



IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI.

(Before: Charles P. Chemmutut, J., J.M. Kilonzo & J.C. Odaga, Members.)

CAUSE NO. 110 OF 2001.

TAILORS & TEXTILES WORKERS' UNION.....Claimants.

v.

THIKA CLOTH MILLS LTD Respondents.

Issue in Dispute:-

Dismissal of:-

- | | | |
|----------------------|---|------------|
| 1. David Mwanzia | - | T/No 2623. |
| 2. Harrison Khanga | - | " 2509. |
| 3. Francis Mukanda | - | " 7914. |
| 4. John Mutisya | - | " 2674. |
| 5. Julius K. Makhoka | - | " 1734. |
- Cosmas Okong'o Orowe for the Claimants (hereinafter called the

Union).

J.N. Namasake, Principal Executive Officer, F.K.E., for the

Respondents (hereinafter called the Company).

A W A R D.

The Notification of Dispute, Form 'A', dated 24th October, 2000, together with the statutory certificates from the Labour Commissioner and the Minister for Labour under Section 14 (7) and (9)(e) and (f) of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act), were received by the Court on 21st September 2001. The Union submitted its memorandum on 7th May, 2002, while the Company filed its reply statement thereto on 29th July, 2002. The dispute was heard on 3rd and final submissions were made on 14th July, 2003.

Messrs. David Mwanzia, Harrison Khanga, Francis Mukanda, John Mutisya and Julius K. Makhoka (who are hereinafter called the grievants) were employed by the Company on 26th August, 1980, 17th December, 1972, 31st October, 1981, 19th June, 1984 and 1st October, 1979, respectively, and were all summarily dismissed on 20th July, 1999 for negligence, i.e mixing grade A and B of khangas. The Union approached the Company for an amicable settlement of the matter, but no compromise was reached. On 23rd September, 1999, the Union reported a formal trade dispute to the Minister for Labour pursuant to Section 4 of the Act. The Minister accepted the dispute and appointed Mr. G. Kamicha of Thika Labour Office to act as the Investigator; and, on the basis of the investigation, the Minister released his findings and recommendation to the parties on 18th September, 2000, wherein he found and recommended as follows:-

“FINDINGS.

.....that packing of the bales did not rest with the 5 employees.....even though the customer complained there is no proof of the extent of the damage.

..... that these experienced workers who had worked overtime did not have any serious shortcomings they were at the verge of retirement the management was contracting most works at the factory which had proved cheaper and faster, unlike when the old employees did it.

In view of the foregoing, it is clear that the management intended to reduce the permanent and old employees to sub-contract most jobs.

RECOMMENDATION.

..... I recommend that the Claimants' (grievants') dismissal be reduced to normal retirement in accordance with the parties Collective Bargaining Agreement.

In addition, they should be paid four (4) months salaries as compensation for loss of employment”.

Finally, the Minister appealed to the parties to accept the findings and recommendation as a basis of resolving the dispute. The Union accepted the same but the Company rejected them on the ground that its submissions were not fully reflected in the findings and that the parties did not exhaust the dispute negotiating machinery or procedure.

There is no reason to dilate upon the submissions of the parties; but suffice to say that during the proceedings of this dispute, the Company accepted normal termination of the grievants and offered to pay them the following terminal benefits, including 5 months' notice pay under Clause 12 of the parties' collective agreement:-

1. David Mwanzia	Kshs.	38,521.30
2. Harrison Khanga	”	37,972.10
3. Francis Mukanda	Kshs.	37,243.65
4. John Mutisya	”	34,335.85
5. Julius K. Makhoka	”	49,620.50

The Union rejected the offers on the ground that they did not include the four (4) months' compensation as recommended by the Minister for Labour.

In this case, the circumstances of the summary dismissal of the grievants are not in dispute. However, the Company has accepted to give them normal termination of service and to pay them the aforementioned terminal benefits. But in my considered opinion, the grievants are also entitled to compensation for loss of employment.

This being the case, and taking into account the lapse of five (5) years since the grievants were summarily dismissed from service, I am of the view:-

(i) That the summary dismissal be reduced to normal termination of service and the grievants be paid their terminal benefits as stated hereinabove.

(ii) That, in addition, they be paid four (4) months' salary each as compensation for loss of employment as recommended by the Minister for Labour, based on the terms of the collective agreement in force at the material time.

I so award and order.

I sought, considered and accepted the advice or opinion of the two members of the Court in arriving at this decision.

DATED, delivered and signed at Nairobi this 15th day of September, 2004.

Charles P. Chemmutter,
JUDGE.