



**NAMIBIA UNIVERSITY**  
**OF SCIENCE AND TECHNOLOGY**  
**FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION**  
**DEPARTMENT OF GOVERNANCE AND MANAGEMENT SCIENCES**

<b>QUALIFICATION: BACHELOR OF EMPLOYMENT AND LABOUR RELATIONS HONOURS</b>	
<b>QUALIFICATION CODE: 08BILR</b>	<b>LEVEL: 8</b>
<b>COURSE CODE: LRP812S</b>	<b>COURSE NAME: LABOUR RELATIONS PRACTICE</b>
<b>SESSION: JULY 2023</b>	<b>PAPER: THEORY</b>
<b>DURATION: 3 HOURS</b>	<b>MARKS: 100</b>

<b>SECOND OPPORTUNITY/SUPPLEMENTARY EXAMINATION QUESTION PAPER</b>	
<b>EXAMINER(S)</b>	Mr Elias Kandjinga
<b>MODERATOR:</b>	Mr Ohms Kayama

<b>INSTRUCTIONS</b>
<ol style="list-style-type: none"><li>1. Answer ALL the questions.</li><li>2. You are expected to apply your subject knowledge to the questions.</li><li>3. Write clearly and neatly.</li><li>4. Number your answers clearly.</li></ol>

**PERMISSIBLE MATERIALS**

1. Pen
2. Ruler

**THIS QUESTION PAPER CONSISTS OF 6 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**

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.

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. 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. Having read the case above, briefly summarise sequential turn of events that led to the conclusion of the above case in the Labour Court. **[10]**
- 1.2. In your view, why did the applicant approach the Ministry of Labour, Industrial Relations and Employment Creation and thereafter why did the appellant/complainant approach the Labour Court? **[10]**
- 1.3. Differentiate between mediation, conciliation, arbitration and identify the types of disputes that can be resolved through each one of them. **[10]**
- 1.4. The final judgement is that this case will start over again with a different arbitrator. Assume you are the new Arbitrator assigned to adjudicate the case, digest, and discuss pertinent issues that you will consider ensuring a fair and representative outcome for both parties. **[10]**
- 1.5. At the office of the Labour Commissioner the arbitrator established that the respondent was dismissed unfairly both substantively and procedurally. With the aid of the case, explain in general what this statement suggest in practice. **[10]**

- 1.6. In relation to the case, explain the legal remedies for unfair dismissal both at company level and the state. **[8]**
- 1.7. Identify and justify the type of dismissal evident in the above case. **[2]**



**Section B (Answer all questions)**

**[40 marks]**

**Question 1**

2.1. Distinguish between the positive and negative approach to discipline. **[6]**

2.2. Differentiate between economic strike and a grievance strike **[4]**

2.3. Read the scenario below and then answer the questions that follow.

**Assault at Wonderful Fried Chicken (WFC)**

Liam was employed by WFC (Wonderful Fried Chicken), a take-away restaurant, on 25 March 2015 as a cook. On 13 August 2015, the manager requested Liam to stand in for another employee on Sunday. (In Liam's employment contract it was clearly stated that employees could be requested to work overtime if the manager requires them to and that they would be paid 1.5 times their normal wage on a Sunday, because WFC was open seven days a week and Sundays were considered normal working days.) Liam turned his back to the manager and started to speak in Tswana to another employee. From the tone of his voice, the manager gathered that Liam strongly objected to the request. When the manager asked Liam and his co-worker what the problem was, Liam threw the manager down on the floor and kicked him, causing him to suffer broken ribs and bruising his arm and face. Liam then left the premises without permission in the middle of his shift. He returned to work the next day.

*Source: Nel. et al (2020)*

2.3.1. If Liam's manager dismissed him on the spot the next morning when he returned to work, would that be fair? Why or why not? Answer this question by briefly discussing the requirements stipulated by the Namibian Labour Act, Act 11 of 2007 regarding the steps/procedures that should be taken before an employee can be dismissed. **[15]**

2.4. In a short summary, how did the Labour Relations Practice (LRP812S) as a course shape your understanding of the employment relationship in

contemporary organisations? Do you foresee applying what you have learned thus far, how? *Here, you are required to express your understanding in your own words and not listing topics or themes appearing in your prescribed course materials. Also, please note that this question is twofold, the latter requiring you to relate theory to practice.*

**[15]**

**End of Paper!**

**Good Luck!**