



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Cause 21 of 2010

KENYA UNION OF JOURNALISTS AND

ALLIED WORKERS.....CLAIMANT

VERSUS

BRITISH BROADCASTING CORPORATION

MONITORING EAST AFRICA UNIT.....RESPONDENT

JUDGEMENT

The Claimant has filed a claim on behalf of her members who are employees of the Respondent. The claim seeks this court's order regarding some items which the parties herein have disagreed with respect to the Collective Bargaining Agreement (CBA) for the period 1-8-2009 to 31-7-2011.

The items which are outstanding include Redundancy, Leave Travelling Allowance, Retirement, Wage Schedule, Housing and Wage Increment.

When the matter came up for hearing in Court, the parties agreed to seek help from the Central Planning and Monitoring Unit (CPMU) of the Ministry of Labour. The CPMU filed her report on 29-4-2012. The report is dated 27-4-2010.

The claimant did not call any evidence but relied on their pleadings and the Central Planning and Monitoring Unit's report. Mr. Namasake for the respondent did not call any witnesses but relied on the memorandum of response and made detailed oral submissions in court.

He admitted that the parties herein have a Recognition Agreement. That the parties had agreed on all the issues except a few. That it had been agreed that the commencement date of the Collective Bargaining Agreement was 1-8-2009.

He urged the court to consider his proposal on the disagreed issues as follows:-

(a) Redundancy:-

On this issue he submitted that the Collective Bargaining Agreement for Nation Group and Standard Group provided for 15 days pay per year of service. The Respondent had, however increased it to 16 days per year of service while the claimant insisted on 26 days.

(b) Leave Travelling Allowance:-

On this item, Mr. Namasake submitted that the period had lapsed and the respondent had already paid the commuter allowance to the employees even when they were on leave.

(c) Retirement:-

On this issue, the respondent submitted for 55 years as the retirement age. That the extension of the retirement age in Kenya was by a circular and not by the law as it is the case in the United Kingdom.

(d) Wage Schedule:-

On this issue, the respondent has only considered journalists in the Collective Bargaining Agreement. She has proposed Kshs.50,000/- and Kshs.90,000/- per month as the entry point for the Monitoring Journalists and the Senior Monitoring Journalists respectively.

(e) Wage Increase:-

The Claimant has demanded 30% wage increase per year. The respondent, however submitted for zero increment because the respondent was dependent on the government funding. Mr. Namasake ended by asking the court to grant 2% increment in salary only for the second year of the Collective Bargaining Agreement and not to back date it.

(f) House Allowance:-

The respondent submitted that the same was part of the consolidated salary.

In reply to the respondent's submission, Mr. Onwonga for the claimant agreed that the commencement date was 1-8-2009. He, however submitted that the respondent ought to have set apart money for salary increment. That increment should be backdated in order to compensate the years when the workers missed salary increment.

According to Mr. Onwonga, the Central Planning and Monitoring Unit report, the proposed yearly increment is 17.2%. He asked the court to uphold the increment proposed in the Central Planning and Monitoring Unit's report. He admitted that the salary paid to her members was consolidated which included House Allowance.

I have considered the pleadings and the submissions by the parties. I have also considered the Central Planning and Monitoring Unit's report on record and dated 27-4-2010. In my view, the issues for determination are:-

(a) Whether the mandate of the Claimant extends to the respondent's employees who are not journalists?

(b) What should be the court's award on the six (6) contested items of the draft Collective Bargaining Agreement (CBA)?

On the first issue, it is obvious from the Recognition Agreement that the intention of the parties thereto was that the Trade Union was to champion the interests of the journalists who were members of the union and who were employees of the Respondent. However, it is on record that before the first Collective Bargaining Agreement could be agreed on, the Claimant changed her name in what appears to have been intended to bring on board other employees of the Respondent who were not journalists. That did not go down well with the Respondent and that led to the dispute being lodged by the Claimant with the Minister.

The conciliator proceeded and some of the contested issues were resolved leaving only a few.

There is nothing, however, to show that the conciliator ever arbitrated upon the issue of the Claimant having the *locus standi* to agitate for the interests of non-journalist staff members.

In my view, the Claimant abandoned the issue of whether she could agitate for the non-journalist employees of the respondent. The deliberations which followed upto the dispute before me do not include non-journalist employees of the Respondent. Consequently the outcome will only bind the journalists who are members of the claimant by virtue of the Recognition Agreement between the claimant and the Respondent.

In my keen observation the basis of the claimant's mandate to represent the other workers of the Respondent who are not journalists was not demonstrated in evidence. One would have expected the claimant to show that the conciliator resolved the matter in favour of the claimant's expanded mandate, or that a new Recognition Agreement had been signed to include the non-journalists or at least a copy of the Constitution of the Claimant showing the mandate to represent the said non-journalist employees.

As regards, the second issue, I will consider each item systematically.

(a) Redundancy:-

The claimant demanded thirty (30) days per year of service and later reviewed to 26 days. The respondent proposed 15 days but later added to 16 days per year of service. A perusal of Appendix A6 of the Claimant's further supporting documents, there is evidence that elsewhere BBC redundancy rate is 30 days per year of service. Section 40(1)(g) of the Employment Act 2007 provides for a minimum of 15 days severance pay per year of service. I will direct the parties to provide for 21 days in the CBA which is the average of their offers and which is within the statutory bounds.

(b) Leave Travelling Allowance:-

The Claimant now demands Kshs.20,000/- after reviewing downwards her initial demand of Kshs.22,000/-. The Respondent has submitted for no such allowances at all. Her reason for that is because the employees will still be paid the commuter allowance of Kshs.35,000/- even when on leave. In my view, this allowance is only once in a year and it is meant to help the employee to travel home that is to say upcountry within Kenya or outside

Kenya. It is obvious that some of the employees have no choice but to go by Airlines. In my view, the Kshs.20,000/- being sought by the claimant is not enough. I will however, grant Kshs.15,000/-.

(c) Retirement Age:-

The claimant demands voluntary retirement of 55 years and compulsory retirement of 60 years. According to the Claimant retirement in Kenya for Civil Service is 60 years. The Claimant has, however exhibited the Respondent's Employee Handbook which shows that the mandatory retirement age for the Respondent's workers in Kenya is 55 years. I will maintain the status quo of mandatory retirement age of 55 years.

(d) Wage Schedule:-

This refers to the minimum entry point wages. The claimant has demanded Kshs.150,000/- for Monitoring Journalists and Kshs.250,000/- for Senior Monitoring Journalists. That the current entry salary is Kshs.94,000/- and Kshs.147,000/- respectively. The Respondent has offered Kshs.50,000/- and Kshs.90,000/- for the Monitoring and Senior Monitoring Journalists respectively. According to her, the main consideration is the use and interpretation of broadcasts from different languages and proficiency in journalistic skills normally obtained from on-the-job training and her own Internal College of Journalism.

I will not interfere with the *status quo*. I will leave it to the freedom of the parties to agree depending on their qualification and quality of services.

(e) Wage Increment:-

The Claimant is demanding 30% Wage Increment for each year of the Collective Bargaining Agreement to add upto 60% total increment. The basis for the said demand is that the inflation rate in Kenya as at August, 2009 was 26% for the Nairobi Index. The Respondent has offered zero increase in the first year and 2% increase for the second year of the Collective Bargaining Agreement.

Due to lack of proper basis for calculation of cost of living, I will apply the same rate applied by the parties in 2008-2009 of 11% for the second year of the Collective Bargaining Agreement. This means that I will award zero increment for 1-8-2009 to 31-7-2010 but 11% for 1-8-2010 to 31-7-2011.

(f) Housing:-

The Claimant has demanded 30% of the current basic pay. The Respondent has opposed the demand contenting that the basic salary in this case means consolidated salary.

I have confirmed from the Employees' Handbook produced as exhibit CA5 by the Claimant that the Basic Salary includes Housing Allowance. It is, therefore not reviewable independently.

Consequently, I sum up my decision as follows:-

(a) The CBA in issue herein shall only bind the Respondent on the one hand and the Respondent's journalists who are members of the Claimants.

(b) The following shall form part of the CBA for the period 1-8-2009 to 31-7-2011 between the Claimant and the Respondent and the same to be completed in the next 45 days.

(i) Redundancy pay shall be wages for 21 days for each year of service.

(ii) Leave Travelling allowance shall be Kshs.15,000/-.

(iii) Retirement Age shall be 55 years with an option of early retirement at 50 years at the option of the employee.

(iv) Wage schedule shall remain at a minimum of Kshs.50,000/- and Kshs.90,000/- for the Monitoring and Senior Monitoring Journalist.

(v) The Wage Increment shall be zero increment on the first year of the Collective Bargaining Agreement but be increased by 11% on the second year of the Collective Bargaining Agreement, that is to say from 1-8-2010.

(vi) Housing Allowance will not be increased independently from the Basic Salary. The said allowance is deemed to form part of the Basic Allowance whose increment is in accordance with (e) above.

It is my sincere hope that the goose which lays the eggs will not die from the said increases. As a way to promote conciliation, I will direct each party to bear its own costs.

Orders accordingly.

DATED and DELIVERED at Nairobi this 25th day of OCTOBER, 2012.

**Onesmus Makau
JUDGE**