



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Coram: Charles P. Chemmutut, J.,

J.M. Kilonzo & M.A. Warrakah, Members.)

CAUSE NO.66 OF 2003.

KENYA SHOE & LEATHER WORKERS' UNION.....Claimants.

v.

BATA SHOE CO. (K.) LTD.....Respondents.

Issues in Dispute:

- 1. General Wage Increment.**
- 2. House Allowance.**
- 3. Leave Travelling Allowance.**
- 4. Termination of Employment.**

Joseph Bolo, Secretary General, for the Claimants (hereinafter called the Union).

L.W. Kariuki, Senior Executive Officer, F.K.E., for the Respondents (hereinafter called the Company).

A W A R D.

The Notification of Dispute, Form 'A', dated 11th June, 2003, together with the statutory certificate from the Labour Commissioner under Section 14, sub-sections (7) and (9)(e) of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act), were received by the Court on 7th July, 2003. Mr. Bolo for the Union submitted his memorandum on 25th July, 2003, while Mr. Kariuki for the Company filed his reply statement on 17th September, 2003; and the dispute was heard on 6th, 27th and 30th October, 2003.

The Company, which is a limited liability concern and whose principal activities are footwear manufacture and distribution, was incorporated in the Netherlands and it began its operations in Kenya in 1940. The parties have a valid recognition agreement and have also entered into several collective agreements which regulate the terms and conditions of service of the unionisable employees, most of whom are based at Limuru factory while 9 of them are at Mombasa but none in Nairobi. The

present dispute arose when the parties embarked on a review or revision of their latest two years' collective agreement for the period 1st July, 2001 to 30th June, 2003, which was duly registered by the Court on 3rd July, 2001, under RCA No.103 of 2001. The parties met at their own level to resolve their differences on these issues, but disagreed. On 20th May, 2003, the Union reported a formal trade dispute on the said issues to the Minister for Labour in accordance with Section 4 of the Act. The Minister accepted the dispute and appointed Mrs. N.N. Nyaga of Kiambu Labour Office to act as the Conciliator, but during their conciliation meeting held on 11th June, 2003, the parties recorded a deadlock on the same issues. Hence this dispute for consideration and determination.

In his general remarks on the state of the footwear and leather industry, Mr. Kariuki submitted in a nutshell that in the last decade the footwear industry has steadily been experiencing some difficulties, which became critical in the 1990's when the economy was liberalized. He stated that the footwear market was flooded with imported second-hand shoes and cheap quality footwear mostly from the West and South East Asia respectively, which have led to a serious depression of the entire footwear industry. The said imports have increased ten-fold over the levels of early 1990's, thus reducing the market participation of local industries to a very marginal extent, and have also led to a closure of many footwear industries, e.g. Blue Tan, Kamiti Tanneries, Deras Ltd., Barbar Tannery, Kitale Tanners, Bawazir Tannery, Lake Tanners, Kenya Shoe Ltd., Joy Shoes Ltd., Equatorial Ltd., Twenties Manufacturers Ltd., Evershine Shoes Ltd., Pre-socio Ltd., Bulley Industries and Sagana Industries. Furthermore, he said, the rising cost of telephone, power and petrol bills, raw materials and hides, instability of the Kenya shilling, high cost of borrowing, and the influx of counterfeit or look-a-like goods, e.t.c., have adversely affected the footwear industry. In the circumstances, the Company has been unable to effectively compete under such conditions and also against malpractices perpetrated by unscrupulous businessmen, who under-invoice and dump transit goods in the local market. Mr. Kariuki pointed out that the Company has strived to break-even to the extent that it has maintained its pricing structure for most of its products for the last few years and has, in some instances, actually reduced the prices of its products. For some time now, he said, the Company has disposed of some of its assets, including vehicles, in order to meet operational costs, and has also carried out massive sale auctions countrywide and disposed of huge stocks lying in its warehouses and shops at throw-away prices of up to 80% discounts so as to improve on its cash flow in view of the punitive interest rates on borrowing from the banks. The Company has also not been able to purchase new machinery, but instead it retained for use old machinery from its sister companies. However, in order to reduce operational costs, the Company had to close down its rubber factory in August, 2002 due to poor demand of rubber shoes, and this led to hundreds of employees being laid off. It also closed down its Fiber-Board Plant for similar problems. In June 2002, the Company had a workforce of 1,268 employees, but currently its workforce stands at 1,032 employees.

In a nutshell and contrary to the allegations by Mr. Bolo for the Union, Mr. Kariuki vehemently averred that the Company is holding huge stocks of shoes in its warehouses or depots due to low demand of its products as a result of cheap imports and dumping; that the Company is faced with imminent redundancies because of poor business performance and that the Union is cognisant of the problems facing the footwear industry as a whole, and its demands are, therefore, unrealistic and beyond the economic resources and ability of the Company.

In its analysis of this dispute, the Economic Planning Division (which is hereinafter referred to as the EPD) states that the shoe-making and leather-tanning factory of the Company is situated at Limuru, with a clearing depot in Mombasa. The Company has, however, leased out most of its distribution outlets throughout the country, but some of the outlets are being run directly by the Company. The EPD report states further that the Company has set up a manufacturing subsidiary firm in Tanzania and another subsidiary plant known as the Leather Recovery Co. Ltd.; and the Company purchases and sells some specific goods, including machinery, to its sister companies in Eastern and Southern Africa, the Far East and the parent Company in the Netherlands as part of its normal business operations. Some of the materials for the manufacturing process, such as cloth, is obtained locally; but other components, such as rubber, chemical compounds and even some other hides for tanning and leather are imported because of continued exportation of local raw hides and skins to foreign countries.

On employment and labour cost trends, the EPD report shows that the employment levels for all three categories, i.e. unionisable employees, management staff and casual workers, dropped during the period under consideration, i.e. between 2001 and 2002. The level of unionisable employees dropped by 22.6%, i.e. from a total of 1,009 to 781; and that of management staff also dropped nominally by 5.2%, i.e. from 287 to 272 during the same period, while casual workers were reduced from 64 to 30, or by 53.1%. In June 2002, the Company effected some retrenchment when the built-up conveyors for the canvas shoes were closed down; and as at June 2003, the number of unionisable employees dropped further by 3.2 %, i.e. from 781 to 756, while the management staff increased nominally by 4.8%, i.e. from 272 to 285. However, the number of casual workers rose significantly from 30 to 73. Despite the decrease of the workforce during this period, the labour costs for the unionisable employees and the management staff remained almost constant at about Kshs.202 million and Kshs.171 million respectively; but there was a significant drop of the labour cost for the casual workers from Kshs.430 million to Kshs.352 million. The total labour cost, however, rose slightly by 1.1%, i.e. from Kshs.372 million to Kshs.376 million during the period under review; and the EPD forecast that by the end of 2003, there would be a significant increase in labour cost for all categories of employees. Besides the aforementioned direct labour costs, the Company also incurred other extra expenses on health, insurance, residential lighting and security, milk, compound maintenance, NSSF contributions, nursery school, protective clothing, sewerage charges, soaps and detergents, tissue paper and water for domestic use in the estate.

As regards the financial position of the Company, the audited report for the period 2000/2001 and 2001/2002 shows that the

gross revenue increased from Kshs.1.3 billion in 2000 to Kshs.1.64 billion in 2001, an increase of 22.3%, before dropping slightly to Kshs.1.63 billion in 2002, a decrease of 0.3%. However, the Company suffered net losses of Kshs.96.2 million and Kshs.29.3 million in 2000 and 2001 respectively, but made meagre profit of Kshs.4.5 million in 2002. On total assets or stocks, the EPD report shows that in 2002, finished goods, raw materials and work-in-progress were worth Kshs.209.1 million, Kshs.157.1 million and Kshs.38.1 million respectively. But in 2000, 2001 and 2002, the group of companies purchased goods and services from sister or related companies worth Kshs.96.0 million, Kshs.91.7 million and Kshs.76.3 million respectively, and sold goods to them worth Kshs.43.9 million, Kshs.57.1 million and Kshs.53.3 million respectively during the same period.

In view of the foregoing, the Union maintained that the Company was in a healthy financial state because in July-September, 2003, it made new senior appointments, opened new Bata stores and commissioned new production machines. The Union also took exception to the action taken by the Company in sub-contracting part of the work process, i.e. stitching of uppers, to outside enterprises for cheap labour, while it continued to reduce the number of permanent unionisable employees.

On the other hand, the Company insisted that its business performance was poor due to the liberalization of the economy in the early 1990's when massive importation of cheap shoes into the country was experienced. Its operating overheads, which include running of an affluent treatment plant at its Limuru factory, have remained higher than its competitors, who do not pay VAT or import duty for similar goods. Nevertheless, the Company is trying to adjust to the stiff competition by sub-contracting certain aspects of its production process to its related or sister companies in view of the fluctuations in demand of its products.

In *Cause No.22 of 1996* between this Union and *Macquin Shoes Ltd.*, I took judicial notice of the depressed state of the leather industry as a result of stiff competition from cheap imported products being dumped into the local market. I went on to observe that:-

“In fact, the importation of substandard footwear into the country, coupled with the exportation of semi-processed leather (called wet blues) and raw hides to foreign countries, has adversely affected the operations of the entire leather industry and the companies cannot effectively compete in a frustrating market under such conditions.”

With the foregoing in view, I now proceed to deal seriatim with the four issues under consideration and award accordingly.

(1) General Wage Increment.

On this issue, the Union proposed that the current system of fortnightly pay in respect of the 9 grades of the unionisable employees be converted to monthly pay as follows:-

Grade 9 from Kshs.5,135/= to Kshs.7,066/= per month.

“ 8 - “ “ 5,209.75 “ “ 7,168/= “ “.

“ 7 - “ “ 5,612/= “ “ 7,762/= “ “.

“ 6 - “ “ 6,005/= “ “ 8,263/= “ “.

“ 5 - “ “ 6,266/= “ “ 8,622/= “ “.

“ 4 - “ “ 6,325/= “ “ 8,703/= “ “.

“ 3 - “ “ 6,665/= “ “ 9,172/= “ “.

Grade 2 - from Kshs. 6,825/= to Kshs. 9,393/= per month.

“ 1 - “ “ 6,969/= “ “ 9,591/= “ “.

Consequently, the Union prayed that the resultant monthly pay be increased by 38% and 35% for production and auxiliary employees respectively because the present method of payment is detrimental to them.

The Company has pleaded financial inability to meet the demand, but has, however, offered to increase the current pay scales by 3% for the first year and another 3% for the second year, or 6% for the two years' period.

This issue may be divided into two parts as follows:-

(a) As far as the demand for conversion from fortnightly to monthly system of pay, I am firmly of the considered judgement that it is primarily and exclusively the responsibility of the management of the Company to decide as to how best the work should be done, i.e. whether on daily remuneration or contract system or monthly salary. The management may be presumed to know how the work can be performed most conveniently, beneficially and economically. This matter should, therefore, be left to the discretion of the management of the Company. The demand for conversion from fortnightly to monthly system of pay is accordingly rejected.

(b) On the general wage increase, I am clearly of the opinion that, considering the lengthy and unfavourable EPD report, and also keeping in view the aforementioned massive losses that the Company suffered during the period under review due to poor business performance, the demand by the Union for 38% and 35% for the production and auxiliary employees respectively is obviously on a higher side and unrealistic. But the Company's offer is also too low.

In the circumstances, I equitably propose to improve the offer by the Company of 3% each year by a further 3% each year, making it 6% each year, or 12% for the two years period, and I so award.

(2) House Allowance.

Under Clause 15 of the parties collective agreement, the Company currently pays Kshs.1,000/= per month for its employees at Limuru, and Kshs.1,087.50 per month for its employees at Mombasa. The Union demand that these amounts should be adjusted to Kshs.2,000/= per month for all employees irrespective of their place of work, against the Company's offer of Kshs.1,070/= and Kshs.1,163/= per month for its employees at Limuru and Mombasa respectively.

In support of the Union's demand, Mr. Bolo submitted that majority of the Company's employees, who stay with their spouses, reside in Limuru town, where rents range between Kshs.2,000/ and Kshs.5,000 for a single room. He cited Slapper Shoe Industries Ltd., Macquin Shoe Ltd. and Bulleys Tanneries Ltd. which pay on this item Kshs.1,900/=:, Kshs.2,200/=:, Kshs.2,000, Kshs.1,900 respectively as comparable concerns. Therefore, he said, the employees require decent accommodation for which the Company should pay reasonable rent.

Mr. Kariuki for the Company opposed the demand on the ground that it was outrageous and also completely out of focus in so far as the Wage Guidelines are concerned. He submitted that Limuru is a small rural agricultural town, where the cost of living is still low and affordable and the competition for housing does not exist. In any case, most of the employees live in their nearby homes within a radius of 1 km. to 3 km. where they pay nothing towards house rent, water and electricity.

Mr. Kariuki, therefore, prayed that the offer by the Company be upheld.

The EPD report shows that a total of 288, or 38.3%, of the unionisable employees are housed by the Company, while 464 of them are not, but receive house allowance for their either single or double roomed units at Market area, Likiluthi House, near Limuru Nursing Home, next to the factory gate, Ndungu Njenga's, Edwards, Jerusalem, Stephen's PT. near Catholic Church, Mukurino Estate and Kamirithu, where, according to the Company, the rents range between Kshs.200/= and Kshs.2,500/=. The older houses for unionisable employees at Bata village are permanent one-roomed units with shared facilities, while the newer ones are two-roomed units with their own facilities which are provided by the Company, e.g., free water for domestic use, and maintenance of the nursery, general compound, social hall and stadium. The unionisable employees' house allowance bill rose from Kshs.6.2 million in 2001 to Kshs.7.4 million in 2002, while the management staff's house allowance bill also dropped from Kshs.9.0 million to Kshs.8.9 million during the same period. Thus, the total house allowance bill rose from Kshs.15.1 million in 2001 to Kshs.16.3 million in 2002. It is stated in the EPD report that the Union's demand would raise the 2002 house allowance bill by Kshs.5.6 million, while the Company's offer would raise the same by Kshs.390,400/=. But the consumer price indices entitlement would raise the house allowance bill by Kshs.594,300/=.

I have observed on several occasions before on this issue that decent and reasonable accommodation is scarce and unaffordable, particularly in urban centres, and landlords have been quick to exploit the situation to the disadvantage of the

public, especially employees of low income wages or earnings. But it is incumbent upon every employer to provide reasonable accommodation, or pay sufficient rent, to each of his employees as provided for under Section 9 of the Employment Act, Cap. 226, Laws of Kenya, which states, *inter alia*, as follows:-

“Every employer shall at all times, at his own expense, provide reasonable housing accommodation to each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, or rent, in addition to his wages or salary, as will enable the employee obtain reasonable accommodation.....

On careful consideration of the submissions by the parties on this issue and keeping in view Wage Guideline 2(ii) and (iv) and the above legal obligation imposed upon every employer, I am inclined to hike the current house allowance rates of Kshs.1,000/= and Kshs.1,087.50 per month for employees in Limuru and Mombasa respectively by Kshs.120/= across the board, to make them Kshs.1,120/= and Kshs.1,207.50 per month respectively, and I award accordingly.

(3) Leave Travelling Allowance.

Clause 31 of the parties collective agreement provides that:-

“An employee proceeding on authorised annual leave shall be entitled to a leave travelling allowance of Kshs.1,100.00 when proceeding on leave.”

The Union demand that the present leave traveling allowance be raised to Kshs.1,800/= against the Company’s offer of Kshs.1,182.50.

In support of the demand, Mr. Bolo submitted that the present amount is inadequate while there has been a steep rise of fares, and for this reason the employees are unable to proceed on the annual leave. He pointed out that the following comparable concerns give better leave travelling allowances:-

Slapper Shoe Industries. Kshs.2,000/=.

Bulleys Tanneries Ltd. “ 2,166/=.

C. & P. Shoe Industries. “ 2,185/=.

Mr. Bolo, therefore, prayed that an award be made in terms of the demand by the Union.

Mr. Kariuki submitted that the offer by the Company is adequate because majority of the employees come from the surrounding areas.

The EPD report shows that the Union’s demand would raise the current annual leave allowance of Kshs.831,600/= to Kshs.1,360,800/=, an increase of Kshs.529,200/= per year, while the Company’s offer would raise the same to Kshs.893,970/=, an increase of Kshs.62,370/= per year.

Unfortunately, the EPD report does not show any fares of various destinations; but in my considered opinion and taking into account the escalating and unpredictable transport costs, I award that an employee be paid Kshs.1,250/= as leave traveling allowance when he or she proceeds on annual leave.

(4) Termination of Employment.

Clause 5(2) of the parties collective agreement states as follows:-

“When any employee suffers a normal termination after 10 years he/she should be paid 15 days pay for each completed year of service. This shall not be applicable to employees who terminate their services through resignation.”

The Union proposed that the 15 days pay for each completed year of service be raised to 30 days pay for each completed year of service, and that the 10 years qualifying period be reduced to 3 years. Mr. Bolo submitted that the current 15 days pay for each completed year of service is unreasonably low and the 10 years qualifying period too long. He also took exception of the Company’s assertion that it would take about 8 years to train a skilled shoemaker.

Mr. Kariuki pleaded for status quo on the ground that the current provision is generous. He pointed out that it takes about 8 years to train a skilled shoemaker and that the proposed period of 3 years by the Union is too short. Mr. Kariuki averred further that there are also other provisions in the parties collective agreement, e.g. retirement age, retirement on medical grounds, redundancy, e.t.c., which are beneficial to the employees.

The EPD report shows that 32.8% of the unionisable employees have served the Company for 10 years or more, almost 45% for between 3 and 9 years, and a further 22.3% for less than three years. Furthermore, about 200 unionisable employees, who are employed on renewable contract terms, enjoy all the other fringe benefits available to permanent unionisable employees, except benefits under the terminal benefits clauses.

I think that the Union’s demand is unreasonably high, and the Company’s nil offer is unacceptable. In my considered opinion, the 10 years qualifying period is fairly adequate, but I feel constrained to enhance the 15 days pay for each completed year of service, to 21 days pay for each completed year of service, and I so award.

On request for a written opinion or advice in this case, the members of the Court were unable to render the same.

DATED and delivered at Nairobi this 24th day of March, 2004.

Charles P. Chemmutut,

JUDGE.