



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION
DEPARTMENT OF GOVERNANCE AND MANAGEMENT SCIENCES**

QUALIFICATION: BACHELOR OF EMPLOYMENT AND LABOUR RELATIONS HONOURS	
QUALIFICATION CODE: 08BILR	LEVEL: 8
COURSE CODE: LRP812S	COURSE NAME: LABOUR RELATIONS PRACTICE
SESSION: JUNE / JULY 2024	PAPER: THEORY
DURATION: 3 HOURS	MARKS: 100

FIRST OPPORTUNITY EXAMINATION QUESTION PAPER	
EXAMINER(S)	Mr Elias Kandjinga
MODERATOR(S):	Mr Ohms Kayama

INSTRUCTIONS
<ol style="list-style-type: none">1. Answer <u>ALL</u> the questions in Section A and only <u>ONE</u> question in Section B.2. You are expected to apply your subject knowledge to the questions.3. Write clearly and neatly.4. Number your answers clearly.

PERMISSIBLE MATERIALS

1. Pen
2. Ruler

THIS QUESTION PAPER CONSISTS OF 5 PAGES (Including this front page)

Section A (Answer all questions)

[60 marks]

Question 1

Read the following Labour Court appeal judgement and answer all the following questions.

LEWIS STORES NAMIBIA (PTY) LTD T/A BEST HOME & ELECTRIC VS CAROLLA KAVENDJII

Paragraph one

This is an appeal against the arbitration award delivered by arbitrator Kleofas Geingob on 24 September 2021 under case number CROU 49/20.

The respondent was subjected to a disciplinary hearing on 28 July 2020 and dismissed. Respondent was employed as an Assistant Regional Controller by appellant and it was discovered that client refunds were processed over a period of time. These transactions were done contrary to prescribed policies and respondent authorised these transactions. According to appellant these transactions are fraudulent. The respondent referred the dispute to the office of the Labour Commissioner and the arbitrator found that the respondent was dismissed unfairly both substantively and procedurally. The arbitrator ordered respondent's reinstatement as well as a payment of N\$ 400,000, being 16 months' salary. Appellant appeals this result and raises three *points in limine* as well as twelve grounds of appeal on the merits.

Paragraph two

Having read the papers and heard the submissions by Mr Rukoro on behalf of appellant and Mr Ikanga on behalf of respondent, I am satisfied that the arbitrator erred on various counts. The question of the substantive unfairness of the dismissal should be revisited since respondent was in a responsible, trusted position and she clearly authorized client refunds that were not in terms of the appellant's policies. A strong argument can be made that it was dishonest. If established, it would in my view justify dismissal. The procedural fairness of the disciplinary proceedings should also be revisited. The telephonic testimony of the witness should be addressed. It appears the respondent accepted this procedure.

Nevertheless, it may not be enough for a respondent to accept a procedure to render it fair. The further aspect which is of concern is that the chair of the disciplinary proceedings was also a witness.

Paragraph three

Finally, even if it is determined that the disciplinary proceedings were procedurally tainted it does not necessarily justify a reinstatement. The respondent was in a position of trust and if it is established that trust was breached, reinstatement does not necessarily follow. In the premises, the appeal is upheld and the matter is referred back for another arbitration before a different arbitrator.

It is ordered that:

1. The appeal is granted and the arbitration award by Mr Kleofas Geingob dated 24 September 2021 is hereby set aside;
2. The matter is referred back for arbitration before a different arbitrator; and
3. No order as to costs.

The matter is removed from the roll: Case regarded as Finalised.

Source: : *Lewis Stores Namibia (Pty) Ltd t/a Best Home & Electric v Carolla Kavendjii* (HC-MD-LAB-APP-AAA-2021/00073) [2022] NALCMD 12 (16 March 2022)

1.1. The judge concluded in paragraph two that the arbitrator had made several mistakes. Analyse and discuss this assertion using the case study, any relevant laws, and your own expertise. **[15]**

1.2. The ultimate ruling states that a new arbitrator will be appointed to hear this matter. Let's say you are the new arbitrator appointed to hear the case. Analyse and discuss the relevant issues to consider in your endeavor to make sure all parties receive a fair and impartial decision. **[15]**

- 1.3. The disciplinary inquiry's (DI) chair was a witness in the case, according to paragraph two of the case study. Discuss the ramifications of the chairperson and initiator testifying in the DI. **[10]**
- 1.4. Carrolla Kavendji was hired by Best Home Electric to serve as an assistant regional controller. In a hypothetical scenario, she appeared at the DI with her legal representative after receiving a notification of a DI. The altercation that followed, though, prevented the DI from moving further, and security officers were dispatched to forcibly remove Kavendji's lawyer, who was refusing to leave the DI room.
- a) Is it allowed for an employee to have a legal representative at a DI? Justify your answer. **[8]**
 - b) Was it the right course of action to eject the legal representative from the DI room with force? Justify your answer. **[5]**
 - c) Is it possible for an organisation policy to prohibit a union representative from advocating for the employee in DI? Justify your answer. **[7]**
 - d) What is the role of an ER practitioner at the external dispute resolution tribunal and who represents a dismissed employee at that tribunal? **[6]**

Section B (Answer only question 1 or question 2)

[34 marks]

Question 1

- 1.1. Distinguish between the positive and negative approach to discipline. **[4]**
- 1.2. Define "decent work" as a human right and describe how the fundamental requirements may all be met at work by following the four principles of decent work. **[15]**
- 1.3. To sum up, how did the course Labour Relations Practice (LRP812S) influence your perception of the working relationship in modern organisations? How do you envision using what you have learnt so far? Instead of reiterating subjects or ideas from your compulsory course resources, you must explain what you understand in your own words in this section. Please take note that this is a two-part question, with the second asking you to connect theory to practice. **[15]**

Question 2

- 2.1. Explain, in your opinion, how labour relations and human resource management policies relate to one another in the workplace. **[4]**
- 2.2. Define "decent work" as a human right and describe how the fundamental requirements may all be met at work by following the four principles of decent work. **[15]**
- 2.3. If an employer finds that a worker is not performing up to par, what steps should they take? How will the company handle underperforming employees who are still in their probationary period compared to those whose probationary period has ended? Justify your response. **[15]**

End of Paper!

Good Luck!