



EFFECETIVENESS OF LABOUR COURT IN LABOUR DISPUTE MANAGEMENT IN ZIMBABWE



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ABSTRACT

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The paper focused on the effectiveness of the labour court in Zimbabwe in managing labour disputes. In assessing the effectiveness the study used a non-statistical framework which looks at three factors that can be used in determining effectiveness and these are speed, accessibility and expertise. The research was guided by Trudeau's framework and justified by the statistics of pending cases and the cases set down for hearing and also the rate at which judgments are handed down in relation to capacities and available resources. The study highlighted that the huge backlog of cases pending at the Labour Court and the geographical locations as well as inexperienced personnel who have diminutive knowledge and expertise in labour law had a negative impact on the effectiveness of the court. Through the use of structured interviews and questionnaires the research showed that there should be prescribed qualifications and competences of the Labour Court judges to include experience in labour law and also continuous training on labour law for those already in the office. There is need to decentralize the Labour Court to every province for easy accessibility and allocate adequate resources and the Labour Court should have the powers to enforce its own decisions to be effective.

Contribution/ Originality: This study is one of very few studies which have investigated labour dispute management in Zimbabwe. More specifically it contributes the first consistent analysis on the efficacy of Zimbabwean labour court in managing labour dispute.

1. INTRODUCTION

The contract of employment is one of the most important contracts in the life of any individual as they are about bread and butter issues. Disputes at the workplace are inevitable because of the conflicting of interests between the employer and the employee. This relationship between the employer and the employee is heavily tilted against the employee, especially in view of the power of the employer to the terminate contract. The State has stepped in to restrict the powers of the employer by formulating laws which govern workers in Zimbabwe. The law is mainly contained in the Labour Act (Chapter 28:01). It is through this Act and the Constitution of Zimbabwe Amendment (No. 20) Act 2013 that the Labour Court was established, and it is at the apex of alternative dispute

resolution (ADR) mechanism. The rationale in which the Labour Court was established was to give disputing parties an opportunity to settle their differences, in an expeditious and equitable manner in the process achieving social justice. Though the Court has to be easily accessible to the disputing parties, the process has its challenges to this end. This study analyses the effectiveness of the Labour Court as one of the forum of ADR. The Labour Act has provided three methods of ADR namely conciliation, arbitration and adjudication (use of the Labour Court). This study focused on the Labour Court, the goal being to assess its effectiveness in labour dispute management.

1.1. Background of Study

The history and development of the Labour Court cannot be fully understood without analysing the legal statutes that regulate labour relations in both pre- and post- colonial Zimbabwe. According to [Gwisai \(2006\)](#) the Industrial Court first emerged under the Industrial Conciliation Act Chapter 29 of 1959. The Act established an Industrial and Tribunal Court to act as an appellate court from decisions of Industrial Councils, Industrial Boards and the Registrar of Trade Unions. The law and principles pertaining to employee/employer relations has undergone significant changes over the past years as the country has experienced a dramatic shift from the repressive legislation of the colonial era to present day anti-discriminatory legal framework. In the colonial era, there was the Master and Servant Act, and through the penal provisions contained therein, the Rhodesian government targeted the control of labour. Its essence was to curtail the freedom of independence of the working class ([Cheater, 1991](#)). The legislation was authored in such a way that instead of championing the protection of employees' rights, especially relating to unfair and arbitrary dismissal, it created a system where the voice of the employees was not heard in the decision making or in the determination of contractual terms and conditions.

After independence in 1980, government made swift efforts to address the colonial imbalances. Early legislative intervention to address the anomalies of the past included the Minimum Wage Act (No. 4) and the Employment Act (No. 13). According to [Machingambi \(2007\)](#) Minimum Wages Act Chapter 4 of 1980 proscribed discrimination in the payment of wages on grounds of race, sex or age and it also introduced regulatory measures on employment agencies. Machingambi further notes that the Employment Act Chapter 13 of 1980 empowered the state to provide minimum conditions in areas such as hours of work, leave and wages. The Employment Act repealed the Master and Servant Act, the African Labour Relations Act and the African Juveniles Employment Act. According to [Madhuku \(2012\)](#) the Minimum Wages Act and the Employment Act had no provisions on dispute resolution. The major changes were introduced by the Labour Relations Act of 1985 (LRA), and some of the objectives of the LRA included the desire to declare and define the fundamental rights of workers and provide for the prevention of unfair labour practices. [Gwisai \(2006\)](#) notes that the Labour Relations Act of 1985; established a powerful Labour Tribunal sitting at the apex of the dispute settlement machinery under that Act. Gwisai further states that the Tribunal had a multi-disciplinary composition with persons appointed either having the same qualifications as judges appointed to the High Court or were suitably qualified persons having wide experience in labour relations. The Labour Relations Tribunal was limited in terms of powers and jurisdiction. Its decisions were subject to review by the High Court in the same way as the decisions of any other domestic tribunal would be. Appeals from decisions of Tribunal lay with the Supreme Court.

The Labour Relations Amendment Act, 2002 (No. 17) abolished the Labour Relations Tribunal and established the Labour Court. The Labour Court was established in terms of section 172 of the Constitution and section 84 of the Act as a special court and a court of record to only deal with labour matters. The functions, powers and jurisdiction of the Labour Court are specified in section 89 of the Act.

1.2. Theoretical Framework

The research was guided by the pluralist ideology and Trudeau framework. [Finnemore and Sikkink \(2001\)](#) summarise pluralism as the acceptance of conflict as natural within the workplace but that common interests in the

survival of the organization make compromise essential. It also sees trade unions as legitimate organizations that allow workers to counter their otherwise inherently weaker positions as individuals and thereby protect and further their interests. Through promotion of specialised courts to deal with labour conflicts, the State seeks to dispense equity and labour justice in the employment relationship. The court is a creature of statute created by the Labour Act whose purpose included advancing social justice. The court enjoys the full authority to look into issues of equity

Gwisai (2006) argues that pluralism is the ideology that underlies the formation of the International Labour Organization (ILO) and the concept of the right to work under international human rights instruments namely, the right to the enjoyment of "just and favourable conditions of work" including a fair wage which ensures an existence worthy of human dignity for workers and their families. Such rights are also provided under article 14 paragraph B of the Southern African Development Community (SADC) Charter on fundamental social rights which obliges the state to ensure that employees are given a human living. Zimbabwe ratified the above covenants (international instruments). It is also the principal influence behind the Labour Act (Chapter 28:01), Section 2A subsection 1(f) that states that its purpose is to "advance social justice and democracy in the workplace by.... securing the just, effective and expeditious resolution of disputes and unfair labour practices"

According to Machingambi (2007) employees are primarily concerned with the security of their jobs and what they earn, and the employer with what can be produced as cheaply as possible to obtain a maximum profit. When these conflicting interests have taken a definite form and shape, the State has often stepped in to protect some of these interests through legal control. Thus pluralism is of relevance as it incorporates social justice at the workplace and that the interests of both employers and employees must be taken into account.

1.3. Trudeau Framework

Trudeau (2002) developed the framework that looks at three factors namely, accessibility, speed and expertise. According to Trudeau (2002) accessibility refers to the ease with which disputants can resort to the process without the complication of technical considerations and complex legal paper work. The second factor is speed. The speed with which a system operates in dispensing justice is a paramount feature of justice delivery and a key feature of effectiveness. The third factor is expertise. Expertise means competency of the principal factors in the court process. The principal actors presiding over the process should be unquestionably competent and experienced in the field in which they operate. The researchers adopted Trudeau's framework in analysing the effectiveness of the court because it answers questions that are non-statistical.

1.4. Literature Review

Various scholars and authorities have written on the effectiveness of Alternative Dispute Resolution (ADR) in general. This study dwells on the Labour Court in particular. In daily parlance, dispute is such a common word that few people are worried about its concrete meaning and subtleties. But for scholars, it is necessary for its clarity and tangible understanding. A dispute has been defined by Brand *et al.* (1997) as a highly formalised manifestation of conflict in relation to workplace related matters which may include the failure to address a grievance. Section 2 of the Labour Act defines a dispute as any matter concerning employment which is governed by this Act. This study defines dispute as an officially out spoken workplace conflict. This research focused on the employment disputes and investigated if the disputes are being managed expeditiously and judiciously. According to Gwisai (2006) the Labour Act Cap 28.01 Act recognises the disputes of right, disputes of interest, collective and individual disputes.

Taking into cognisance the nature of industrial climate the organisations are operating in, disputes are inevitable and most disputes are disputes of right. The country is facing international isolation and the impact of the economic meltdown is felt mostly by employees who are underpaid or in worst scenario going for months without receiving any salaries. From the foregoing, the study is of the view that effective and innovative mechanisms must exist so as to promote industrial peace and harmony.

1.5. Dispute Management

In as much as disputes are inevitable, a common ground must be found, thus mechanisms must be put in place that deals with disputes in an impartial manner. Grogan (2003) states that the key to understanding dispute settlement mechanisms of the Labour Relations Act lies in identifying which forums have jurisdiction over which categories of disputes. The Labour Act provides for three methods of Alternative Dispute Resolution (ADR) namely conciliation, arbitration and adjudication (use of the Labour Court). ADR includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement sort of litigation.

1.6. Adjudication

For recourse the research focused on the Labour Court processes as Fayoshin (2008) noted that the Labour Courts are specialized in nature and administer both law and equity jurisdiction. Because of this equity jurisdiction Labour Courts are by nature informal as they do not dwell on legal technicalities, and disputes are resolved with relative speed. Fayoshin states that with regard to adjudication of labour disputes, most of the countries in the southern region have established specialized courts in dealing with labour matters. There is Labour Court in Lesotho, South Africa and Zimbabwe; the Industrial Court in Botswana and Swaziland and the Industrial Relations Court in Malawi and Zambia. In Namibia, the High Court sits as a Labour Court if it has to determine a labour related issue.

According to Brand *et al.* (1997) the powers of the Labour Court in South Africa, include the power to grant urgent interim relief, prohibitory and mandatory interdicts, declaratory orders, awards and compensation of damages, order for costs and generally to order compliance with the Act. The parties may be represented by a legal practitioner, co-employee or by a member or official of the party's trade union, if the party is a juristic person, by a director or employee.

Schneider (2002) also argued that Labour Courts in Germany are effective in dispute resolution; he argued using the statistical approach. Schneider notes that from 1980-2000, resolved cases were 100%. He defines resolved cases to mean those legal actions that were finalized by the respective Labour Courts during the above study year, and they were resolved through trial, settlement or withdrawal.

The study guided by Trudeau's framework and justified by the statistics of matters resolved, matters pending and number of judgments handed down, investigated the effectiveness of labour court of Zimbabwe

1.7. Appealing to Labour Court

According to Madhuku (2012) for organizations that use the national code of conduct (SI 15 of 2006), after an employee has been dismissed or otherwise disciplined and having exhausted the channels stipulated in the national code will approach a Labour Officer at the Ministry of Labour who will conciliate the dispute according to section 93(1) of the Labour Act. When the labour officer has successfully conciliated a matter and the disputing parties reach an agreement, the labour officer will issue a certificate of settlement signalling the end of the dispute. When the dispute is not settled within thirty days under section 93(3), the labour officer will issue a certificate of no settlement to the parties to the dispute. The labour officer will either secure the agreement of the parties to refer the dispute to compulsory arbitration under section 93(5) (b), or in the absence of an agreement of the parties exercise his/her discretion, section 93(5) (c). The arbitrator will then determine the matter guided by terms of reference determined by the labour officer in agreement with the parties in line with section 98(4). The arbitral award is final on matters of facts and can only be appealed to the Labour Court on a question of law according to section 98(10). The procedures noted above are meant to manage disputes so that they do not flood at the Labour Court.

Another scenario where a dispute can be before a labour officer is under section 101(6) of the Act, this is where a company with a registered code of conduct fails to determine a matter within thirty days, and the matter can be referred to a labour officer by either the employer or the employee to be disposed of in accordance with section 93.

Voluntary arbitration arises under section 93 (1) where parties may agree to forego conciliation and prefer voluntary arbitration. Voluntary arbitration is governed by the Arbitration Act (chapter 7:15). The parties determine the number of arbitrators, the place of the arbitration, if they fail to agree, the High Court may be requested to make the appointment. An arbitral award from voluntary arbitration cannot be appealed against; it can only be set aside by way of application for review to High Court under Article 34 of the Model Law.

Another step in which the Labour Court can be approached is through NEC determinations; these are companies who have registered their codes of conduct under NEC from their sectors. According to section 63 (3b) of the Act where a designated agent is authorized to deal with the matter before him/her, no labour officer will have jurisdiction in the matter. Suffice to say the NEC has mandate to conciliate, and after conciliation has failed they refer the matter to an arbitrator under that NEC. If there is no arbitrator under that NEC, they refer the matter to independent arbitrators. Any party aggrieved by the determination of the NEC may appeal to the Labour Court only on a question of law according to section 98(10).

When a company has its own registered code of conduct under section 101, an employee who has been disciplined in terms of that code will exhaust all channels stipulated in that code of conduct. After all domestic remedies have been exhausted; an employee will then appeal to the Labour Court according to section 92D of the Act against the determination of the last determining authority as demanded by that code of conduct.

Government employees are not covered by the Labour Act; they are governed by the Public Service Regulations Act, 2000 (SI 1 of 2000). A government employee who has been disciplined under that Act, having exhausted all the channels in the Act will then appeal to the Labour Court against the determination of the last determining authority.

It is noteworthy that the Labour Court is not a court of first instance, but an appellate court. In all those processes, the appeal should be made within twenty one days from the date of receiving the determination according to the Labour Court rules, rule 15 sub rule (1).

1.8. Effectiveness

Daft (2004) argued that achieving effectiveness is not always a simple matter because different people want different things from the organisation. The Labour Court has its stakeholders who include the Labour Court staff, lawyers, employees` representatives, employers` representatives, unions, and employees, employers, the community and the State. All these stakeholders have different expectations and want different things from the Labour Court, therefore each of them interprets the goals of the Labour Court differently, that is how disputes are handled and its outcome.

Contemporary thinkers like Trudeau (2002) developed non-statistical framework as a criterion for effectiveness. The framework in determining effectiveness looks at speed, accessibility and expertise. When Trudeau developed the yardsticks to determine effectiveness, he was looking at the arbitration system. The researcher adopted the same framework since it was used in ADR, and Labour Court as another method of ADR can also be assessed using the same framework.

1.9. Accessibility

According to Brand *et al.* (1997) the effectiveness aspect of dispute resolution entails that parties should have easy access to the dispute resolution systems. They should know who to approach and how to involve the dispute resolution institutions in their dispute. This was complemented further by Trudeau (2002) who argued that arbitration is accessible if parties have full knowledge of how it works as well as how readily the facilities can be accessed. This includes the knowledge of the procedures and the system in general. Trudeau further notes that accessibility refers to the ease with which disputants can resort to the process without the complication of technical considerations and complex legal paper work. The researcher agrees with Trudeau that the court must be informal

and readily accessible to the offended parties; hence the study investigated from both employees and employers if they know about the Labour Court, and also find out if they have the full knowledge of its operations.

Representation is also another issue of accessibility of the Court. According to the Labour Court rules, representation was defined as "means an official or employee of a registered trade union or employer's organisation representing a party who is a member of that trade union or employer's organisation". The study focused on third party people was capable of representing their clients.

2. SPEED

The speed with which a system operates in dispensing justice is a paramount feature of justice delivery and effectiveness. According to [Trudeau \(2002\)](#) the system of dispute resolution should not be cumbersome. It should allow for expeditious resolution of disputes by not lengthening the dispute resolution process. Justice delayed is justice denied. The study investigated the processes involved when the matter is lodged with the Labour Court till its finality, thus looking at the implications speed have on both parties concerned. Whilst the researchers agree with Trudeau that there should be expeditious resolution of disputes, the study focused on the challenges that hinder the speedy resolution of matters. [Madhuku \(2012\)](#) alludes that, the Zimbabwean labour law does not impose a maximum time limit with which the Labour Court must deliver judgments. He argued that this gap in the law accounts for some of the delays in resolving labour disputes. The researcher is of the view that any long delays in the court process create barriers to justice, hence the old adage "justice delayed is justice denied". Thus the research sought to establish the delays encountered in the matters before they are set down and after judgments have been reserved. Standards emerging from other countries provide a time limit within which a judgment must be made. For example, Section 67(4) of the Malawi Labour Relations Act, 1996 states:

"Every decision, including any dissenting opinion, shall be issued to the parties within twenty-one days of the closing of the final sitting on the matter".

The issue of enforceability of judgments also affects the speed with which matters are determined. Judgments of the Labour Court are not automatically enforceable. Section 92B (3) provides the following:

"Any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrate court, the High Court".

[Madhuku \(2012\)](#) argued that the registration process is laborious and confusing. Many workers are unaware of this requirement and the lapse of time between obtaining the judgment and seeking registration for enforcement may make it impracticable to get an effective remedy. The courts refuse to register the judgments that are not quantified, as an order for reinstatement only that means the employees have to go back to the Labour Court and make an application for quantification, further again waiting for that application to be determined.

Other countries in the region make these judgments automatically enforceable. For instance, in relation to orders of the Industrial Court, the Botswana legislation says in Section 25(2) that:

"A decision of the Court shall have the same force and effect as a judgment or order of the High Court, and shall be enforceable in like manner as such judgment or order".

The study made reference to the above literature in examining the extent to which employees labour in their endeavour to register awards to other courts considering other courts have their backlog as well, and their processes which is different from those processes of the Labour Court.

2.1. Expertise

Efficiency and effectiveness in dispute resolution can only be achieved by human beings. In any system of dispute resolution as noted by [Brand et al. \(1997\)](#) the people staffing the various institutions plays a decisive role in

determining how efficiently and effectively that system works. For it are those very dispute resolvers that must strike the balance between countervailing considerations of practical and informal dispute resolution on the one hand and the maintenance of fairness, justice, impartiality and order on the other hand. Expertise means the competency of the principal actors in the dispute management process. It is critical that these are manned by specialised personnel who appreciate labour law jurisprudence and industrial relations. According to [Bishop and Reed \(1998\)](#) they should be disinterested and neutral parties. This was supported by [Brand et al. \(1997\)](#) who notes that a dispute resolver should be fair, unbiased and independent. Not only the personnel of the dispute resolution system determine, to a large extent, the efficiency and effectiveness of the system, but they also determine the view and the attitude that the employers, employees, employers' organisations, trade unions and lawyers take of the dispute resolution system.

[Madhuku \(2012\)](#) observed that Zimbabwe's Labour Act does not prescribe expertise in labour law as a pre-requisite for appointment as a judge of the Labour Court. Zimbabwe takes the view that any reasonably qualified lawyer or former judge is suitable for appointment. This is a fundamental misconception and is a major area of weakness as there is need at the issue of specialisation. Labour law has become a very specialised, complex and challenging area of the law. Unlike in counterparts across the region labour relations is a pre requisite such as Lesotho's, Section 23(2) of the Labour Code says:

"The President and Deputy Presidents as may be prescribed shall be persons qualified in law with experience in labour relations".

[Madhuku \(2012\)](#) indicates that most current judges of the Labour Court have no expertise in labour law. The majority of them are former magistrates who spent greater part of their legal career in criminal law. The researcher investigated the current Labour Court judges had other qualifications in labour law and experience in the field of labour upon appointment and also investigate if this has an adverse effect on the judgments they pass.

The researcher noted that existing research carried out by various scholars has emphasis on the concept of speed, accessibility and expertise as a result a gap exists in terms of the effectiveness of the Labour Court in terms of statistical framework and also responses by various stakeholders hence that's the purpose of undertaking this research.

2.2. METHODOLOGY

A mixed approach was adopted for this study. According to [Khotari \(2004\)](#) the process of combining quantitative and qualitative research methods is popularly known as triangulation, whilst ([Creswell, 2008](#)) refers to the combination of quantitative and qualitative methods as mixed methods. The qualitative approach helped in collection of non-numerical data. The quantitative approach was used to collect secondary numerical data on matters appealed to the Labour Court, those set down for hearing and those that are still pending. Both qualitative and quantitative methods were used because one cannot analyse issues to do with the effectiveness of the court without probing those that use the facilities or without analysing the statistics.

The research was carried out in Harare, although the Labour Court is also in Bulawayo and Gweru. In this study, the target populations were Harare metropolitan managers as company representatives, Harare employees, Trade Union officials, employees' representatives, lawyers, employees of the Labour Court and judges as experts of the labour law. The study through stratified sampling, convenience sampling and judgmental sampling selected a representative sample of a manageable size. 6 Labour Court staff; 20 employee representatives; and 100 employees who have had their matters dealt with the Labour Court, and those that they have pending matters before the Labour Court. The researchers interviewed 10 lawyers who specialize in labour law; 10 trade union officials; 20 employers and 5 labour court judges were chosen on their seniority.

Data gathering was done through structured interviews which enabled the researchers to discuss with the respondents in their vernacular language and through this most respondents feel free to express their views.

The researchers used self-administered questionnaires for the main advantage that they would then collect all the completed responses. The questionnaire designed consisted of the mixed response type, with both closed and open-ended questions.

For reliability and validity, the draft questionnaire was discussed with about four experts separately for their contribution and comments on the representativeness and suitability. These experts were expected to contribute by ensuring the questionnaire comprised of evaluative questions. This is supported by [Bryman and Bell \(2007\)](#) position that no textbook can take place of a good supervisor. Amendments were then made resulting in rephrasing and rewording of questions and in other cases complete removal of some questions.

Ethical considerations were addressed before, during and after the research process.

2.3. Data Presentation and Analysis

The data was analysed using Miles and Huberman framework of 1994 as it allowed one to engage a continual process of reducing data which would have been collected from in-depth interviews, displaying data in narrative text and diagrams and drawing conclusions and verifications of informant's experience according to the researcher's understanding.

Analysis of quantitative data was done manually as opposed to computer software analysis and the researcher had to physically count and group related responses. The related responses led the researcher to make graphical presentations.

2.4. Response Rate-Questionnaires

A summary of responses from questionnaire is presented in table i

2.5. Response Rate-Interviews

The response rate for the structured interviews is presented in table ii

2.6. Discussion of Findings

[Boinstein and Thomas \(1995\)](#) claim that the Labour Courts are limited by little competence such that there is little invocation of international labour standards as judges do not receive job training on international law. Research revealed that the judges do not receive job training and are not trained on international labour standards. This is in tandem with what the literature highlighted. The judges should be well informed of developments worldwide, and their judgments should be in sync with the international labour standards. The research had revealed that there was need for judges to attend workshops or forums and meet with other judges from other countries as this gives judges an appreciation of international labour standards. The Labour Court staff must also have training with other institutions and organizations for them to have an appreciation of labour and employment law, and since they are the ones dealing with the labour issues before the hearings are done they should also understand the dynamics of industrial relations.

Resources are a vital cog for effective justice delivery. The resource-based view as noted by [Armstrong \(2010\)](#) is primary in the determination of policies and procedures. Labour Court libraries are inadequately equipped with recent textbooks and journals. Thus the judges suffer malfunction of digest of labour law as international sources are scarce. These coincide with what the research had established that there was no library at the Labour Court. The judges were not abreast with current labour developments, particularly in the field of international labour, as they relied on editions of books which have since been revised. There was need for new and updated information. From the research, all judges indicated that they often preside over complex issues and that the field of labour was challenging and evolving, this left the researchers with the impression that their work requires new and updated adequate textbooks because lack of same compromises the court. For justice to be administered fairly and

impartially or seen to be fairly and impartially administered, the presiding officers should apply their mind on their work supported by relevant literature on the subject area. The fully equipped library would go a long way in keeping with the best practices and promote and maintain justice delivery that inspires public trust as envisaged by the mission statement.

Madhuku (2012) points out that the judges' lack the best support in resources (technical and human). All the judges interviewed indicated that they did not have research assistants who could be both an extra pair of hands and brains. This lack of support staff had left judges dealing with issues without developing jurisprudence in the field of labour. The research has noted that the research assistants at the court would improve on the quality of judgments because they would assist the judges to research on judgments. This would relieve much pressure from the judges and make them develop jurisprudence in the labour laws of the country. Thus making the judges produce meaningful judgments that would pass the test of international standards. Thus research assistants would increase the efficiency and effectiveness of the court, and consequently there would be no need to employ more judges. Ahmed and George stated that judges lack technical support; this was supported by Khabo (2008) who noted that most Labour Courts in the region do not have accommodation of their own and the conditions leave a lot to be desired. It was established in the research that the Labour Court did not have a court room, and the place it used was not spacious. Most respondents stated that if magistrates' court has court rooms and buildings better than the Labour Court, this simply meant that the Labour Court was not given the recognition it deserved. This meant that the building affected the perception with which the court should be perceived. A building that is not spacious affects the quality of work in that there would not be enough space to operate from and this compromises the privacy of the person's work. The research concluded that the building had a serious impact on perception, and negative perceptions affect the quality of work.

The research highlighted aspects of reward as a demoralizing factor that affected the workers. According to Armstrong (2010) the aims of reward management are that: "they motivate employees and obtain their commitment and their engagement; help to attract and retaining high quality people the organization needs; create reward processes that recognize the importance of both financial and non-financial rewards; operate fairly and apply equitably". The research revealed that the reward was not motivating staff, and for effectiveness to be achieved the internal customer must be motivated and have will power to carry out the duties. If the internal customer is not motivated, the external customers will not receive value. The research revealed that there is need to be equity in rewarding employees, as fortified in the equity theory of Adams 1965, in which he argued that people are better motivated if treated equitably. There is need to equitably reward the officers of the Labour Court as those with other courts as this motivates them. The *Newsday*, March 3, 2014 states that "Labour Court judges have protested against their working conditions and demanded that their salaries be urgently increased to match their counterparts at the High Court. Labour Court judges said that although the new constitution placed them at the same level with the High Court judges their salaries were still below their counterparts". There was also need to improve non-financial rewards for the Judges. The work-life balance as noted by Armstrong (2010) is a balance between an individual's work and their life outside work. Work-life balance would improve quality of work, morale and commitment. The research revealed that the work of judges was stressing and excessive. Stressing can cause illness and can reduce their effectiveness, thus affecting the speed with which matters should be resolved.

Madhuku (2012) argued that the registration process of Labour Court judgments was laborious and confusing as the court did not enforce its own decisions. The research found out that the Labour Court did not enforce its own judgments, thus affecting its effectiveness as it does not have any power. The failure by the court to enforce its own decision affected the speed with which the matter was dealt with. To have other courts to enforce the judgments of the Labour Court is a frustrating process and it militates against speed. This flies in the face of the principle that there should be finality to litigation. This process stalled matters and the employees are the ones who brunt the

pains of waiting in agony. Literature has indicated that other countries have made the judgments automatically enforceable. For instance in South Africa, section 163 of the Labour Relations Act, 1965 says:

“Any decision, judgment of the Labour Court may be served and executed as if it were a decision, judgment or order of the High Court”.

The research has noted that the provision of the Labour Act Chapter (28:01) section 92B (3) and the contents envisaged in this provision is in stark contrast with section 2A subsection 1 (f) of the same Act which states that “...securing the just, effective and expeditious resolution of disputes and unfair labour practices”. The provision of section 92B (3) has the consequences of delaying procedures and leading to multiplicity of court proceedings which affects the employees as the delays caused are unnecessary. The research has also noted with concern that employees who work for government have problems in registering the judgments against the state, as the state is protected by State Liability Act. This means that the property of the government cannot be attached, and this reduces the judgments produced by the Labour Court against the state to a *brutum fulmen* (empty judgments). This leaves the state the victor against the weak, and employees will be at the mercy of the state whether it wants to pay timeously or not. Amending the provision in the State Liability Act can have detrimental repercussions to the government which is often the subject of litigation by its workers. The inherent chaos characterized by such provision is neither undesirable nor accidental for the government because it favourably works for them. It defeats the pluralist ethos it had envisaged because social justice and workplace democracy is not achievable when the strong tramples upon the weak.

Saharay (2011) noted that the Labour Courts have no supervisory jurisdiction that empowers them to act as both a custodian and guardian of employment law. This was complemented by Madhuku (2012) who states that the Labour Court has no supervisory oversight over the work of arbitrators other than through appeals against awards on a question of law. The research complemented the literature in that the Labour Court did not act as a guardian of employment law. Most arbitrators do shoddy work and they are not monitored, the Court complains and barks but it is a harmless bark after all. This lack of supervisory role has made the role of the Court to that akin to a fire fighter who responds when the fire breaks out. Most of the disputes if properly done would be finalized at arbitration, which was the intention the legislature had in mind not to over burden the courts. The courts should be empowered to monitor the work of the arbitrator and have the powers to renew or not to renew the practicing licenses of those arbitrators who will be competent or not.

The study identified challenges that had been discussed in the foregoing paragraphs namely knowledge and skills gap; resources; motivation; enforcements of judgments and poor arbitral awards among others. The challenges identified hindered the effectiveness of the Labour Court in terms of resolving the matter with speed. The challenges delayed matters, and mostly they frustrated not only the parties to the proceedings but also the staff at the Labour Court. The challenges affected the quality of the judgments which is the end product every stakeholder is concerned about.

Madhuku (2012) stipulated that there is perennial increase of workload for Labour Court judges which had adverse effects on expeditious resolution of matters. Research revealed what the literature has stated that the Labour Court judges have increased workload which affects expeditious resolution of matters. Schneider (2002) noted that the judicial workload would be measured as the number of cases filed during the year per judge employed. The figure has shown that in year 2012, 1712 cases were appealed at the Labour Court and only 536 were finalized during that year, whilst in the year 2013, 1458 cases were reported and 719 were completed. The figure of cases pending by 30 August 2014 showed an increase in the workload of judges. The figure of pending cases was 2211 and it is frightening to imagine that the workload expects only 12 judges to clear it with quality judgments being produced and in the process develop labour jurisprudence. There was serious understaffing of the judges at the Labour Court as evidenced by the jurisdiction they covered. Only twelve judges covered five provinces namely Harare metropolitan province, Mashonaland East province, Mashonaland Central province, Mashonaland

West province and Manicaland province, and there are more than 30 districts in the five provinces. The understaffing meant that the Court was not able to hear cases as quickly as desirable. Chinamasa, the then minister of Justice and Legal Affairs said “the challenge is that not everybody wants to be a judge as we don’t pay well. The issue of remuneration is still a challenge because we approached some lawyers and they declined the offer because of salaries”, *Newsday*, March 7, 2013. The remuneration offered was failing to attract talent which could help the court deal with issues of backlog. As long as the JSC did not develop reward strategies that would attract talented personnel who would help in presiding over the cases, the number of pending cases would still sky rocket to shocking levels. The recruitment of other judges into the system would help in speedy resolution of matters, reduction of backlog and also reduce the workload on the sitting judges. As noted by the Chief Justice when he states “each year, more cases are being filed with the court than the number of judgments and orders coming out of that court. I have, on previous occasion, expressed my disquiet about the structure of the Labour Court, which in my view contribute to the uneven flow of work in the unending backlogs”. The figure of 2012, which was 1246 at the end of the year shows that the backlog is increasing instead of decreasing because on 31 December, 2013 the figures of pending cases were at 1657. In year 2013, 1458 cases were appealed and 1364 cases were finalized, this is what the Chief Justice was referring to when he said the number of cases appealed far outweigh those completed. The statistics at the Labour Court suggests a system that is not well functioning because every month cases pending increases instead of being reduced and as noted by the Chief Justice, the system contributed to the unending backlogs.

The research revealed that there were cases pending at the Labour Court dating back as far as 2005, and that these matters could not be set down because the record was incomplete. According to [Saharay \(2011\)](#) the Labour Courts lacked supervisory jurisdiction that empowers them to act as both a custodian and guardian of employment law. Literature has shown that the Labour Courts are not empowered to act as a guardian of employment law, and this is what the research found out. The speedy resolution of matters at the Labour Court is at the mercy of arbitrators, and they dictate the pace with which matters are dealt with. To put the life of struggling employees in the hands of arbitrators while the court watches and folds its hands doing nothing is reducing the court to be ineffective, taking away the superiority status the legislature has provided it with. For speedy resolution to be achieved, the court should be given arresting powers to deal with arbitrators who do not furnish the court with the record as and when it is required. When matters come to court, the parties involved want finality and to have arbitrators indirectly controlling the Labour Court is a serious cause for concern.

To avoid backlog, the processes at the Court should be electronic. The manual system that still existed at the Court and considering the workflow was overwhelming for employees. There was need for technology at the Labour Court, in this day and age it is prudent that the Courts be computerized and this would make life easier to both staff and external stakeholders because they could acquire any information they want at the click of a button. The research revealed that currently the Court had serious shortage of manpower, and with the staff they have today if the court was to be computerized the level of work would be manageable. A lot of time was spent looking for the records, filling documents and this was tiresome and stressing.

The research has shown that the economic meltdown caused backlog at the court. Most industries were operating at 30% production and many companies were closing. There was need for government to formulate policies that would attract investors and bring stability to the economy. Both actors in industrial relations were suffering because the economy was hitting hard on them. [Schneider \(2002\)](#) states that from 1980-2000, resolved cases in Germany were 100%, this is a stable economy and disputes that are handled at the Labour Court will be very few. The statistics of cases that were appealed to the Labour Court in 2005 would validate the argument because during that period the economy was stable and many employees were not breaching the law willy-nilly.

The backlog had debilitating effects to parties concerned. Backlog affects the speedy resolution of matters. The speed with which a system operates in dispensing justice is a paramount feature of justice delivery and a key feature

of effectiveness. According to [Trudeau \(2002\)](#) the system should allow for expeditious resolution of disputes by not lengthening the dispute resolution process. Justice delayed is justice denied. The research has revealed that there are matters dating as back as 2005 still pending. From the respondents, they stated that their matters took more than a year to be set down, and some indicated that their cases were still pending from 2012. According to Labour Court rules SI 59 of 2006, it takes at least 60 days for a matter to be set down, but with the volumes of work the matters inevitably take longer, thus the backlog is a barrier to justice. Though [Madhuku \(2012\)](#) claims that, the Zimbabwean labour law does not impose maximum time limit for the Labour Court to deliver judgments, hence delays in resolving disputes. The findings of the research did not agree with Madhuku because the JSC has its code of ethics. Section 19 of the Judicial Code of Ethics Regulations 2012 states that:

“(1) Where a judgment is reserved to be delivered on notice, the judicial officer shall use his or her best efforts to ensure that such judgments is delivered within the next ninety (90) days and, except in unusual and exceptional circumstances, no judgment shall be delivered later than one hundred and eighty (180) days from the date it was reserved.

(2) Where a judicial officer reserves judgment in any case and the judicial officer has reason to believe he or she will not be able to render judgment within the ninety-day period referred to in subsection (1), he or she shall inform his or her head of court or division of that fact.

(4) The Chief Justice may, by a practice note, reduce the maximum periods within which judgments must, in terms of this section shall be delivered.”

This is in harmony with some of the regional countries. For example’ Section 67 (4) of the Malawi Labour Relations Act, 1996 says:

“Every decision, including any dissenting opinion, shall be issued to the parties within twenty-one days of the closing of the final sitting on the matter”.

However, the research had noticed that the provision in the code of ethics was not included in the Labour Act, and is of the view that it should be included in the Labour Act, so that all stakeholders can be aware of its existence.

Backlog at the Court and assess its effects in dispute management was also of interest in the study. Backlog had adverse effects on employees because they could end up giving up on their matters. The delays take away justice from the ordinary man because many end up relocating elsewhere to fend for their families. Employees might be engaged in their area where they would have relocated and new commitments might not permit them to pursue their matters, and still these cases would be counted as pending backlog. Many companies have closed down, and the directors have relocated elsewhere and the cases are still pending and those judgments risk to be reduced only to being academic as they cannot be enforced. The Labour Court is a court of bread and butter issues, and the matters must be resolved with speed. In most cases if the employee is dead, balance of probability is high that the surviving spouse and children will not make a follow up on the case; the case too will die a natural death. Backlog negatively affected the speed with which matters were handled at the Labour Court. The rules of the Court according to its procedures allowed speed resolution of matters, but that was not attainable because of the ever increasing workload.

Accessibility to the offended parties both through its geographical locations and procedures was of an interesting feature of the study. The research had revealed that the Labour Court was not easily accessible to offended parties through its geographical locations. The court covered Harare metropolitan province, Mashonaland Central province, Mashonaland East province, Mashonaland West province and Manicaland province. The longest distance of other provinces to Harare is about 300 kilometres, and distance and money has the disadvantage of deterring people from travelling to Harare. [Brand et al. \(1997\)](#) argued that the effectiveness aspect of dispute resolution entails that parties should have easy access to the dispute resolution systems. This was complemented by Trudeau who argued that systems of dispute resolution are accessible if parties can readily access the facilities. The research exposed the inaccessibility of the court, and from all the respondent’s views, it was established that what

literature pointed out about the accessibility should exist so that people could feel that they have justice at their door steps. Justice should not be away from the people, more so the poor. The geographical locations have adverse effects to the common people because the distance itself is a barrier in attaining cheap justice. Though not established by the research, the balance of probability was high that there were many people who had been or are being treated unfairly in other parts of the country but distance had deterred them to approach the courts. In the back of their minds they were convinced beyond reasonable doubt that justice and courts are for the rich. The specialized courts were established to deal with labour disputes, in the process dispensing equity and labour justice in the employment relationships. The equity is not attainable if distance is a barrier, thus labour justice comes with a price contrary to the objectives with which it was formed. The geographical locations of the courts favour those with resources and they would want the status quo to be preserved. The idea of establishing circuit courts was noble, the idea was to make the circuit court a viable path to accessibility and reducing backlog, hence bringing justice to the people. The research noted that though matters were set down, it slowed down the process of which matters were disposed of in that province thus the circuit court is a mirage of justice. The research observed the need of having a resident Judge in each province.

According to [Brand et al. \(1997\)](#) it is almost axiomatic that the ideal labour resolution system should be free, or, at the very least, inexpensive. The practice direction number 1 of 2014 requires that a party who lodges an appeal or application before the Labour Court to deposit with the sheriff as security of services of all notices of set down of matters, if one does not pay the costs, the appeal or application will be deemed to have been abandoned and shall not be set down for hearing. The research observed that the practice direction number 1 of 2014 had sharply contradicted with what ideal labour dispute should be like-free. It has gone against the principle of the State in dispensing equity as was stated in the case of *Marcussen and Cocksedge vs. Dzikuti LC/H/53/05*, where Hove P said that the Labour Court was created “to dispense simple, cheap and industrial justice....” While the court needs money to run its administrative business, it should balance their needs and the plight of the employees taking into cognizance the fact that there are out of employment.

The Labour Court rules S.I 59 of 2006 rule 12 (1) and (2) affirm the informal and inflexible character of the Labour Court required under section 90A (1) which states that ‘the court shall not be bound by the strict rules of evidence and the Court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party’. In *Kurwaisimba vs. Windmill (Pvt) Ltd LC/H/42/06*, Musariri P held that the Court was not bound by the strict rules of evidence. Hove P aptly put it in *Guyo vs. Trans Africa Timber Merchants LC/H/246/04* by stating; “the Labour Court is an informal court, which is not restricted by the usual rules of evidence, as in the case of other courts. It is not concerned with technical issues but concerns itself with substantive issue of justice and fairness”. This was reinforced by [Trudeau \(2002\)](#) who argued that accessibility refers to the ease with which disputants can resort to the process without the complications of technical consideration and complex legal paper work. The research discovered that the Labour Court was a friendly court and that the parties could resort to the process without the complication of technical consideration. All the respondents who have had access to the court and court proceedings gave thumbs up to the court procedures. The court was doing a tremendous job by relaxing the procedures and makes it a court of the people.

Representation of parties was an important issue in making the court accessible. According to the Labour Court rules, representation was defined as; “means an official or employee of a registered trade union or employer’s organization representing a party who is a member of that trade union or employer’s organization”. This is in line with section 92 (b). Research established that consultants and members of the workers committee are not allowed to represent parties in the court. Available literature has supported that in the case of *Bothwell Rutsvara vs. Lucullus (Pvt) Ltd LC/H/38/08* where it was held that consultants are not permitted to represent parties in the Labour Court. The research revealed that the current set up at the Labour Court should continue where consultants are not allowed to represent parties and differ from what the literature says. [Gwisai \(2006\)](#) argued that this archaic

provision of not allowing consultants to represent employees is designed to protect the monopoly of bosses and lawyers over legal services and has no place in modern legislation. Research observed that lawyers have their professional body which is the law society, and it regulates the ethical conduct, behaviour and pricing of the lawyers. It sets the qualifications one needs to be a lawyer, and the unionists are governed by their unions in terms of ethical conduct. Currently the consultants do not have their own body that sets required ethical conduct and behaviour expected of them, and more so there is no available body to set the minimum requirements as regards qualifications. To allow them to represent employees in the current set up no matter their qualifications and experience will cause problems as they are not regulated and they can get away with anything to the detriment of employees and the interest of justice.

The research revealed that the Labour Court Judges were not promoted on the basis of having a special qualification in the field of labour law and industrial relations. This supports what the literature says, [Madhuku \(2012\)](#) claims that most current judges of the Labour Court have no expertise in labour law. As noted by most respondents that on appointment the judges did not have experience and this tends to affect the quality of judgments they produce. Most respondents and the judges themselves agreed that most judgments lack the test of quality, and most trade unionists, and some lawyers and employers attributed the lack of quality on experience. The judges stated that the volume of work they had and the time with which to produce judgments as stipulated in the JSC code of ethics affected their quality because they would be having a deadline to beat, and also coupled with lack of resources. The research revealed that there was need to include specialization as labour law was a very complex and challenging field. The research agreed with what other countries have done so as to increase effectiveness. In Lesotho, section 23(2) of the Labour Code says:

“The President and Deputy Presidents as may be prescribed shall be persons qualified in law with experience in labour relations”.

2.7. Conclusions

This study focused on assessing the effectiveness of the Labour Court in labour dispute management in Zimbabwe. The research highlighted that the huge backlog of cases pending at the Labour Court and the geographical locations had a negative impact on the effectiveness of the court. The Labour Court was partially effective in labour dispute management in Zimbabwe in terms of speed and accessibility. In terms of expertise, the inquiry concluded that there is need for continuous job training for the judges and to consider in recruiting judges who have experience and qualifications in labour law.

2.8. Recommendations

Based on critical issues that arose from the empirical findings, this section proposes what needs to be done and to be in place for the Labour Court to be effective in labour dispute management.

- Establishment of a Labour Appeal Court would ease pressure on the Supreme Court and expedite finalization of appeal.
- The Labour Court should have the powers to enforce its own decisions. One has to register the decisions with the High Court or magistrates' court; this involves costs and lengthens the justice delivery process.
- The Labour Court should have exclusive jurisdiction in all labour matters and this has to be expressly provided for in the Act. Thus section 89 (1) should read “the Labour Court shall have original and exclusive jurisdiction in all labour matters”.
- The Labour Act, section 92, should take into account the representation from companies. They should allow any person whose representation shall be accompanied by a company resolution nominating the said representation to represent the company.

- There is need to introduce a provision to facilitate the punishment through criminal or otherwise for arbitrators or employers who fail to furnish the Registrar's office with the relevant documents for the preparation of an appeal record.
- There is need to establish a functional library for the court that is well stocked with recent textbooks and journals including international sources.
- There is need to provide the court with the research assistants.
- There should be prescribed qualifications and competences of the Labour Court judges to include experience in labour law and also continuous training on labour law for those already in the office.
- Labour Court should computerise. The Court should also have recording machines.
- There is need to decentralize the Labour Court to every province for easy accessibility and allocate adequate resources.
- The Labour Court should be given powers to supervise arbitrators and they (arbitrators) should be under the JSC or there is need to establish an independent body that monitors the conduct and work for arbitrators.
- There is need to improve on the reward management to include both financial and non-financial rewards. There is also need for equity pay for Assistant Registrars.
- The court should have enough manpower to be able to deal effectively with the pending cases. The Labour Court must have inherent power to protect and regulate its own process and to develop the common law or customary law taking into account international law principles and principles of justice.
- The Labour Court must have powers to issue declaratory and interdict orders.

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