



**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI.**

**(Coram: Charles P. Chemmutut, J.,**

**J.C. Odaga & J.M. Kilonzo, Members.)**

**CAUSE NO. 10 OF 2001.**

**KENYA UNION OF COMMERCIAL, FOOD & ALLIED WORKERS.....Claimants.**

**v.**

**AVERY KENYA LTD.....Respondents.**

**Issues in Dispute:-**

1. House Allowance.
2. General Wage Increase.
3. Mechanic's Expenditure.
4. Out of Pocket Expenses.

S.D.O. Mutambi, Assistant Secretary General, for the Claimants (hereinafter called the Union).

M. Onyango (Mrs.), Executive Officer, F.K.E., for the Respondents (hereinafter called the Company).

**A W A R D.**

The Notification of Dispute, Form 'A', dated 25<sup>th</sup> October, 2000, together with the statutory certificate from the Labour Commissioner under Section 14, subsections (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 22<sup>nd</sup> February, 2001. Mr. Nathan Ayieza, then Assistant Secretary General, for the Union submitted his written memorandum on 3<sup>rd</sup> April, 2001, and Mrs. Onyango for the Company filed her reply statement on 9<sup>th</sup> May, 2001. The opening submissions of the dispute were heard on 16<sup>th</sup> April 2002 and final submissions were made on 28<sup>th</sup> May, 2002.

The Company are a limited liability concern, incorporated in Kenya in 1971, and their core business is the sales and servicing of weighing equipment and ink jet coding machines.

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. The present dispute arose when the parties embarked on a review or revision of their latest two years' collective agreement for the periods 1<sup>st</sup> November 1997 to 31<sup>st</sup> October 1999. The

parties met at their own level and agreed on all other issues, but recorded a deadlock on the following six(6) issues:-

1. Leave Travelling Allowance.
2. Mechanic's Expenditure.
3. House Allowance.
4. Basic Minimum Wages.
5. General Wage Increase.
6. Out of Pocket Expenses.

On 3<sup>rd</sup> July, 2000, the Union reported a formal trade dispute to the Minister for Labour in accordance with Section 4 of the Act. The Minister accepted the dispute; and, pursuant to Section 6(2)(a) of the Act, appointed Mr. J.N. Ikinya of Nyayo House Labour Office to act as the Conciliator. During their conciliation meetings held on 24<sup>th</sup> and 25<sup>th</sup> October, 2000, the parties amicably settled issues Nos. 1 and 6, re: Leave Travelling Allowance and Basic Minimum Wages, but were unable to compromise or agree on the four(4) issues now before the Court for consideration and determination.

In her opening submission, Mrs. Onyango stated that, like many other industries or concerns, the Company have been adversely affected by the poor economic conditions experienced in the country over the past three years. During this period, their turnover remained virtually static and profits have fallen by almost 60%. In 2000 alone, service revenue in the service division, where most of the unionized employees are employed, decreased by K£80,000. In any case, the Company do not have any monopoly in the weighing machine and ink jet coding market because the number of competitors has increased since the liberalization of the foreign exchange controls from a few to eight major competitors in the sector. These are Papyrus (E.A.) Ltd., Weighing Solutions Ltd., Byronics (K.) Ltd., Industrial and Retail Scales and Global Scales Ltd., in the weighing sector, and Spicers (E.A.) Ltd., Statpack Ltd. and Signode (K.) Ltd. in the ink jet coding sector. There are also very many small service organisations in the weighing sector which have reduced the Company's market share and profitability in recent years. She, therefore, contended that in the light of the increasing level of competition and the prevailing economic bleak climate, the Company do not anticipate any improvement in their performance in the foreseeable future. In spite of the said unfavourable factors, however, no job losses have been incurred.

In its analysis for the relevant period under consideration in this dispute, the Economic Planning Division (which is hereinafter referred to as the EPD) have stated that the level of management staff stood at 21 in 1997 and 25 in 1999, against their corresponding labour costs of Kshs.4.1 million and Kshs.7.0 million during the same period. The management staff wage bill also stood at Kshs.2.6 million in 1997 but rose to Kshs.4.2 million in 1999. The number of unionisable employees stood at 28 in 1997 but declined to 25 in 1999, while their corresponding labour costs stood at Kshs.3.3 million in 1997, but declined to Kshs.3.0 million in 1999. Their wage bill remained almost constant, at Kshs.2.4 million during the same period. Overall, therefore, the Company's total annual wage bill rose from Kshs.5.0 million in 1997 to Kshs.6.6 million in 1999.

On the financial position of the Company during the period under review, the EPD report shows that the turnover rose from Kshs.136.8 million in 1997 to Kshs.153.0 million in 1998, but declined to Kshs.134.5 million in 1999, while the net profits after taxation also rose from Kshs.18.3 million to Kshs.20.7 million, but declined to Kshs. 14.5 million during the same period.

With the foregoing brief observations in view, and after consultation with the two members of the Court, I now proceed to consider the four (4) issues before me and award accordingly.

1. General Wage Increase.

Under clause 21 (b) of the parties' collective agreement, the Union demand a general wage increase of 20% for the first year and a further 20% for the second year, or a total of 40% for the two years' period, against the Company's offer of 5% for the first year and a further 5% for the second year, or a total of 10% for the two years' period.

In support of the demand, Mr. Mutambi for the Union submitted that the unionisable employees, who fall in the middle and upper income groups, deserved the wage hike due to their hard work and tireless efforts which increased productivity and enabled the Company earn good profit. He pointed out that the Company was able to meet the demand and, therefore, urged the Court to uphold the same.

On the other hand, Mrs. Onyango for the Company strongly pleaded inability by the Company to meet the demand beyond the aforesaid offer because of reduced productivity and severe economic hardship. In the circumstances, she urged the Court to uphold the Company's offer as fair and reasonable.

During their investigation, the EPD established that since the Union members fall in the middle and upper income groups, their full entitlement pursuant to the rise in consumer price indices would be 7.37% wage increase for the first year and a further 7.37% for the second year, or 14.74% for the two years' period, or payment of arrears amounting to Kshs.367,086/=. But, if  $\frac{3}{4}$  of the rise in the cost of living, which translates to 11.05% during the entire period of the agreement, is taken into consideration, then the unionisable employees would be entitled to 5.53% each year, or 11.06% for the two years' period, or payment of arrears amounting to Kshs.272,995/=: as compensation for the rise in the cost of living. If the demand by the Union were to be granted, the additional wage bill would amount to Kshs.480,379/= for the first year, and a further Kshs.576,455/= for the second year, or a total of Kshs.1,056,874/= in arrears during the entire period of the agreement, against the offer by the

Company of Kshs.120,095/= for the first year, and a further Kshs.126,100/= for the second year, or a total of Kshs.246,195/= in arrears during the said period of two years of the agreement.

The primary objective in deciding industrial disputes with regard to wage increase to employees is and has to be the ability of the Company to pay and the restoration of peace and harmony in the industry concerned so as to do justice to the interests of both the employees and the employer. The Company have offered 5% wage increase each year, or 10% for the two years' period, against the Union's demand of 20% each year, or 40% for the two years' period, while the EPD have established that according to the rise in consumer price indices, the employees are entitled to full compensation of 7.37% each year, or 14.74% for the two years' period.

In the circumstances, I consider the demand by the Union of 20% wage increase each year, or 40% for the two years' period, to be unreasonably on a higher side and they should not ask for more than the business can afford. This being the case, and taking into account the moderate business performance of the Company, I have decided to slightly hike the Company's offer of 5% wage increase each year, or 10% for the two years' period, by 1½% to make it 6½% wage increase each year, or 13% for the two years' period, and I so award.

## 2. House Allowance.

### **Clause 20 of the parties' outgoing collective agreement provides that:-**

“All employees will receive a monthly house allowance as follows:-

- (a) All existing employees will have their current house allowance increased by 12% for each year of the agreement.
- (b) All employees joining the service of the Company for the first time will receive a house allowance equivalent to 20% of their basic wage in accordance with the job grades”.

The Union demand 30% house allowance for the first year, and a further 25% for the second year, against the offer by the Company of 2.5% for each year, or 5% for the two years' period of the agreement.

In support of the demand for a decent accommodation, Mr. Mutambi cited the high house rents charged by unscrupulous landlords, dearth of reasonable accommodation, inadequacy of the current house rent, insecurity in slum areas, e.t.c.

In reply, Mrs. Onyango submitted that the demand is ambiguous because it does not explain whether it should be an increase on the existing individual house allowance rate, or a percentage of the basic wages. Otherwise, she said, the demand is too high and unsustainable by the Company.

The current house allowances range between Kshs.522/= and Kshs.1,810/=, and a scrutiny of all the previous collective agreements between the parties shows that the house allowance entitlement for the unionisable employees has always been 20% of the basic wages. Majority of the Company's employees live in various estates in Nairobi, where the monthly rents for a 10' x 10' single-roomed permanent house, situated in easily accessible areas, vary between Kshs.1,500/= per month and Kshs.2,500/= per month, while the rent for a one bed-roomed house, also situated in easily accessible and safe areas, range between Kshs.3,000/= per month and Kshs.4,000/= per month. Other employees are stationed in Mombasa, Kisumu, Nakuru, Kericho, Eldoret and Thika. This means that the employees have to dig deeper into their pockets for decent accommodation in most major towns and municipalities. If, therefore, the demand by the Union is granted, the house allowance entitlement would range between Kshs.1,010/= per month and Kshs.2,278/= per month during the first year, and a further range of between Kshs.1,262.50 per month and Kshs.2,847.50 per month during the second year; and if the Company's offer is allowed, the house allowance entitlement would range between Kshs. 565.80 per month and Kshs.1,855.25 per month during the first year and a further range of between Kshs.671/= per month and Kshs.1,902/= per month during the second year. The EPD report shows that the Company's annual house allowance bill for the year 1999 stood at Kshs.319,824/=, and, on average majority, of the unionisable employees earned Kshs.1,066.10/= per month as house allowance. If the offer by the Company is, therefore, accepted an employee would, on average, earn Kshs.1,093/= per month as house allowance for the first year and a further Kshs,1,120/= per month during the second year.

In *Cause No.96 of 2000: Kenya Union of Commercial, Food & Allied Workers v. Queensways Properties Ltd.*, I observed at page 11 thereof that “It is a fact that decent and reasonable living accommodation is scarce and unaffordable, particularly in urban areas and landlords have also not been slow in exploiting the situation to the disadvantage of the public, especially employees of low income wages or earning” (see also *Cause No.38 of 1997: Tailors & Textiles Workers' Union v. Garment*

*Manufacturers Mass Production Group and Cause No.96 of 1998: Kenya Shoe & Leather Workers' Union v. Leather Industries of Kenya Ltd.*). However, Section 9 of the Employment Act, Cap.226, Laws of Kenya, provides, *inter alia*, that:-

“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, as rent, in addition to his wages or salary, as will enable the employee obtain reasonable accommodation.....”

Having given due and serious consideration to the submissions of the parties on this issue, and keeping in view Wage Guidelines (ii) and (iv) and the above legal position, I consider the offer by the Company of 2.5% each year, or 5% for the two years' period, to be very low. In the circumstances, I am inclined to improve the Company's offer by a further 2.5%, to make it 5% each year, or 10% for the two years' period, and I award accordingly.

### 3. Mechanic's Expenditure.

**Clause 7 of the parties' outgoing collective agreement provides that:-**

“Total Safari Allowance shall be Shs.490/= per day as follows:-

Breakfast	Shs. 62.50
Lunch	“ 72.50
Dinner	“ 105.00
Accommodation	“ 250.00

If the employee incurs expenses on accommodation over and above Kshs.250/= per night he will be reimbursed on production of genuine receipts provided efforts have been made to obtain accommodation within the normal limits”.

The Union demand that the mechanics be accorded the following rates:-

Breakfast	Shs. 78.00
Lunch	“ 100.00
Dinner	“ 140.00
Accommodation	“ 400.00

The Company have, on the other hand, offered an overall increase of 6.7% on the current rates, and are of the view that this offer is fair and reasonable.

This expenditure concerns mechanical and electronic technicians. The EPD report shows that the expenditure for mechanics stood at Kshs.794,804/= in 1997 and Kshs.1.0 million in 1999, while that of electronic technicians stood at Kshs.1.2 million and Kshs.1.7 million respectively during the same period.

On careful consideration of the parties submission, I am constrained to hike the Company's offer of 6.7% overall by 3.3%, to make it 10% overall. I, therefore, award that henceforth the mechanical and electronic technicians be paid as follows:-

Breakfast.	Shs.68.75.
Lunch.	“ 79.75.
Dinner.	Kshs. 115.50.
Accommodation.	“ 275.00.

I, however, recommend that the expenditure for the two categories of technicians should be harmonised so as to eliminate any glaring disparity between them.

4. Out of Pocket Expenses.

This is a new demand which the Union wish to be incorporated in the parties' collective agreement to enable the mechanics meet certain expenses on laundry of their clothes, shoe polishing, purchase of mineral water, soda, drugs, telephone, e.t.c. The Union, therefore, demand that the mechanics be paid Kshs.250/= per day for the first year and a further Kshs.350/= per day for the second year of the collective agreement.

The Company strongly resisted the demand on the ground that the same is a duplication of the mechanics' expenditure allowance and that their current poor business performance does not allow.

In view of my recommendation hereinabove, I find no force in this demand, which is hereby rejected.

This award, except on general wage increase, will not apply retrospectively because I am cognizant of how disruptive to the Company this could be financially.

DATED and delivered at Nairobi this 26<sup>th</sup> day of March, 2003.

Charles P. Chemmutut,

JUDGE.