IN THE SUPREME COURT OF ZAMBIA **Appeal No.202/2014**
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

CHARLES NYAMBE & 82 OTHERS **APPELLANT**

AND

BUKS HAULAGE LIMITED **RESPONDENT**

Coram: Mambilima CJ, Kaoma and Kajimanga, JJS
On 11th July 2017 and 7th September 2017

For the Appellant : In Person

For the Respondent : Mr. Chanda H. J. Chileshe, Messrs Lloyd Jones & Collins

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J U D G M E N T

Kajimanga, JS delivered the judgment of the court.

Cases referred to:

1. **Mike Musonda Kabwe v. B. P. Zambia Limited (1995-1997) ZR 218**
2. **Zambia Oxygen Limited v. Bernard Kaniki & 25 Others and Zambia Privatisation Agency – Appeal No.120/1999**
3. **Lawrence Muyunda v Bank of Zambia – SCZ Judgment No.22 of 2010**
4. **Ndongo v Mulyango and Another (2011) ZR Volume 1 187**
5. **Newston Siulanda and Others v Foodcorp Products Limited, SCZ Judgment No. 9 of 2002.**

Legislation referred to:

1. **Supreme Court Act Chapter 25 of the Laws of Zambia, Rule 72**
2. **Minimum Wages and Conditions of Employment (General) Order 2011.**

This is an appeal from a judgment of the Industrial Relations Court delivered on 10th June 2014, dismissing the appellant's claims against the respondent.

By an amended notice of complaint dated 7th November 2011, the appellant and 82 others (complainants in the court below), claimed the following against the respondent:

i. An order that the complainants be paid K2,000,000.00 (now K2,000.00) each as the balance on their salaries per month from 1st October, 2007 to date.

ii. An order that the complainants be paid K165,000.00 (now K165.00) each per night as the balance on night allowances from 1st October, 2008 to date.

iii. An order that the complainants be paid their leave days and be reimbursed the funds wrongfully deducted without justification.

iv. An order that the complainants be allowed to join a union of their choice and that their conditions of service be drawn together with a code of conduct.

v. In the alternative, that the complainants be allowed to form a trade union of their own so as to facilitate negotiations of conditions of service.

vi. Any other relief the court may award.

vii. Interest and costs.

The basis of the complaint before the court below was that the complainants were truck drivers employed by the respondent on various dates prior to September 2007. It was alleged that no properly defined conditions of service and disciplinary code of conduct had been put in place for them and that they had not been allowed to join a trade union of their choice so that the terms of their employment could be properly defined and negotiated. By a letter dated 28th September 2007, the respondent awarded the complainants an increment of K2,000,000.00 (now K2,000.00) on their monthly salaries of K800,000.00 (now K800.00). According to the letter, the increment was to be effective from 1st October 2007. The

complainants, however, alleged that despite the increment the respondent continued to pay them a salary of K800.00. Further, in January 2008, the complainants were required to work out of station at Frontier Mine and in Solwezi and were entitled to a night allowance of K195,000.00 (now K195.00) per night but the respondent only paid them a night allowance of K30,000.00 (now K30.00) leaving a balance of K165,000.00 (now K165.00) per night.

The respondent issued an Answer in response to the complaint on 24th January 2012 which was essentially addressed exclusively to the appellant. It was asserted that the appellant, being the principal litigant in the matter, was falsely holding himself out and purporting to act in a representative capacity on behalf of the 82 other complainants when in fact they had all dissociated themselves from the complaint upon the respondent consulting them on the same. The respondent denied that the appellant was entitled to any of the claims set out in the complaint and averred that there was a written contract of employment made between the parties which was initially for a fixed term of one year ending 30th April, 2008 and was subsequently renewed from time to time. That it was from the said

contract that the parties derived their contractual rights since May 2007. According to the respondent, the appellant had been and continued to receive his salaries, emoluments and accrued contractual entitlements at the end of each month and he acknowledged the same from the respondent in writing without any protest or objection.

The respondent also averred that the appellant had failed to comply with the laid down internal administrative grievance resolution procedures set out in its Disciplinary and Grievance Procedure Code which was availed to the appellant and its other employees. That by reason thereof, the appellant was in breach of section 85 (3) of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia as amended by Act No. 8 of 2008. Further, the respondent refuted the claim that the appellant had been subjected to any inhuman terms or that he had been denied leave and conventional working hours as a long distance truck driver. The respondent also denied that the appellant had been subjected to any wrongful or unjustified deductions from, or under payment of his salary, emoluments or allowances. It was asserted by the respondent

that the appellant had been generously compensated for his services as a driver since his employment in May 2007 and that his monthly salary and allowances amounted to K4,700,000.00 (now K4,700.00).

The appellant's evidence in the court below was that the respondent employed him in December 2004 as a truck driver on a permanent and pensionable basis but no conditions of service were ever availed to him and neither did he receive any letter of appointment. Sometime in 2005, the director of the company decided that the truck drivers would be working in shifts and that each truck would have two drivers. On 26th September 2007, the directors of the respondent company held a meeting with the drivers where it was directed that from 1st October 2007 each truck would be operated by one driver and that the salaries of the drivers had been increased to K2,800,000.00 (now K2,800.00) with effect from 1st October 2007. On 28th October 2007, he and his colleagues were given letters informing them, *inter alia*, of the increase in their salaries. He stated that although the letter was not signed, all the conditions listed by the respondent therein were implemented except for the payment of the new salaries. According to the witness, the respondent had a

practice of not signing letters and to support this argument, he referred to an internal memorandum admitted as exhibit "CN6" in his affidavit in support of the complaint which was unsigned.

The appellant also testified that from January 2008, the respondent told the drivers not to be knocking off and assured them that they would be paid night allowance. Subsequently, the drivers were being made to ferry copper between Frontier Mine and Ndola and also between Solwezi and Ndola as well as from Ndola to KCM in Chingola without any overtime allowance. Further, at the month end, they would find deductions from their salaries on account of purported shortages and despite working under such conditions, there were no written conditions of service in place. The appellant stated that the drivers were being paid K30,000.00 (now K30.00) as night allowance and those who queried the amount were dismissed from employment. The appellant and other drivers then went to the labour office where they were advised that the night allowance payable to drivers was K195.00 per night and they took that information to the respondent. However, the respondent refused to

implement the payment of night allowance at the said amount and insisted on paying them K30.00 instead.

It was the appellant's evidence that he and the other drivers of the respondent did not belong to any union and therefore, when an employee was dismissed by the respondent, they had nowhere to appeal to because there was no disciplinary code and agreed conditions of service in place. According to the appellant, some employees were dismissed for agitating the formation of a union. He stated, however, that the respondent had not actually stopped them from forming a union or joining one. The appellant testified further that on the date the respondent was served with a letter of demand from his advocates, his truck was retrieved from him and he was later charged. Further, most of the drivers have either been dismissed because of pestering for increases and bringing the matter to court, whereas others were sent to work from far away and by reason thereof, some of them did not sign against their names on the list attached to the notice of complaint before court. He, however, stated that all drivers whose names appeared on the list gave him authority

to include them in the matter and up to that point none of them had come forward to have their names removed from the list.

On the part of the respondent, Shupiwe Ruth Ngoma, the respondent's senior human resource officer gave evidence that the appellant was employed as a heavy-duty driver on 2nd January 2005. The respondent had conditions of service for all its employees which were read to them at the time they were employed and the appellant never raised any objection regarding the said conditions of service during his employment.

Concerning the letter dated 28th September 2007, the witness stated that the subject matter discussed therein was for a programme planned by the respondent in respect of Lonshi Mine which was never implemented. She stated that she was aware that the appellant was representing 83 complainants although she doubted his representative capacity because at the time of the letter dated 28th September 2007 upon which the appellant was basing some of his claims, the respondent only had 15 drivers.

The witness also testified that the appellant was still in employment on full pay but he was no longer performing any duties as his truck had been withdrawn from him and as such, he was not receiving any trip allowances. According to the witness, the more trips the drivers made, the more money they earned through the trip allowance which was in the sum of K160.00 per trip. She stated that the truck had been withdrawn and the appellant had been charged on account of the complaint before court but no further action would be taken against him until the conclusion of the matter. That in suing the respondent, the appellant had failed to follow the laid down grievance procedure as he did not exhaust the grievance process.

As regards the union, the witness testified that the complainants opted for a workers committee which comprised of representatives chosen by the workers themselves but some workers had broken away from this committee and joined the transport and allied union. According to the witness, a recognition agreement had been signed with the union. About 25 employees belonged to the union, 15 employees were in the workers committee and the rest had not joined either of the two. She stated that the employees were told

that they had the liberty to form or join a union but the majority of them had opted not to.

The respondent's second witness was Artson Kanyenda, its operations manager. His evidence was that sometime in 2007, management had a meeting where it was proposed that the company should change its system of operation from having 3 drivers per truck to 1 driver per truck. He described the letter dated 28th September 2007 as an operation proposal relating to Lonshi Mine which never took off. He, however, admitted that most of its contents were implemented by the respondent while other things were already in operation.

He also testified that the respondent did not stop any employee from forming or joining any union and that there was a union at the respondent which the workers belonged to but was unable to give details of it. According to this witness, the employees of the respondent had conditions of service which incorporated the disciplinary code but he did not know if the code or the conditions of service were availed to the complainants.

The witness further testified that the appellant was charged under clause 6.10 of the disciplinary code because he failed to follow the grievance procedure and as such his truck was given to another driver. With regard to the night allowance, the witness stated that drivers would be paid night allowance if they were entitled to it and only those who moved away from their homes were entitled.

After considering the evidence and submissions of both parties, the trial court found, on the claim for payment of K2,000.00 balance of the salary per month from October 2007 to date, that the drivers' salaries were increased by the respondent's director to K2,800.00 with effect from 1st October 2007. It also found that the increment was never implemented but the appellant and the other drivers continued to work and receive their old salaries. Pursuant to the decisions in the cases of **Mike Musonda Kabwe v. B. P. Zambia Limited**[1] and **Zambia Oxygen Limited v. Bernard Kaniki & 25 Others and Zambia Privatisation Agency**[2], the trial court found that the complainants were entitled to deem their contracts as having been determined as the respondent effectively varied the conditions as to the payment of the increased salaries as of 1st October 2007.

That by continuing to work, the complainants had signified consent, by way of acquiescence, to the variation of the new condition. Therefore, an inference could be drawn that the appellant and his fellow drivers had opted to continue under the old condition of a lower salary. To support the position that it is up to the employees to ensure that conditions under which they serve are ascertainable, the trial court relied on the case of **Lawrence Muyunda v Bank of Zambia**[3] and concluded that the claim for payment of the balances of K2,000.00 in respect of salaries could not succeed.

Regarding the payment of K165.00 as balances on night allowances from 1st October 2008 to date, the trial court found that the appellant had not proved this claim and accordingly dismissed it. On the claim relating to payment of leave days and the reimbursement of funds wrongfully deducted without justification, the trial court found that no evidence had been adduced by the appellant to prove his entitlement to the leave days and that it was premature for him to demand payment of his leave days when his employment contract was still subsisting. The trial court further found that the appellant had not furnished any evidence to show the

alleged deductions which he claimed and neither did he address this claim by any direct evidence.

In respect of the appellant's claim that he and other drivers be allowed to join a union of their choice and that their conditions of service be drawn together with a code of conduct, the trial court opined that since an employment relationship is consensual in nature, the court could not prescribe that employees join or form a union.

Accordingly, the trial court found that the complaint was unsuccessful and dismissed it in its entirety.

Dissatisfied with the lower court's decision, the appellant has now appealed to us on the following grounds: -

1. **The court below failed to properly address itself to the evidence relating to the complainants' salary increment when it held that the increment was not implemented when in fact it was the court's duty to order that it should be implemented.**

2. **The court below misconceived the law under section 16 of paragraph 16 of the Minimum Wages and conditions of Employment (General) Order 2011 because upon accepting that the same applied to the appellants the court below should have accepted the evidence on the**

pay slips as proof that the night allowances were not being paid and should have referred the matter for assessment before the learned Deputy Registrar to ascertain the quantum payable to the appellants.

On 19th December 2014, the appellant filed heads of argument in support of the appeal. In support of ground one, the appellant referred us to the letter the respondent had written to the drivers regarding their salary increment appearing on pages 38 - 39 of the record of appeal which he submitted, was acknowledged by the respondent's RW2 in his testimony before the court below at pages 189 and 190 of the record of appeal.

The appellant referred us to the judgment of the trial court particularly at page 21 of the record of appeal, where the court accepted that the salaries were increased by the respondent in the manner alleged by the appellant and that the increment was never implemented. We were then referred to the testimony of RW2 at page 193 of the record of appeal where the witness stated that some of the things listed in the letter appearing on pages 38 - 39 of the record of appeal were already happening whereas others such as the salary increment did not happen.

We were again referred to the judgment of the trial court particularly at page 23 of the record of appeal, where the court stated that the appellant did not take any action after discovering that the company had continued paying him at the old rate. It is the appellant's submission that after verbal discussions about the non-payment of the new salaries with the respondent's management during the meetings held weekly between the management and its employees, the appellant and other drivers went to the labour office where they were given the Minimum Wages and Conditions of Employment (General) Order, 2011.

In support of ground two, the appellant submitted that the Minimum Wages and Conditions of Employment (General) Order 2011 stipulates that the sum of K195.00 will be paid as subsistence allowance per night to cover all expenses while away from home. He argued that at page 25 of the record of appeal, the trial court stated that the complainant did not prove this claim. That however, the evidence of RW1 at page 176 of the record of appeal was that the company paid the same at the rate of K160.00 per trip.

The appellant referred us to the pay slips on pages 78 - 81 of the record of appeal showing varied amounts of the subsistence allowance based on the number of trips he was making. He submitted that drivers spend more nights than the number of trips made per month and that there was an oversight of K35.00 on the night allowance. The issue, therefore, was not with the trip allowances but with the night allowances which he submitted was not being paid in accordance with paragraph 16 of the schedule to the Minimum Wages and Conditions of Employment (General) Order, 2011. It was his contention that the lower court did not address the issue regarding the underpayment of the K35.00 on the night allowance.

In conclusion, the appellant prayed that the appeal be allowed.

At the hearing of the appeal the appellant informed us that he would rely entirely on his heads of argument.

The respondent did not file written heads of argument. At the hearing, the learned counsel for the respondent, Mr. Chileshe submitted that having agreed with the judgment of the lower court,

the respondent's view was that heads of argument would offer little assistance and that he would submit on the law.

In response to the first ground of appeal, the learned counsel submitted that in the judgment at page 23 of the record of appeal, the court below correctly deliberated on the complaint and found against the appellant that there was no change in the conditions of employment. He contended that similarly on the second ground of appeal, the lower court explained why it found against the appellant. Relying on rule 72 of the Supreme Court Rules, Cap 25 of the Laws of Zambia, the learned counsel urged that there was a re-hearing of the record of the trial court and that we should uphold the judgment of the lower court.

We have considered the record of appeal, the judgment appealed against, the written heads of argument filed by the appellant and the oral submissions of the appellant and the learned counsel for the respondent.

We note that the two grounds of appeal launched by the appellant attack the trial court's findings of fact. The consistent

approach of this court in dealing with appeals of this nature is well settled and authorities abound. In **Ndongo v Mulyango and Another**[4] for example, we stated that:

> **"An appellate court will not reverse findings of fact made by a trial judge unless it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapplication of facts, or that they were findings which on a proper view of the evidence, no trial court acting correctly can reasonably make."**

The appellant's grievance in ground one is that the lower court failed to properly address itself to the evidence relating to the appellants' salary increment by holding that the increment was not implemented when it was the court's duty to order that it should be implemented. In support of this ground, the appellant relies on the letter at pages 38 – 39 of the record of appeal which he alleges was written to the drivers and stated, among other things, that the drivers' salaries had been increased to K2,800.00. He submitted that according to the judgment of the trial court at page 21 of the record of appeal, the court accepted that the salaries were increased by the respondent and that the increment was never implemented. We were also referred to the testimony of RW2 at page 193 of the record of

appeal that some of the things listed in the said letter were already happening while others such as the salary increment did not happen. The appellant also referred us to the judgment of the lower court at page 23 of the record of appeal where it is stated that the appellant did not take any action after discovering that the company had continued paying him at the old rate.

We have considered the arguments of the parties under this ground. The appellant has anchored this ground on the unsigned document dated 28th September, 2007 authored by one P. J. Rensbury, the respondent's director. For completeness, the document is reproduced in its entirety below.

"867 Bessemer Rd

Ndola Zambia

Tel/Fax: +260 2650 998

28/09/2007

As from 01 October, 2007 we will start on a new system. We will no longer be working 24 hours. Therefore we will have only one driver per truck and he will be responsible for his truck and trailer. He will be off every second week from Friday morning 04.30 and will resume work on the Monday at 04.30. There is one spare driver between 2

trucks. All drivers will receive ZK2,800,000.00 as salary and will be penalized accordingly if following procedures are not followed:

1. **From Monday 01 October, 2007 all drivers will report for work at 04.30 in the morning. All trucks will be out of the yard before 05.00. For every so minutes a driver is late for work ZK20,000.00 will be deducted.**
2. **All drivers will do 5 loads per day or 125 loads per month.**
3. **Spare driver will do 60 loads per month for the 12 days worked. If a driver does not arrive for work before 06:00 the spare driver will take the truck for work and the money will be deducted from the driver to pay the spare driver for the day's work.**
4. **After a day's work and arriving at the workshop, drivers will report to Ronnie, Gerald and Pieter to go through the truck and opening a job card.**
5. **After the job card is opened the driver will go with his delivery; log book and diesel slip to the office. Once in the office the loads and diesel will be checked and recorded.**
6. **Then he will go to the computer to have his duty satellite tracking report checked. Speed limit is 50Km/h.**
    - **Speeding over 60 km/h ZMK5,000.00 penalty.**
    - **Speeding over 65 km/h ZMK20,000.00 penalty.**
    - **Speeding over 70 km/h ZMK50,000.00 penalty and a written warning**
7. **There are 4 places on the route where drivers are supposed to stop except 401. Anyone who has not seen the 4 BHL STOP signs, please make sure that you find out where they are.**
    - **If not stopping at stop sign and selecting first gear ZK50,000.00 will be deducted for each time you have not stopped and selected the first gear.**

- **If stopping anywhere else on this route ZK50 000 will be deducted for each stop!**

Next Morning

8. **Delivery and log books will remain in the office and will be collected the next morning from 04.30.**
9. **Before leaving the yard the driver must go with Ronnie, Gerald, Pieter or Buks through the truck and job card to make sure that everything on the truck was repaired as requested on the job card. If not make sure that the defects remain on the job card until it has been resolved. Then if something went wrong you can't be blamed for it if the problem was stated on the job card for more than 24 hour.**
10. **Half of the cost will be deducted from salary if damages to tyres like side wall impacts and bended rims occur.**
11. **Damages to suspension radiators and exhaust occurring when driver[s] were negligent and drove over rocks will also be deductible depending on the amount of damage.**
12. **If a truck is pushed with a dozer or excavator a ZK200,000.00 penalty will be given to the driver.**
13. **All drivers will be properly dressed in BHL clothing and safety gear everyday if not a penalty of ZK10,000.00 are in place.**
14. **If not reporting for work and not reporting with a doctor's letter days will be deducted from leave days.**

Director

.....

Mr. P J Van Rensburg"

The appellant alleges that the said document was addressed to the drivers. According to the appellant's testimony, he and his colleagues were given letters by the respondent on 28th September, 2007 informing them of the increase in their salaries. We do not think so. We have scanned the record of appeal and have not found a copy of such a letter addressed to the appellant. It is quite plain from the document that it was not addressed to any specific individual driver. It seems to us that it was some kind of a circular notifying the employees about the new system the respondent intended to introduce from 1st October, 2007. Of course, among other things, the respondent in that document also intended to increase the drivers' salaries to K2,800.00.

Moreover, the evidence of the appellant, RW2 and RW3 was that the salary increment was never implemented. The appellant's argument is that the trial court had a duty to order that the salary increment should be implemented. We note that the document indicating that the drivers' salaries would be increased is dated 28th September 2007 and this action was commenced by the appellant in December 2011. This means that for four years when the promised

increment remained unimplemented, the appellant and his fellow drivers continued to receive their old salaries without any protest. It was for this reason that the trial court found that by continuing to work, the appellant and his fellow drivers had acquiesced to the variation of the new condition and further, that an inference could, therefore, be drawn that they had opted to continue with a lower salary. Based on this finding, the trial court held that the claim for payment of the balances based on the new salary could not succeed. We are unable to interfere with the finding of the lower court as it was based on the evidence deployed before it.

On the facts of this case, we cannot fault the decision of the trial court not to order implementation of the increment. We are fortified by the case of **Newston Siulanda and Others v Foodcorp Products Limited**[5]. In that case the appellants requested for a finding that there had been disadvantageous alterations to the former ZIMCO conditions without their concurrence such that the changes should have been held to be a breach by employer entitling the workers to treat the contract as repudiated. It was held that:

> **"The cases of Kabwe v BP (Zambia) Limited (1995 – 1997) ZR 218 and Marriot v Oxford and District Co-operative Society Limited No. 2**

[1970] 1 QB 186 were called in aid, yet those can only arise if there has been a termination of employment connected to the alleged breach. The cases are inapplicable in the case of those who choose to continue working and are still working, opting to accept or acquiesce in the changes."

In light of the **Newton Siulanda** case, it would follow that since the appellant continued to work and received the old salary he is deemed to have accepted being paid such a salary. In any event, there is no evidence in the court below which was adduced by the appellant to show that he challenged the respondent on the payment of the old salary. The evidence on record indicates that the appellant went to the labour office in respect of the underpayment of the night allowance and the advice given by the labour office which he allegedly took to the respondent only related to the night allowance and not the salary increment. However, in his heads of argument, the appellant has attempted to sneak in evidence that he had verbal discussions with the respondent's management on a weekly basis regarding the non-payment of the new salaries. This evidence cannot be considered because it was not adduced in the court below. It is no doubt an afterthought. Ground one must, therefore, fail.

In ground two, the appellant complains that having accepted that the Minimum Wages and Conditions of Employment (General) Order 2011 applied to the appellant and his fellow drivers, the trial court should have accepted the evidence on the pay slips as proof that the correct allowances were not being paid and that the matter should have been referred to the Deputy Registrar for assessment of the quantum. He argued in support of this ground, that according to the evidence of RW1, the respondent gave them K160.00 subsistence allowance per trip. According to him, the pay slips at pages 78 – 81 of the record of appeal show varied amounts of the subsistence allowance based on the number of trips he was making. Further, that since the Minimum Wages and Conditions of Employment (General) Order 2011 stipulates that the sum of K195.00 would be payable as subsistence allowance per night, the lower court did not address the underpayment of K35.00 relating to their night allowances.

We have considered the arguments of the parties on this ground. The finding by the trial court was that the claim for underpayment of night allowances was not proved by the appellant.

This finding is assailed by the appellant on the basis that having accepted that the Minimum Wages and Conditions of Employment (General) Order 2011 applied to the appellant and his fellow drivers, the trial court should have accepted the evidence on his payslips as proof that the night allowances were not being paid and the matter should have been referred to the Deputy Registrar for assessment of the quantum.

The fact that the Minimum Wages and Conditions of Employment (General) Order 2011 applied to the appellant and his fellow drivers is not in dispute. As we see it, the issue is whether the appellant adduced sufficient evidence to prove his claim for underpayment of night allowances. The appellant's evidence in the court below was that he and his fellow drivers were advised by the labour office that the night allowance payable to drivers was K195.00 per night and they gave this information to the respondent. That the respondent insisted on paying them K30.00 per month. This was the only evidence before the lower court.

In his heads of argument, the appellant contended that the lower court did not address the issue regarding the underpayment of

K35.00 in respect of night allowance. He relied on the payslips at pages 78 – 81 of the record of appeal showing varying amounts of the subsistence allowances based on the number of trips he was making. We have gleaned the payslips. They do not show even remotely, that there was an underpayment of the appellant's subsistence allowance. The onus was on the appellant to adduce cogent evidence showing how he was underpaid. This, he lamentably failed to do. The appellant has blamed the lower court for not referring this claim to the Deputy Registrar for assessment of the quantum. We must emphasise that it is not the role of courts to assist litigants prove their claims. A claim can be referred to the Deputy Registrar for assessment only if liability has been proved and there is insufficient evidence to enable a trial court assess the quantum. As indicated above, the appellant, in the present case, failed to prove liability against the respondent.

In light of the above, we are unable to interfere with the lower court's finding that the claim for underpayment of night allowances was not proved by the appellant. We accordingly find that the second ground of appeal also lacks merit.

Both grounds of appeal having failed, this appeal is dismissed. Given the nature of this case however, we make no order for costs.

I. C. MAMBILIMA
SUPREME COURT JUDGE

R. M. C. KAOMA
SUPREME COURT JUDGE

C. KAJIMANGA
JUDGE SUPREME COURT