



**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI.**

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

**J.M. Kilonzo & A.K. Kerich, Members.)**

**CAUSE NO.78 OF 2002.**

**KENYA CHEMICAL & ALLIED WORKERS' UNION.....Claimants.**

**v.**

**BOC KENYA LTD.....Respondents.**

**“Dismissal of Mr. Sebastian Njagi Nyaga”, (hereinafter called the grievant).**

**W. D. Ogotu, National General Secretary, 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.**

**This dispute was referred to the Court for consideration and determination by the Minister for Labour on 27<sup>th</sup> September, 2002, under powers vested in him by Section 8 of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter referred to as the Act); and his reference, together with the statutory certificates from the Labour Commissioner and the Minister himself under Section 14(9)(e) and (f) of the Act, were received by the Court on 30<sup>th</sup> September, 2002. The dispute was then listed for mention on 22<sup>nd</sup> October, 2002, when Mr. W.D. Ogotu and Mrs. M. Onyango, who appeared for the parties respectively were directed to submit or file their respective written memoranda or statements on or before 20<sup>th</sup> December, 2002, and 14<sup>th</sup> February, 2003, and the dispute was fixed for hearing to-day. Mr. Ogotu for the Union submitted his memorandum on 20<sup>th</sup> December, 2002, and Mr. Namasake for the Company belatedly filed his reply statement on 31<sup>st</sup> March, 2003.**

Before the commencement of the hearing this morning, the parties arrived at an amicable settlement of the dispute, and consequently presented the same to the Court, duly signed by Mr. Evans K. Kahiga, Assistant Company Secretary, for the Company and Mr. W.D. Ogotu, National General Secretary, for the Union. It was witnessed by Mr. J.N. Namasake, Principal Executive Officer, F.K.E. The parties prayed that an award by consent be entered in terms of the memorandum of agreement, which is reproduced hereunder:-

“1. The dismissal of Mr. S.N. Nyaga be reduced to normal termination to qualify for normal terminal benefits with the prevailing Collective Bargaining Agreement.

2. Under the CBA Mr. Nyaga was entitled to two months' notice pay which amounts to Ksh.29,448/=. He is also entitled to accrued leave of 81 days – amounting to Ksh.39,210/=.

3. In addition, Mr. Nyaga should be paid Ksh.29,448/= on an *ex-gratia* basis.
4. The grievant, Mr. Nyaga should be paid his Provident Fund amounting to Ksh.41,153.70.
5. All the above payments should be paid less statutory deductions and liabilities due to Hewa Co-operative as at 30/3/97, amounting to Ksh.16,037/=”.

In my considered opinion, the terms of the settlement are fair and reasonable, and I so award in terms thereof.

**DATED** and give at Nairobi this 2<sup>nd</sup> day of April, 2003.

**Charles P. Chemmutut**

**JUDGE**