



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Coram: Charles P. Chemmutut, J.,

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

CAUSE NO.96 OF 2002.

KENYA BUILDING, CONSTRUCTION, TIMBER,

FURNITURE & ALLIED INDUSTRIES EMPLOYEES' UNION.....Claimants.

v.

MECOL LTD.....Respondents.

Issue in Dispute:-

“Unlawful dismissal of Geoffrey Wabwa (hereinafter called the grievant) and underpayment of wages to him”.

E.M. Gikunju for the Claimants (hereinafter called the Union).

No appearance for the Respondents (hereinafter called the Company).

A W A R D.

On the 5th December, 2002, the Minister for Labour referred this dispute to the Court for consideration and determination 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). The Minister's 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 23rd December, 2002. The dispute was then listed for mention on 6th February, 2003 and the parties were notified to attend. On this occasion, Messrs. Joe Macharia and G.K. Kuria, Advocate, who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements on or before 29th April and 29th May, 2003, and the dispute was fixed for hearing on 12th June, 2003. Mr. E.M. Gikunju for the Union submitted his memorandum on 19th March, 2003, a copy of which was forwarded to the learned counsel for the Company, but there was no reply statement from him thereto. On 12th June, 2003, Mr. Gikunju appeared for the Union, but there was no appearance for the Company, and no reasons were given for the learned counsel's inability to file his reply statement and/or appear during the hearing of this dispute. The dispute was, therefore, heard *ex-parte*.

The Company, which manufactures steel, products, was a member of the Furniture Manufacturers Group of F.K.E. (which is hereinafter called the Group) until 22nd January, 2002, and its employees were governed by the terms and conditions of service entered into between the Group and the Union.

Mr. Gikunju submitted that the grievant was employed by the Company as a labourer on 26th October, 1996, at a consolidated wage of Kshs.144/= per day, and he was verbally dismissed on 22nd January 2000, while earning a consolidated daily wage of Kshs.192/=. He stated that the grievant reported on duty as usual on the said date, i.e. 22nd January, 2000, although he was feeling unwell, and when he sought permission from supervisor to enable him seek medical attention, he was denied; and instead he was ordered to hand in his overall and requested to wait at the gate. After a while, the Cashier went to the gate and handed him his wages for the days he had worked. The grievant reported on duty on 24th January, 2000, being a Monday, but he was denied entry into the Company premises on the ground that he had resigned.

The parties attempted to settle the matter at their own level, but they were unable to agree. On 19th October, 2000, the Union reported a formal trade dispute to the Minister for Labour, who accepted the dispute and appointed Miss W.A. Otieno of Nyayo House Labour Office to act as the Investigator; and in his investigation report, which was released to the parties on 4th April, 2002, the Minister found that the dismissal of the grievant, who had a clean employment record, was harsh. He, therefore, recommended that the dismissal of the grievant be reduced to normal termination of service, and he paid his full terminal benefits, arrears of underpayments, if any, in accordance with the terms and conditions of the collective agreement between the Group and the Union in force at the material time. In addition, the Minister also recommended that the grievant be paid compensation.

The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of this dispute. The Union accepted the recommendation, but it would appear that the Company rejected it.

Hence this dispute for consideration and determination.

Mr. Gikunju submitted further that the grievant was underpaid by the Company during his tenure or period of employment in that from 1st May, 1998 to 30th April, 1999, he was being paid a consolidated wage of Kshs. 192.80 instead of Kshs.259.60 per day, while for the period from 1st May 1999 to 30th April, 2000, he continued to receive a consolidated wage of Kshs.192.80 instead of Kshs.297.60.

For the foregoing reasons, Mr. Gikunju prayed that the grievant be paid the following terminal benefits and maximum compensation, i.e. 12 months, in accordance with Section 15(1)(ii) of the Act:-

(i) Appropriate notice pay:

$$26 \text{ days} \times \text{Kshs.}297.60 = \text{Kshs.}7,737.60$$

(ii) Leave (2 years @ 26 days):

$$52 \text{ days} \times \text{Kshs.}297.60 = \text{Kshs.}15,475.20$$

(iii) Underpayment as per CBA –

(a) 1st year from 1.5.98 to 30.4.99:

$$(\text{Kshs.}6,750/- - \text{Kshs.}4,992) =$$

Kshs.1,758/= x 12 months. = “ 21,096.00

(b) 2nd year from 1.5.99 to 31.12.99:

(Kshs.7,737.60 – Kshs.6,750.00) =

Kshs.987.60/= x 8 months. = “ 7,896.00

(c) From 1st to 22nd January, 2000:

(Kshs.297.60 – Kshs.259.60) =

Kshs.38.00 x 22 days: = “ 836.00

(iv) Maximum compensation – i.e. 12 months:

Kshs.297.60 x 26 days x 12 months. = Kshs.92,851.20

TOTAL = Kshs.145,892.00

Since the claim or demand by the Union, on behalf of the grievant, stands unchallenged, the amount hereinabove is granted; and the Company is ordered to pay the same within thirty (30) days from the date of this award.

On consultation, the members of the Court are in full agreement with this decision.

DATED and delivered at Nairobi this 2nd day of July, 2003.

Charles P. Chemmutut,

JUDGE.