

Violation of Labour Laws by Small to Medium Enterprises: a Threat to Sound Employment Relations. The Zimbabwe Experience

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Abstract

The study looked at the extent to which Small to Medium Enterprises (SMEs) were observing the country's labour laws that are earmarked to create a conducive and harmonious working environment at the workplace. Areas of concern were non-compliance issues with the country's labour laws particularly in the areas of employment contract, job security, employee health, safety and welfare. Major labour issues that are provided by the major labour laws in Zimbabwe that the SMEs are supposed to comply with, were looked at such as; the Labour Act 28:01(amended 2015), the National Social Security Authority (NSSA) Act, **Chapter 17: 04 of 1989**, the Factories and Works Act 14:08 of 1996, and the Zimbabwe Revenue Authority Act 23:11 of 2001. **The study, which was qualitative, was conducted in the capital city, Harare using unstructured interviews.** The participants were drawn from the Ministry of Small and Medium Enterprises and Cooperative Development (SMECD), the Ministry of Public Service, Labour and Social Welfare (PSLSW), the Labour court, City of Harare, SMEs covering both the entrepreneurs and workers and the *SME Association* of Zimbabwe. **The major findings were that; SMEs were violating the labour laws on issues pertaining to employment contracts, none or inadequate contribution towards employee pensions, insurance, medical cover and income tax. The study concluded that in this sector, there was lack of job security and the employees' welfare was compromised as evidenced by underpayment of wages, poor conditions of service and exposure to hazardous working environment. A major recommendation is the need for the Department of labour, NSSA and even ZIMRA inspectorate departments to conduct audits on the level of compliance by SMEs with the country's labour laws. Collaboration of workers with their respective industry's National Employment Councils (NEC) would help to mobilise employers/entrepreneurs' to implement some of the labour laws provisions.**

Key words: employee welfare, job security, legislation, industrial and labour relations, non-compliance, SMEs

I Introduction

Many African countries among other developing nations have been affected by global crisis of unemployment and that has forced many to leave their home countries in search of greener pastures in neighbouring countries and in other continents. The need to address the employment crisis hinges on improving or supporting the SMEs sector that employs a huge population and has potential to employ more. A Small Enterprise is a business with a turnover of less than USD 240 000 and the Asset base of less than USD 100 000 whereas a medium enterprise is the one which has a turnover of above USD 240 000 but less than USD 1000000 (Zimbabwe Association of SMEs, 2010). In 2019, the SME employed over 60% of Zimbabwe's productive workforce, contributed to over 50% of GDP, and constituted 70% of business in Zimbabwe (Research council of Zimbabwe, 2019). The statistics show a marked increase in SMEs operations as evidenced by a relatively low contribution to employment by 40% (Chivasa, 2014).

Most commercial banks and retail enterprises in Zimbabwe now have a dedicated SME desk signifying the role small businesses are playing in the local market. This is partly because only a sizeable chunk of yester-year corporate giants is still standing in the country's economy. The majority of these enterprises are focused on the domestic market, given their limited international competitiveness. SMEs are therefore an important and integral sector in the Zimbabwean economy due to their provision of employment, contribution to the GDP (Chadamoyo and Dumbu, 2012), alleviation of poverty and provision of an opportunity for women and youth to participate in the mainstream economy (Zimtreasury, 2013).

In Zimbabwe, SMEs fall under the parent Ministry of Small and Medium enterprises and cooperative development. The Ministry has since established policies and strategies to deal with the key challenges facing SMEs but due to financial constraints, progress has not been very much. The ministry's mandate is to formulate and implement policies for SMEs and Cooperative Development. The Ministry also works closely with the Ministry of primary and secondary education and that of Youth, Indigenization and economic empowerment. The major strength of Zimbabwe's Small and Medium Enterprises (SMEs) is their flexibility in adapting to changes in market tastes and preferences. Being that as it may, SMEs are confronted with a plethora of obstacles to grow. Such obstacles include financial, managerial, taxation, infrastructural, access to competitive markets, management ability, weak legal and regulatory structures (Chivasa, 2014). Registered organisations including those classified as SMEs are supposed to comply with the country's labour laws so that there is a harmonious and productive working environment at the work place (Uzhenyu, 2017). Issues of so many labour disputes as manifested by worrying cases of industrial action causing loss of production, heavy backlog of court cases, victimisation and discrimination in some organisations in Zimbabwe, seem to be also prevalent among SMEs in Harare as well.

A lot of employees in SMEs seem to have the notion that they are underpaid and that the boss takes all the money and enjoys all the benefits that they would have ‘‘slave-laboured’’ for, which in many cases was true (Finscope, 2014). This is despite the existence of the major labour administrative laws that are supposed to enhance organisational harmony by creating sound working relations especially between workers and employers such as the Labour Act 28:01 recently amended in 2015, the Factories and Works Act 14:08 of 1996 and the National Social Security Authority (NSSA) Act, **Chapter 17: 04 of 1989** and Zimbabwe Revenue Authority Act 23:11 of 2001 (Mudyawabikwa and Sambureni, 2003). It is against this background that the researcher was motivated to conduct this study given the importance of the SMEs as a key sector in Zimbabwe at the moment.

1.1 Statement of the problem

SMEs are not fully complying with the provisions of labour laws and there are lots of irregularities in the manner employment relations are being managed thereby constituting unfair labour practices and violation of employees rights.

1.2 Research Questions

1. What is the level of participation on matters of employment relations by SMEs employees?
2. How are issues of grievance handling at the workplace handled by SMEs?
3. Which labour matters are not being complied with by SMEs?
4. What should be done by SMEs to comply with labour laws to enhance sound labour relations?

1.3 Literature Review

The Process Of Labor Relations model

This was proposed by Toppr (2008) and guided this study in terms of how employees and employers should co-exist in order to create a harmonious and conducive working environment.

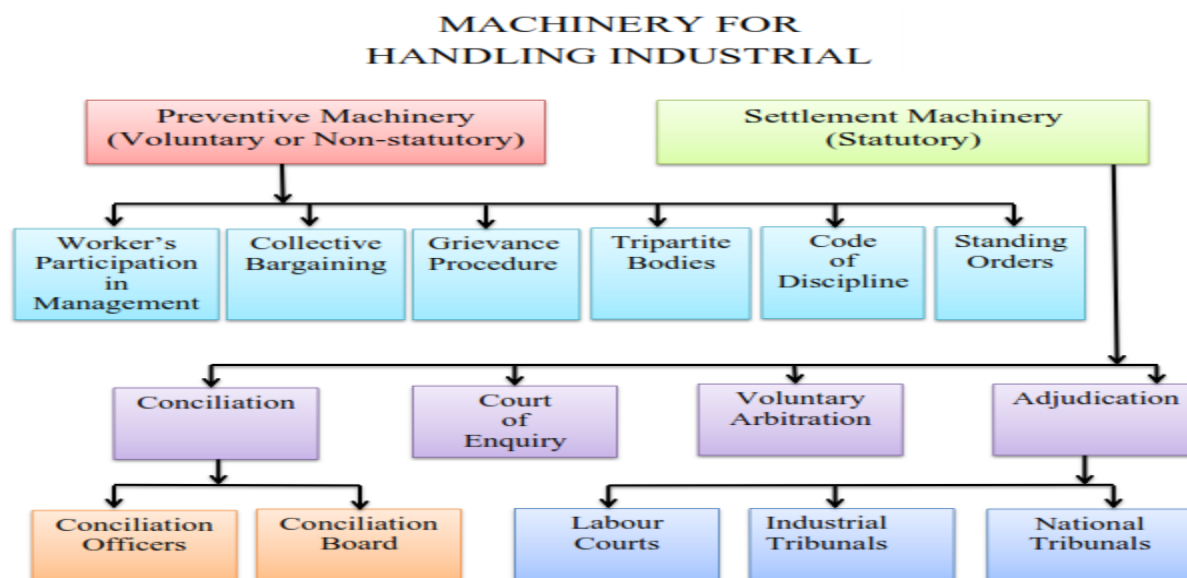


Fig 1: Process of Industrial relations model(Toppr, 2008)

The are 4 steps of managing employer-employee relationships

i. Unionization of employees

The first step of labour relation is unionization of employees. A workers committee at enterprise level and a trade union at industrial or sectoral level are organizations of employees that are formed to protect and promote the interest and welfare of employees in the organization. It is a voluntary organization of workers that protects their interests through collective bargaining.

ii. Workplace disputes or conflicts

Usually, employers want to avoid workers committees and trade unions in their organizations. Therefore, when these are formed, there is likelihood of disputes or conflicts in the work environment because of different interests. There is need to resolve the disputes which usually affect production.

iii. Collective bargaining

Collective bargaining is a mechanism through which the workers and employers negotiate over essential terms and conditions of employment with the intention of reaching an agreement. Collective bargaining allows participation of workers in industrial relations and it is enshrined in the International Labour Organisation (ILO) conventions. The dispute(s) can also be solved by collective bargaining.

iv. Settlement of disputes

The disputes or conflicts are settled through a negotiation. Usually the code of conduct and labour laws are used to resolve labour disputes. A number of options such as third party

intervention can be used such as conciliation, mediation, arbitration and litigation or use of courts. Both of the conflicting parties should agree preferably in writing to settle the existing dispute (s). Hence, it serves a way for future disputes to be settled under a mechanism. This brings an effective work environment in the actual workplace.

1.4 Major labour laws in Zimbabwe

In Zimbabwe the major labour laws governing the employment contract such as the Labour Act 28:01 amended 2015, the Factories and Works Act 14:08 of 1996 and the National Social Security Authority (NSSA) Act, **Chapter 17: 04 of 1989** and Zimbabwe Revenue Authority Act 23:11 of 2001).

i. The Labour Act 28:01 amended 2015

This is the major administrative piece of legislation that is used to guide labour matters pertaining to major matters of the employment relationship. The Act defines the fundamental rights of employees; unfair labour practices; regulates conditions of employment and other related matters. It also provides for the; control of wages and salaries; appointment and functions of workers committees; formation, registration, certification and functions of trade unions, employers organizations, employment councils and employment boards. The Act also regulates the negotiation, scope and enforcement of collective bargaining agreements; provides for the establishment and functions of the Labour Relations Board and the Labour Relations Tribunal. It also provides for the prevention of trade disputes, and unfair labour practices; to regulate and control collective job action and employment agencies.

The labour Act defines the fundamental rights of a worker on Section 4(i) to (3). These are.

- Right to be a member or office bearer of a workers' committee or trade union and engage in all lawful activities of such committee or trade union for the advancement or protection of one's interests and/or fellow colleagues.
- Right to be protected against discrimination e.g. based on grounds of race, tribe, place of origin, political opinion/affiliation, colour, creed or sex in all issues related to employment
- Right to fair labour standards, for example get fair remuneration based on job evaluation and performance, work within normal working hours and conditions.
- Right to democracy in the workplace such as airing any grievance, negotiating any matter. Also employer should allow a labour relations officer, trade union official or employment board member to access the premises and talk to any member on lawful labour issues.
- Right to health and safety (implied)
- Right to fair remuneration (implied) and benefits as per employment contract or conditions of service.

ii. The Factories and Works Act 14:08 of 1996

The Factories and Works Act, Chapter 14:08 of 1996, provides for the registration and control of factories, the regulation of conditions of work in factories, supervision of the use of machinery and precautions against accidental injury to persons employed on structural work. The Factories and Works Act defines a factory as any premises on which any person performs any of the following activities: the making of any article or part of any article; the altering, repairing, renovating, ornamenting, painting, spraying, polishing, finishing, cleaning, dyeing, washing or breaking up of any article. As can be seen from this list,

workshops, abattoirs, power stations, printing presses and places where manufacturing takes place are all considered factories in terms of the Act. They are, therefore, subject to the Act's provisions. The Act provides for the appointment of inspectors to administer the Act and to ensure compliance with its requirements.

iii. The National Social Security Authority (NSSA) Act, Chapter 17: 04 of 1989

In Zimbabwe the National Social Security Authority (NSSA) was established as the statutory corporate body tasked by the Government to provide social security. Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner. The provision of social security is instituting public policy measures intended to protect an individual in life situations or conditions in which his/her livelihood and well-being may be threatened, such as those engendered by sickness, workplace injuries, unemployment, invalidity, old age, retirement and death.

iv. Zimbabwe Revenue Authority Act 23:11 of 2001.

Zimbabwean tax residents are subject to income tax on their earnings. The Income Tax Act (Chapter 23:06) provides the framework for determining taxable earnings and the rate of tax that is applicable to the earnings. It also provides details of income that is exempt from tax and deductions that are permitted in determining taxable earnings. Employees are taxed on a monthly basis in terms of the pay-as-you-earn (PAYE) system. Tax is withheld at the source by an employer on taxable amounts paid to an employee. The tax tables operate on an escalating scale basis until a certain threshold is reached, after which a flat rate of tax applies. (The flat rate threshold is referred to as the Marginal Tax Rate (MTR). This an Act that established the Zimbabwe Revenue Authority as the major parastatal to facilitate and coordinate the collection of certain revenues of the State and to provide for the authority's functions, powers and management.

2 Research Method

The study followed the qualitative methodology (paradigm). Unstructured interviews were used to collect data in order to gather as much detail as possible from participants or key informants (Durand and Chantler, 2014). The design was a case study of the SMEs in Harare. The target population comprised the members (officials) of Ministry of Small and Medium Enterprises and Cooperative Development, Ministry of Public Service Labour and Social Welfare (PSLSW), the Labour court, Harare municipality, SMEs including the entrepreneurs and the association, as well as, workers who were employed in that sector. The quota sampling technique was used in order to cover all the key stakeholders for inclusivity (Abawi, 2008; Leedy and Omrod, 2016) and for interviewing each category, the data saturation technique was used (Kothari, 2014; Rubin and Babbie, 2014). The Research ethics were observed during the entire collection and analysis of data in light of research best practices as suggested by Porter (2014) and Naagarazan (2006). Analysis of data to derive the findings was done using the content analysis method that is ideal for qualitative research (Neuman, 2013).

3 Results and Analysis

The following are the major findings of the study;

i. Lack of knowledge pertaining to industrial and labour relations.

Educational background was cited as a major contributory factor. A sizeable number of the business owners had their education background in engineering, finance and marketing and not human resource management, which covers industrial and labour relations. In addition, very few had copies of major labour laws (Acts) namely; the Labour Act 28:01 amended 2015, the Factories and Works Act 14:08 of 1996 and the National Social Security Authority (NSSA) Act, **Chapter 17: 04 of 1989** and Zimbabwe Revenue Authority Act 23:11 of 2001.

One SME entrepreneur had this to say:

‘We do not even know where these laws can be obtained from. In bookshops you cannot find them and even the language is so technical and therefore difficult to understand’

ii. No formal contracts of employment in violation of the Labour Act.

One SME entrepreneur said ‘*Why should I be bothered to offer employment contract when I am actually doing a favor to help a desperate friend, relative or church mate who had no hope of being employed at all. The person has to agree with what I want and should work based on my instructions in order to survive.*’

iii. Unreported workplace accidents in violation of the NSSA Act

A number of occupational hazards especially accidents were not being reported. One worker (welder) said

‘You are warned that if you tell the law enforcement agents like NSSA, you will lose your job and find yourself going back to join your rural life or become a tout and be faced with the agony of experiencing poverty’. The situation was compounded by inadequate safety clothing, rare maintenance of machinery, factory inspections and lack of social protection as majority of the employees were classified as casuals and told that they were not entitled to medical and insurance cover, as well as, pension benefits.

iv. Non-observance of vacation and maternity leave provisions in violation of the Labour Act.

To demonstrate some extreme disregarding of the workers' rights by some business owners (entrepreneurs), one female worker working in clothing retail shop had this to say *‘You are told to choose between either having a baby or to lose your job. If lenient then you may be told that there is no payment for the entire duration when off duty nursing the child’*.

v. Under payment or delayed payment at times, violating a workers fundamental rights

Some workers went for several months without full salary. In some cases, they were given part of the salary on the condition that they reported for duty. This was worsened by the prevalence of long working hours with no overtime payments. However, it was also noted that business for most SMEs was facing stiff competition from large corporates and those in the retailing and manufacturing sectors were being affected by an influx of cheaper products from China and Dubai.

vi. No right to associate and organise in violation of Labour Act and International Labour Organisation (ILO) Conventions

Worker activism was not encouraged by SMEs who usually applied the unitary perspective of industrial relations, which emphasizes the use of centralised power and views workers committees and trade unions as counterproductive. The perspective assumes that everyone shares the same vision and understanding (strong culture) without room for diversity or divergence of ideas (conflict).

vii. Lack of government inspections and reinforcement of labor law compliance worsened by corrupt tendencies

A Ministry of PSLSW official in the labour department said, *“We do not have adequate manpower to monitor labour compliance issues and we depend largely on reported cases for intervention”*.

However, a labour body (trade union) representative cited the problem of corruption as the major one. He said *‘Some of the labour officials and NSSA inspectors are given kickbacks to disregard genuine cases of labour malpractices perpetrated by employers. These are swept under the carpet or ruling is done in favour of the employer because the ordinary worker does not have the financial muscle to seek recompense through expensive legal avenues’*

viii. Non-remittance of statutory obligations

A number of SMEs were not remitting income tax, pension and insurance premiums as provided for in the NSSA and ZIMRA Acts, yet surprisingly in some cases, the deductions reflected on some employees' paylips.

IV Conclusion

There was very low level of labour law appreciation by most SMEs and the number of cases involving the disregarding (violating) of these laws was worrisome. Flouting of labour laws by SMEs was manifesting poor labour relations that ultimately culminated in perennial labour disputes and employee disgruntlement.

V Recommendations

The study recommends for implementation the following;

i. Improved surveillance and supervision of SMEs on labour compliance issues

There was need to have regular inspections by the various inspectorate and compliance departments from the Ministry of labour, NSSA, Zimbabwe Occupational Health and Safety Council (ZOHSC) and ZIMRA.

ii. Empowering SMEs through training

A more vigorous approach to capacitate SMEs on employment or labour matters was to conduct training workshops facilitated by labour and compliance experts from the departments of Labour, NSSA and ZIMRA. This will enable SMEs to become conversant with the dictates of industrial relations and statutory obligations, as well as, the legal implications emanating from violation of such issues.

iii. Promotion of workplace democracy

Government should put in place mechanisms or systems that should ensure that those employed by SMEs enjoy their fundamental labour rights in line with the provisions of the

Labour Act 28:01 amended 2015. These rights should incorporate the provision of employees to;

- forma workers' committees or affiliate to a relevant trade union of their choice.
- negotiate freely with their employer(s) on their grievances or matters of concern.
- enjoy fair labour standards e.g. hours of work, time off duty, right to be heard, entitlement to remuneration, conducive safe and health workplace.
- be involved and participate on all matters of concern that affect issues regarding the employment contract and their welfare e.g. salary reviews, retrenchments, code of conduct, and other conditions of service.

iv. Reinforcement of employment contracts

All employees should have written and agreed contracts designed in line with sectoral or industrial expectations to avert and ultimately avoid unfair labour practices by employers or even employees. This should be made very clear by the inspectorate officials or during training that drafting and signing by both parties of an employment contract, is a prerequisite and mandatory before an employer engages a new employee.

v. Reinforcement of a code of conduct

Each SME should be guided by a code of conduct, which should be registered, first with the Department of labour. This will definitely result in reduced labour disputes and improved strong organisation, sectoral or industrial employment relations and work ethics.

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