion of an employee is a privilege, left to the discretion of the employer. It is not a right an employee is entitled to claim, unless his contract of employment so provides.”

The same legal reasoning that promotion at work is at the discretion of an employer was also followed in the case of **Mudarikwa and Anor v Director of Housing and Community Services NO & Anor SC-78-05** as follows:

“ It is elementary that no one can be directed by an order of the court something which he or she is not under a binding obligation to do. The court would in the circumstances be promoting the employees as its order would be a source of binding obligation not imposed on the employer by law.”

Labour Court of Zimbabwe judgment about promotion at work

In the case of **Rumbidzai Maletse and Ors v Civil Aviation Authority LC/H/708/2014**, the Labour was faced with a case involving promotion of some employees at work. The brief facts of that case are that Rumbidzai Maletse and her other fellow employees acted in various positions for a period in excess of six months. There was a legal provision in the employer’s human resources manual and also in the collective bargaining agreement enacted as a statutory instrument to the effect that if an employee acted in a certain position for more than six months, that employer acquired a legal right to be substantively confirmed in the position he/she acted. The concerned employees in this instant case acted in their positions for more than six months and they engaged the employer to give promote them into those substantive positions in which each of them acted. The employer either neglected or refused to validate their promotion in the positions they acted and the matter spilled into conciliation in terms of section 93 of the Labour Act and later to compulsory arbitration. The arbitrator declined the relief which the employees sought to have the employer promote them into the positions in which they acted. Aggrieved by the decision of the arbitrator who refused to give an arbitral award in terms of which the employer was supposed to give them a promotion into the substantive positions they acted in, the distraught employees appealed to the Labour Court against the arbitrator’s award on a question of law.

The Labour Court had this to say about promotion at work as sought by the employees the above case:

“ At the hearing of the matter the parties were agreed that the legal issue before the court was the interpretation of section 17 (2) of S.I. 55 of 1992 as well as clauses 10.4.4 of the respondent’s human resources manual. The said clause states:

10.4.4 An employee shall be appointed into an acting position for a period of up to but not exceeding six consecutive calendar months.

The appellants argued that section 17 (2) of S.I. 55/92 is worded in mandatory terms and therefore they should be confirmed in their appointment on completion of six months. They distinguished the cases relied upon by the respondent. They submitted that in the cited cases the affected employees’ claim for a right to promotion was not backed by any legal authority but was simply derived from being in an acting capacity for any given period. The appellants argued that in casu the legal right derives from section 17 (2) of S.I. 55/92 as well as clause 10.4.4 of the respondent’s Human Resources Manual. The appellants also referred to section 82 (1) (a) of the Labour Act about the binding nature of registered collective bargaining agreements.

It is common cause that in both S.I. 55/19 and the respondent’s Human Resources Manual, the word “shall” is used. The appellants made reference to the case of Doctor Daniel Shumba & Anor v Zimbabwe Electoral Commission and Anor SC-11-08 where it was held that the use of peremptory word shall as opposed to may is indicative of the legislature’s intention to make the provision peremptory.

It is trite that promotion of an employee is a privilege left to the discretion of the employer. It is not a right of an employee which he or she is entitled to claim. However, in the circumstances of this case I am convinced that the privilege and discretion is exercised prior to appointment to an acting position. The Collective Bargaining Agreement and Human Resources Manual take away that privilege once one is appointed to an acting position. The cases cited by the respondent do not refer to any obligation imposed upon an employer to appoint an acting person substantively.

From the quoted statements it is clear that a contract of employment can create an obligation for an employer to promote an employee. In my view the circumstances of this case are such that the respondent is under an obligation to promote whoever is in an acting position once six months have expired. The source of the binding obligation imposed on the employer by law is section 17 (2) of S.I.55/92 and clause 10.4.4 of the Human Resources Manual. The appellants’ argument is therefore with merit on that basis. I therefore find that the arbitral award cannot be supported and the appeal must succeed.”

Conclusion

In the final analysis therefore, in the absence of a clear legal provision in a contract of employment or collective bargaining agreement or human resources manual affording an employee a legal right to promotion, an employee does not enjoy any legal right to promotion at work by design or default. A court of law cannot enforce any legal right to promotion of an employee at work in the absence of a legally binding and enforceable legal provision giving an employee a right to promotion.