



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

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

QUALIFICATION: BACHELOR OF HUMAN RESOURCES MANAGEMENT	
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COURSE CODE: IRL712S	COURSE NAME: INDUSTRIAL RELATIONS
SESSION: JANUARY 2023	PAPER: THEORY
DURATION: 3 HOURS	MARKS: 100

SECOND OPPORTUNITY EXAMINATION QUESTION PAPER	
EXAMINER(S)	Mr Elias Kandjinga
MODERATOR:	Dr F. Musukubili

INSTRUCTIONS
<ol style="list-style-type: none">1. Answer ALL the questions.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 8 PAGES (Including this front page)

Section A (Answer all the questions)

(50 marks)

Read the following case study and answer all the following questions.

The high court case: Bosses fight job cut ban

TWO organisations representing Namibian employers have launched a High Court case against the president, the government and trade unions to have the suspension of parts of the Labour Act during Namibia's Covid-19 state of emergency declared unconstitutional. In an urgent application filed at the Windhoek High Court on Friday, the Namibian Employers' Federation (NEF), the Namibian Employers Association and the companies FP du Toit Transport, JetX Couriers, John Meinert Printing, Huab Safari Ranches and Skycore Aviation are asking the court to declare parts of two proclamations issued by president Hage Geingob on 28 April and 4 May, and also parts of the Covid-19 state of emergency regulations, as unconstitutional.

In the two proclamations issued by the president, the suspension of the operation of some provisions of a number of laws – including the Labour Act of 2007 – was announced. The proclamations stipulate that during the Namibia's Covid-19 lockdown period, which started on 28 March and at this stage is due to end on 2 June, employers may not dismiss any of their employees because of the impact of the Covid-19 pandemic on their businesses, they may not force employees to take unpaid leave or annual leave due to the pandemic, and they may not reduce the pay of any employee for reasons related to Covid-19. Employers are also required to reinstate employees who have been dismissed due to the effect of the pandemic on their business, and to negotiate with recognised trade unions, workplace representatives or affected employees themselves if they want to reduce or defer the payment of remuneration during the lockdown period because they are unable to pay employees' salaries in full. In addition to this, the regulations under the proclamations state that if employers have notified their employees of intended dismissals because of Covid-19, the dismissals would only occur 28 days after the end of the lockdown period. Employers who breach the regulations by dismissing employees because of Covid-19, reducing their pay or forcing them to take leave, are committing an offence for which they can be fined N\$10 000 or given a jail term of up to two years.

The regulations further state that they apply retrospectively, with effect from 28 March, although they were published only on 28 April and 4 May. The president, government, attorney general, ministers of labour and health, the labour commissioner and the National Union of Namibian Workers (NUNW), Trade Union Congress of Namibia (Tucna), Namibia National Labour Organisation (Nanlo), Namibia Transport and Allied Workers Union (Natau) and Mineworkers Union of Namibia (MUN) are cited as respondents in the case filed by the two employers' organisations and the five companies questioning the constitutionality of the regulations. The secretary general of the NEF, Daniel Strauss, states in an affidavit filed at the court many employers in Namibia are facing imminent demise if they are not allowed to use provisions in the Labour Act to try to cut their labour costs. However, those provisions in the law have been suspended by the regulations issued by the president. Geingob "went much further than permitted by the Constitution" when he issued the proclamations containing the regulations on the Labour Act, Strauss claims. According to Strauss, the suspension of parts of the Labour Act is not necessary for the protection of Namibia's national security, public safety and the maintenance of law and order, as required by the Constitution, and the suspension is not reasonably justifiable.

In his affidavit, Strauss says the purpose of suspending a specific provision of the Labour Act must be to address the situation that gave rise to the Covid-19 state of emergency, which is the spread of Covid-19 itself. "The Constitution gives no emergency powers to the president to make regulations to address the negative effects which are occurring in the Namibian economy because he made [the state of emergency and lockdown regulations]," Strauss states. "There is a huge difference between addressing the situation which gave rise to the lockdown and addressing the consequences of the lockdown. The powers of the president allow him to address the former, not the latter." He also asks: "How does a suspension of a section of the Labour Act which prohibits retrenchments prevent the spread of the coronavirus?" The respondents in the matter have been given time until 22 May to give notice if they intend to oppose the application and to file their answering affidavits. The case has been postponed to 26 May for a hearing.

The union views of the high court case: Miners blast employers for challenging [Government]

THE Mineworkers Union of Namibia (MUN) on [...] criticised the Namibian Employers' Federation (NEF) for dragging the government to court to halt certain Covid-19 labour directives. The government has ordered that employers may not dismiss workers between 28 March and 2 June, which marks the end of stage 2 of Namibia's lockdown exit strategy. In reaction, the NEF and various other employers have filed an urgent application at the High Court against the president, the government and trade unions to have the suspension of parts of the Labour Act during the Covid-19 state of emergency declared unconstitutional. The MUN says the move by the federation does not consider the welfare of workers. "We find the statements by the NEF ill-considered, and not in the spirit of tripartite cooperation. If workers are required to be understanding of the difficulty faced by employers in these unprecedented times, we then also expect employers to be sensitive and sympathetic to the plight of workers, who face the prospect of unemployment, starvation and destitution," Abiud Kapere, western regional chairman of the MUN, said in a statement.

Kapere said the federation's call for the setting aside of the directives makes its intentions to complement the government's efforts in challenging times questionable. "We call upon all stakeholders, regardless of industry, to prioritise the principles of collective bargaining and encourage constructive dialogue in the interest of amicable consensus in these tough times, instead of making threats that undermine the government's initiatives which are merely aimed at easing the negative impact of the Covid-19 pandemic," Kapere said. He [further] said mineworkers will not take the matter lightly. "If we have to apply solidarity of the mining industry to support the government, we will do so in whatever form is necessary,". Not only may employers not dismiss employees in the specified period, they may also not force employees to take unpaid leave or annual leave due to the pandemic, and they may not reduce payment of employees for reasons related to the pandemic.

The high court case verdict: Covid-19 dismissals ban unconstitutional

THE state of emergency regulations that forbid Namibian employers from dismissing workers, reducing their pay or putting them on leave due to the Covid-19 pandemic are unconstitutional and invalid, a three-judge bench of the High Court declared today. The regulations declared as unconstitutional were attacked by the Namibian Employers' Federation (NEF), the Namibian Employers Association and the companies FP du Toit

Transport, JetX Couriers, John Meinert Printing, Huab Safari Ranches and Skycore Aviation in an urgent application filed at the court in mid-May. The applicants in the case were claiming that their businesses are in danger of going bankrupt if they are not allowed to use suspended provisions in the Labour Act to try to cut their labour costs.

The Labour Act provisions were suspended in proclamations issued by president Hage Geingob on 28 April and 4 May. The proclamations also stipulated that during Namibia's Covid-19 lockdown period, which started on 28 March, employers may not dismiss any of their employees, reduce their pay or force them to take leave because of the impact that the Covid-19 pandemic has on the employers' business. Declaring the regulations unconstitutional, the court – consisting of judges Shafimana Ueitele, Thomas Masuku and Hannelie Prinsloo – ordered that the government should also pay the applicants' legal costs in the case.

Source: The Namibian, 2020

Questions

- 1.1. From the case study, identify three external influences on the labour relationship and discuss them in detail with a clear link to the case study provided. **(6)**
- 1.2. Having read the case study, **discuss** the role of the state as a legislature of employment relationship, and **how** did the government/president in this case get the employment relationship wrong with the amendment of certain provisions of the labour Act? **(20)**
- 1.3. Why did the Mine Workers Union (MUN) criticise the Namibian Employers' Federation (NEF) for dragging the government to court to halt certain Covid-19 labour directives? **(10)**
- 1.4. The Namibian Employers' Federation (NEF), the Namibian Employers Association and the companies FP du Toit Transport, JetX Couriers, John Meinert Printing, Huab Safari Ranches and Skycore Aviation won the court case against the government (although plans are said to be underway to appeal the case). What does this say about the role of the Judiciary in the employment relationship in Namibia? **(10)**

- 1.5. Identify any four effects of the human resource management function on industrial relations. **(4)**

Section B (Answer all the questions)

(50 marks)

Read the following case study and answer all the following questions.

Eleven CRAN employees charged for COVID-19 'AWOL'

The Communications Regulatory Authority of Namibia (CRAN) has instituted disciplinary proceedings against 11 employees who stayed away from work over fears of contracting COVID-19. The basis of the charges was due to their union's breach of its agreement with CRAN in that "they issued directives to the employees to absent themselves from work on 11 May 2020 without consulting and or obtaining permission in this regard from the chief executive officer." The employees said they stayed away from work after one of their colleagues tested positive for the novel coronavirus as CRAN had allegedly not put in place measures to protect them against the virus. They alleged that seven employees have contracted the virus, of which six are confirmed contacts of the first confirmed case at the company. This was dismissed by CRAN's chief executive officer, Jochen Traut who said only three of the confirmed cases were contacts of the company's first case. "The other three of the seven confirmed cases did not contract COVID-19 in the workplace," he said.

Further, Traut dismissed assertions that the company does not take the pandemic with the seriousness it warrants. "With every confirmed case, CRAN proactively and consistently put in place various measures to safeguard employees at work as we are a responsible Namibian corporate and, in our quest, to curb the further spread of this disease," he said. This includes installing hand washing stations and making masks available, Vitamin B injections and flu shots to staff. CRAN has also arranged the services of a psychologist to provide counselling sessions (at company cost) to employees who may have experienced anxiety due to the COVID-19 pandemic. CRAN, in addition, provided communications tools and mobile data to ensure that colleagues could efficiently work from home during the lockdown period, he said. "No employee was persecuted, and the process was managed in compliance with the provisions of CRAN's Disciplinary Policy and the Labour Act. The primary purpose is to afford employees an opportunity to prove that their absence from work was authorised," Traut said. A representative of the Namibia Public Workers Union at CRAN, Stanley Kavetu confirmed that the disciplinary process is underway but denied any wrongdoing on the part

of employees. “The employees have however acquired the legal services of their colleagues in the legal department,” Kavetu said on Monday.

Source: NBC and NAMPA, 2020

Questions

- 2.1. Having read the case study, discuss five (5) most appropriate characteristics of a bargaining relationship that were overlooked by either party in CRAN case. **(10)**

- 2.2. The Communications Regulatory Authority of Namibia (CRAN) has instituted disciplinary proceedings against 11 employees who stayed away from work over fears of contracting COVID-19 because the union issued them directives to absent themselves from work on 11 May 2020 without consulting and or obtaining permission from the chief executive officer. In your view, and as per section 42 of the Labour Act (Act, 11 of 2007) was it a correct decision by CRAN employees to stay away from work? Discuss in detail. **(15)**

- 2.3. Is there a dispute of right or dispute of interest on the side of employees in CRAN’s case? If so, why, or why not? **(10)**

- 2.4. In a short summary, how did Industrial Relations (IRL712S) as a course shape your understanding of employment relationship in the world of work? 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!

Aemick 18/1/2022