



IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI.

(Coram: Charles P. Chemmutut, J.,

A.K. Kerich & H.B.N. Gicheru, Members.)

CAUSE NO. 76 OF 2000.

KENYA UNION OF COMMERCIAL,
FOOD & ALLIED WORKERSClaimants.

-v -

KENYA NATIONAL LIBRARY SERVICES.....Respondents.

Issues in Dispute:

1. Salaries:

- (a) Minimum Wages.
- (b) General Wage Increases.

2. House Allowance.

3. Owner Occupier.

4. Other Allowances:

- (a) Accommodation Allowance.
- (b) Mobile/Lunch Allowance.
- (c) Special Accommodation Allowance.
- (d) Disturbance Allowance.
- (e) Car Allowance.
- (f) Bicycle Allowance.
- (g) Leave Allowance.

Remunerative Allowance:

- (a) Extra Duty Allowance.
- (b) Hardship Allowance.
- (c) Overtime Allowance.
- (d) Commuter Allowance.

5. Medical:

- (a) Out-Patient.
- (b) In-Patient.
- (c) Dental or Optical Treatment.

6. Loans:

- (a) **Bicycle Loans.**
- (b) **Motor Cycle Loan.**

7. Leave:

- (a) **Annual Leave.**
- (b) **Compassionate Leave.**

8. Pension.

9. Gratuity.

10. Staff Welfare.

11. Effective Date/Duration.

H. Olilo Nyumba, Deputy Secretary General, for the Claimants (hereinafter called the Union).
Jason N. Namasake, Principal Executive Officer, F.K.E., for the Respondents (hereinafter called the Board).

A W A R D.

The Notification of Dispute, Form 'A', dated 20th April 2000, 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 21st July 2000. The dispute was then listed for mention on 9th August 2001 to fix a suitable or convenient date for hearing, and the parties were notified accordingly. On this occasion, Messrs. K.A. Luvega and R.M. Muthanga, who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements on or before 31st August and 22nd September 2000, and the dispute was fixed for hearing on 24th October 2000. The Union submitted its memorandum on 1st September 2000 and the Board belatedly filed its reply statement on 13th October 2000. On 24th October 2000, the dispute was rescheduled for another mention on 13th November 2000, when the matter was fixed for hearing on 14th March 2001. The parties made their opening submissions on the said date, i.e. 14th March 2001, and final submissions were made on 5th April 2001.

At the commencement of the hearing of this dispute, the representatives of the parties informed the Court that they have mutually agreed to drop or settle, and indeed dropped or settled, issues Nos. 3, 4(c) to (g) and under Remunerative Allowance (b) to (d), 5, 6, 7 and 8, leaving issues Nos. 1(a) & (b), 2, 4(a) & (b) and under Remunerative Allowance (a), 9, 10 and 11, for consideration and determination. The issues which have been dropped or settled are, therefore, dismissed as such.

The Board was established in 1965 by an Act of Parliament, the Kenya National Library Service Act, Cap. 225, Laws of Kenya, to promote, establish, equip, manage, maintain and develop libraries in Kenya as a National Library Service. It has a network of 27 branches in all Provincial Headquarters and in some Districts and Divisions, i.e. at Nairobi, Embu, Garissa, Kisumu, Mombasa, Nakuru, Kakamega, Nyeri, Eldoret, Kabarnet, Meru, Laikipia, Wundanyi, Kericho, Thika, Wajir, Karatina, Mutuyambua, Naivasha, Kisii, Kinyambu, Nyilima, Kapsabet, Kithasyu, Mwingi and Silibwet. Some of the libraries have been built by the Government while others are built by the community; and in both categories of the libraries, the Board provides the books and employs the personnel. The Board is also fully funded by the Government as its budgetary allocation is given or provided by the Treasury, through the parent Ministry of Home Affairs, National Heritage and Sports. It is grouped under "Non-Revenue" earning parastatals, Category F. The Board has a total workforce of 865 employees, 735 of whom are unionisable and are affected by this dispute.

The parties have had a valid recognition agreement since 1972 and have also entered into or concluded several collective agreements which regulate the terms and conditions of the unionisable employees. The dispute arose when the parties embarked on a review or revision of their latest or outgoing collective agreement for the period 1st July 1996 to 30th June 1998. The Union forwarded its proposals to the Board on 14th January 1998 (vide Union App.I), and also sent some reminders for negotiations of a new collective agreement. But according to Mr. Namasake, the Board studied the proposals and immediately sought mandate to negotiate from the Office of the President (Inspectorate of State Corporations). He averred that the Office of the President, withheld giving the mandate until the outcome of the Commission which was appointed to review the terms and conditions of Public Service and the Board employees (see Board App.I). On 13th November 1998, the Union reported a formal trade dispute on 17 issues to the Minister for Labour in accordance with Section 4 of the Act (vide Union App.2). The Minister accepted the dispute and, under Section 6(2)(a) of the Act, appointed Mr. J.N. Ndiho of Ministry of Labour Headquarters to act as the Conciliator (see Union App.3 and Board App.II). It is stated that on 6th January 2000, the Office of the President gave the Board the mandate to go ahead with the negotiations (see Board App.III); and during their

Joint Negotiation Consultative meeting, held on 21st March 2000, and other subsequent conciliation meetings, the parties resolved 6 issues, but recorded a deadlock on the 11 issues which were referred to the Court for consideration and determination (see Union App.4 and Board App.IV).

In its analysis of this dispute, the Economic Planning Division (which is hereinafter referred to as the EPD) has stated that the level of management staff rose from 112 in 1996 to 173 in 2000, and their labour cost also increased from Kshs.20.4 million to Kshs.63.1 million over the same period. As regards the unionisable employees, the report shows that their strength increased modestly from 615 in 1996 to 687, and their corresponding labour cost increased from Kshs.45.7 million to Kshs.70.7 million. The Board has stated that annual labour cost comprises of the employees' basic salary, house allowance and pension. Therefore, the total labour force fluctuated between 727 in 1996 and 860 in 2000, against the corresponding total labour cost which also fluctuated between Kshs.66.1 million and Kshs.133.8 million over the same period. It is also stated in the report that the management staff annual wage bill increased from Kshs.12.2 million in 1996 to Kshs.36.5 million in 2000, while the unionisable employees' annual wage bill also increased from Kshs.27.3 million to Kshs.40.7 million over the same period. All in all, the total annual wage bill fluctuated between Kshs.39.5 million in 1996 and Kshs.77.1 million in 2000.

On the financial position, the report says that the Board collects limited funds in form of Appropriation-in-Aid from hiring of halls, information service, accruals from fines, overdues, surcharges, bibliography sales, interests and rents. The collections rose from Kshs.1.2 million in 1995/96 to Kshs.1.8 million 1999/2000, and the EPD has established that these meagre funds are used to purchase books, and are, therefore, of little consequence in determining the Board's ability to pay. However, the Government assistance in form of Grants-in-Aid has increased from Kshs.96.6 million to Kshs.184.2 million over the same period.

Before I deal with the issues in dispute, I may observe that it would be inappropriate in industrial adjudication to apply the cloak of the Government, which usually protects her departments and other bodies, to commercial public corporations or bodies. Even if they are controlled by the Government, these corporations or bodies are in law separate entities which, subject to any provisions in each controlling statute, engage their employees on the same conditions as any other commercial undertaking, as far as the law is concerned. Certain arguments have been raised by the Board against the demands by the Union, but the main argument that was urged before us was that the Board was a service or non-revenue making parastatal which is totally constrained and prohibited from exceeding its budgetary allocation by the Government. It was impliedly stated that the functions and activities of the Board are not of a commercial nature with the object of profit making. The Board was constituted to promote, establish, equip manage, maintain and develop libraries in Kenya. It was submitted that the relationship of the Board with the Union, especially with regard to the negotiations of the parties concerning terms and conditions of service of the unionisable employees, has to be guided and sanctioned by the Government. In my view, the functions and activities of the Board, except in so far as what may be described as regal functions of the Government that might have been delegated to it and which could be undertaken either by private citizens or corporations, whether the underlying motive is profit making or rendering services, are covered by the connotation of the word "industry" and constitute a "trade dispute" under the Act.

With the foregoing observations in view, and after consultation with the two Members of the Court, I now proceed to consider seriatim the issues in dispute and award accordingly.

1. **Salaries:**

(a) **Minimum Wages.**

The current rates of pay are as follows:-

<u>Grade.</u>	<u>Kshs.per month.</u>
S.1	2,342
S.2	2,708
S.3	2,918
S.4	3,400
S.5	3,935
S.6	4,635
S.7	5,100

Mr. Nyumba submitted that some of these minima have been adjusted in line with the General Wages Order, while others have not been so adjusted to conform with the current Minimum Wages Order; and in the circumstances, the Union had demanded during the negotiations that the minimum rates of pay be adjusted as hereunder:-

<u>Grade</u>	<u>Kshs. per month.</u>
S.1	4,500
S.2	6,000
S.3	7,000
S.4	8,000
S.5	9,000
S.6	9,500
S.7	10,000

The Board had offered to adjust the minimum rates as follows:-

<u>Grade</u>	<u>Kshs. per month.</u>
S.1	3,000
S.2	3,250
S.3	3,400
S.4	4,445
S.5	4,600
S.6	5,600
S.7	6,600

Mr. Namasake pointed out that the current minimum wage as at 1st May 2000 was Kshs.3,059/=; and, therefore, the offer by the Board of minimum wage of Kshs.3,220/= with effect from 1st July 1999 is reasonable.

In his written submission, Mr. Nyumba accepted the offer by the Board on condition that the rates of pay be adjusted in conformity with the latest statutory Wages Order.

It cannot be denied that every employee in an industry is entitled to the minimum wage irrespective of the capacity of the industry to pay. The minimum wage is a bare subsistence, which is just sufficient to cover the minimum physical needs of the employee and his family. The minimum wage has to be determined on the cost of living and the normal reasonable needs of the employee and his family on the bare subsistence level. This has to be fixed with reference to the cost of living index obtaining in a specific base year which is selected in the expectation of the prices remaining at a steady level. In Kenya the prices of necessities of life have been increasing so rapidly that the minimum wage of an employee has not been able to keep pace with it, with the result that the employees are perpetually out of pocket for their living wage.

Accordingly, and taking into consideration the acceptance by the Union of the Board's offer and my above observation, I award that the minimum rates of pay be adjusted in conformity with the latest General Wages Order.

(b) General Wage Increase.

The Union demand a general wage increase of 17% each year, or 34% for the two years period, in respect of Grades S.1 to S.4 and 15% each year, or 30% for the two years period, for Grades S.5 to S.7, against the Board's offer of 5% each year, or a total or 10% for the two years period, across the board.

Mr. Nyumba submitted that during the parties' in-house discussions, the Board had offered 13% each year, or 26% for the two years period, in respect of Grades S.1 to S.4, and 10% each year, or 20% for the two years period, for Grades S.5 to S.7. But when the parties disagreed, the Board revised its offer downwards to 5% each year, or 10% for the two years period, and denied the shopstewards a chance for further consultations.

On the other hand, Mr. Namasake stated that the Union had initially demanded general wage increase as follows:-

<u>Grades:</u>	<u>1st Year</u>	<u>2nd Year.</u>
S.1 to S.4	120%	120%.
S.5 and above	100%	120%.

But in its written memorandum, the Union revised the demand as hereunder:-

S.1 to S.4 17% each year.

S.5 to S.7 15% each year.

Mr. Namasake submitted that the offer of 5% each year is reasonable, considering that all the salary grants are received from the Government (vide letter, Ref: No.OP.9/10A/1SC/111/(23) of 6th January 2001). He said that the Board also approved upgrading of posts and salary scales by one(1) grade, with effect from 28th September 2000, which would result in an increase of salaries by 15%. Mr. Namasake stated further that in the said letter, the Government directed the Board to negotiate on salaries only and not on any other allowances, and that the collective agreement should be for the period 1st July 1999 to 30th June 2000. Therefore, the Board is totally unable to meet the Union's demands because it has no money of its own but depended on the Government grants. He, therefore, urged the Court to uphold the said offer of 5% each year, or 10% for the two years period, otherwise any general wage increase over and above the said offer would create undesirable consequences.

In the circumstances, Mr. Namasake urged the Court to uphold the offer of 5% wage increase each year, or 10% for the two years' period, and award accordingly.

In the instant case, it is alleged that the Board collects limited funds from hiring of halls, information service, fines, surcharges, overdues, sales, interests and rents, and is almost entirely dependent on the Government to finance its activities. The EPD report shows that the wage earners cost of living indices for the period under review rose by 19%, 19.5% and 21.4% for the lower, middle and upper income groups respectively, or by an average of 20% for the three income groups; and since the Union members fall in the middle income group, their full compensation of entitlement pursuant to the rise in consumer price indices would be 19.5%, or an average of 9.75% each year. If the demand by the Union is, therefore, allowed the additional labour cost excluding the cost implication for the period 2000/2001, will amount Kshs.6.4 million for the first year and a further Kshs.6.9 million for the second year, of a total of Kshs.13.0 million for the two years period against the offer by the Board, based on the 5% general wage increase each year, of Kshs.2.0 million for the first year and a further Kshs.2.1 million for the second year, or a total of Kshs.4.1 million for the two years period. However, the change in consumer price indices for the period 1st July 1996 to 30th June 1999 shows that the wage earners cost of living indices rose by 20%, 24% and 27% for the lower, middle and upper income groups respectively; and the employees would be entitled on average to full compensation of 24% during the entire period, or 16% for the first year, and a further 8% for the second year of the agreement. This will mean an additional wage bill of Kshs.6.3 million for the first year, and a further Kshs.3.3 million for the second year, or a total of Kshs.10.0 million for the entire period of the agreement. Assuming that the employees are granted maximum consumer price indices entitlement, then the additional wage bill will rise by Kshs.3.7 million for the first year, and by a further Kshs.4.2 million for the second year, or by a total Kshs.7.9 million for the two years period. The EPD report finally indicates that if the case of the Board is sustained, then it would have implemented the second phase of the 5% general wage increase, and also effected the upgrading of posts and salary scales of pay with effect from 1st July and 28th September 2000, respectively, and the upgrading would improve the wages of the unionisable employees by 15%. Thus, on implementation of the upgrading of posts and salary scales, Scale I of the unionisable employees will be abolished when they will join Scale 2, while the unionisable employees in the highest Scale 7 will join the management staff at Scale 8.

There are two factors in any possible wage increase. One is the periodic factor – that wages do increase from time to time; and the other is what I call the adjustment factor, which means that a time might come in any industry when distortion or a trend has to be recognized as such for correction.

As I have observed on numerous occasions elsewhere regarding the impact of financial demands, the primary objective in awarding wage increases is and has to be the restoration of peace, harmony and goodwill in the industry concerned so as to do justice to the interests of both labour and capital by keeping in view the principles of comparative wages, productivity, rise in the cost of living, and especially the ability or capacity of the employer to pay, e?t?c, e?t?c. Therefore, the demand for a wage increase should not be taken too lightly, particularly when the cost of living is spiraling up; but at the same time, the employees have also to face the situation with the same forbearance and fortitude as the general public at large.

In this case, the Board collects limited funds and is almost entirely dependent on the Government to finance its activities as stated hereinabove. However, the offer by the Board of 5% each year, or a total of 10% for the two years period is in my humble opinion on a lower scale, while the demand by the Union of 17% each year, or 34% for the two years period, and 15% each year, or 30% for the two years period is on a higher side. This being the case and weighing the pros and cons of the parties' demands and offers, I am constrained to and hereby award 10% each year, or 20% for the two years period, for Job Groups S.I to S.4 and 7½% each year, or 15% for the two years period, for Job Groups S.5 to S.7.

2. House Allowance.

The current rates of house allowances under Clause 2 of the parties' collective agreement for the period 1st July 1996 to 30th June 1998 are as follows:-

<u>Grade.</u>	<u>Kshs. per month.</u>
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S.I (uniform rate)	1,450
S.2	1,650
S.3	1,750
S.4	1,850
S.5	2,150
S.6	2,300
S.7	2,650

The Union demands an increase thereof of Kshs.250/= per month across the board, while the Board urged the Court to maintain the status quo.

Mr. Namasake submitted that the management staff has not received any house allowance since 1994, and the house allowance for Scale 8, which is the minimum scale for management staff, is Kshs.3,000/= per month, whereas the unionisable employees have had house allowance increases in all previous collective agreements between the parties and the Board has also approved the upgrading of their posts and salary scales by one grade(1) with effect from 28th September 2000, which will increase the house allowance by 16%. In the circumstances, and taking into account the unavailability of further allocation of funds from the Government, it is important to maintain job hierarchy so as not to demoralize the juniormost management staff who are at Scale 8.

The EPD report shows that the unionisable employees house allowance bill stood at Kshs.11.2 million in 1996, but rose to Kshs.14.7 million, Kshs.16.3 million, Kshs.17.0 million and Kshs.17.7 million, or by 31.2%, 11.3%, 4.9% and 3.5%, in 1997, 1998, 1999 and 2000, respectively. It is stated that the moderate increase of 31.2% in 1997 can be attributed to the implementation of the outgoing collective agreement by the Board. The survey by EPD of the distribution of the Board's unionisable employees throughout the country established that 176 are stationed at Nairobi and Mombasa, 176 at other Provincial Headquarters and 319 at the Districts and Divisions. Therefore, 73.8% of the Union's members are stationed outside Nairobi and Mombasa. The prevailing monthly rents for permanent single rooms of a 10' x 10' in most estates in Nairobi which are situated in easily accessible areas vary between Kshs.1,800/= and Kshs.2,500/=. However, rents for a one bedroom house in Nairobi range between Kshs.3,000/= and Kshs.3,500/= per month, which means that unionisable employees in Job Groups 1,2 and 3 are most disadvantaged as they have to dig deeper into their pockets for a decent accommodation.

On the other hand, the management staff house allowance bill stood at Kshs.5.0 million in 1996, but rose modestly to almost a constant amount of Kshs.6.0 million in 1997, 1998 and 1999. In 2000, the house allowance bill rose sharply to Kshs.20.0 million, or by 231%, due to an increase of 40 employees in this category of staff and also as a result of improvement on this item.

Assuming that the demand by the Union is upheld, the total house allowance bill for the unionisable employees will rise by Kshs.2.1 million for the fiscal year 1998/99 and by a further Kshs.2.0 million for the years 1999/2000 and 2000/2001 each, or a total of kshs.6.3 million in arrears. But if the Board's position regarding the upgrading of posts and salary scales is sustained, the additional house allowance bill for the unionisable employees for ten (10) months from 1st September 2000 to 30th June 2001, will be approximately Kshs.2.0 million. Considering the demand by the Union that the award should come into force on 1st July 1998, the rise in consumer price indices would entitle the unionisable employees to an annual increase in house allowance of Kshs.1.6 million, or 9.75%, or a total of Kshs.4.8 million in arrears, for the period 1998/99 and 2000/2001. But if the plea by the Board that the effective date be 1st July 1999 is allowed, the rise in consumer price indices would give the unionisable employees an annual increase in house allowance of Kshs.2.0 million, or 12%, or a total of Kshs.4.0 million for the two years period, i.e. 1999/2000 and 2000/2001.

It is common knowledge that good living accommodation is scarce and unaffordable, particularly in urban centres, and landlords have not been slow in exploiting the situation to the disadvantage of the public, especially employees (*see Cause No.38 of 1997: Tailors & Textiles Workers Union -v- Garment Manufacturers Mass Production Group*). Furthermore, the over-crowding and the squalor are disgraceful, no doubt. But the provision of suitable accommodation or sufficient rent to the employees is well to the fore under Section 9 of the Employment Act, Cap.226, Laws of Kenya, which provides 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.....”

Keeping in view the foregoing, and taking into consideration the Government's Harmonization of Terms and Conditions of Service in the Public Service on housing contained in Circular Ref. No.OP.18/2/1A of 21st June 2000, which has since been implemented for the management staff under Circular Ref. No.OP.18/1A/VIII/141 of 18th June 2001, I allow the demand for an increase of Kshs.250/= in house allowance per month across the board, and award as follows:-

<u>Grade.</u>	<u>Kshs. per month.</u>
S.1	1,700/=.
S.2	1,900/=.
S.3	2,000/=.
S.4	2,100/=.
S.5	2,300/=.
S.6	2,550/=
S.7	2,900/=

3. Other Allowances.

Reimbursable Allowances.

(a) Accommodation Allowance.

This sub-clause of clause 4(I) of the parties' collective agreement provides that:-

“When an employee traveling on duty is required to stay overnight away from his permanent station and make his own arrangements for boarding and lodging, accommodation allowance may be paid to him/her at the following rates:

<u>GRADE</u>	<u>RATE PERDIEM (KSHS.)</u>
S.1, S.2 and S.3	550/=
S.4 to S.5	600/=
S.6 to S.7	650/=.”

The Union demand as follows:-

<u>Grade</u>	<u>Rate Per Diem (Kshs.)</u>
S.1, S.2 and S.3	1,000/=
S.4 to S.5	1,500/=
S.6 to S.7	2,000/=

The Board has resisted the demand on the ground that adjusting the demand would lead to overlapping with the rates of the lowest management cadre whose rate is Kshs.800/=. Furthermore, the Board has no authority from the Government to negotiate this item; and in the circumstances, it has no extra money to cater for the adjustments.

According to the EPD report, the annual accommodation bill stood at Kshs.1.9 million in 1996, but rose to Kshs.2.1 million, Kshs.2.2 million, Kshs.2.9 million and Kshs.3.2 million in 1997, 1998, 1999 and 2000, respectively. The report states further that if the Board maintains the same expenditure trend, the cost on this item would be in excess of Kshs.8.0 million over and above the bill of Kshs.3.4 million for the fiscal year 1999/2000.

In my humble opinion the demand is uncalled for at the moment, and it is rejected.

(b) Mobile/Lunch Allowance.

The sub-clause provides that:-

“Employees on mobile library services but do not qualify for accommodation allowance will be paid a flat rate of Kshs.300 per day as lunch allowance.”

The Union demand that its members be paid the following rates on this item:-

<u>Grade.</u>	<u>Allowance (Kshs.)</u>
S.1	530
S.2, S.3 and S.4	645
S.5, S.6 and S.7	760

The Board vehemently opposed the demand on the same grounds as stated hereinabove under sub-clause (a). After all, it argued, the management cadre’s allowance on this item is Kshs.400/=, and any increase as demanded by the Union would result in overlapping.

There is no justification to hike the current rate of this allowance. I, therefore, order that the present arrangement be maintained.

Remunerative Allowances.

(a) Extra-Duty Allowance

This sub-clause provides that:-

*“When an employee is relieving duties of another employee who is on leave or out of station for some reason or another, he/she shall be paid at the rate Kshs.1,300.00 per month. **Minimum days an employee has to work to qualify for duty allowance shall be 21 days**”.*

The Union demand that this allowance be raised to Kshs.1,500/= against the Board’s nil offer.

There is no substance in this demand, which is rejected.

4. Gratuity.

Clause 9 of the parties’ collective agreement provides as follows:-

“An employee shall be entitled to half month’s salary for every completed year of service if he/she resigns or retires after ten (10) years of service”.

The Union propose that the following additional provision be made:-

“The unionisable employees promoted to management shall be paid their gratuity before taking up their new promotions in the management”.

The Board has, however, urged the Court to maintain the status quo because this benefit, which is applicable to management staff too, is paid to unionisable employees in addition to their pension dues.

The EPD established that the Board is currently reviewing the posts and salary scales of the unionisable employees so that they may benefit in the future from their gratuity when they are in the management.

It is well-settled that gratuity is a reward for good efficiency of a faithful service, rendered for a fairly substantial period and it

is not paid to the employees merely as a matter of boon but for long and meritorious service. In the circumstances, the demand by the Union is not maintainable, and it is rejected.

5. Staff Welfare.

This item is covered under Clause 16 of the parties' collective agreement, which states as follows:-

“If an employee dies, the Board shall provide coffin expenses of Kshs.10,000/= and a vehicle to transport the body to the burial place”.

The Union demand that the amount be increased to Kshs.15,000/= but the Board has urged the Court to maintain the status quo for lack of funds to meet the demand.

In Cause No.66 of 1998: Kenya Chemical & Allied Workers Union -v- Eveready Batteries Kenya Ltd. I observed on this issue that:-

*“It is human and important for the Company to show concern by sharing the cost of bereavement during the period of grief. Hence, their contribution.....
.....”.*

In my considered opinion, I am persuaded to improve the current amount by a further Kshs.2,500/= to make it Kshs.12,500/=. This amount is fair and reasonable, and I so award.

6. Effective Date and Duration:

The collective agreement under consideration expired on 30th June 1998, and the Union has proposed 1st July 1998 as the effective date of the incoming collective agreement and for a duration of two years, while the Board has urged the Court that the collective agreement be effective from 1st July 1999 for the same duration of two years in view of the fact that it has no funds to implement the demand.

The delay in the negotiations for a new collective agreement was entirely caused by the Board because of its dilatory attitude and prolonged correspondence with the Government; and it would be unfair in the circumstances to penalise the employees by denying them their rightful entitlements from the proper date of the commencement of the parties' collective agreement. For this reason, I award and order that the effective date be 1st July 1998 for a duration of two years.

DATED and delivered at Nairobi this 30th day of January 2002.

Charles P. Chemmutut,
JUDGE.