



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

(Before: Charles P. Chemmutut, J.,
A.K. Kerich & H.B.N. Gicheru, Members.)

CAUSE NO. 58 OF 2001.

TRANSPORT & ALLIED WORKERS' UNION.....Claimants.

-v-

EXPRESS TRUCKING LTD.....Respondents.

Issue in Dispute:-

“The dismissal of Alloys J.M. Kaleli” (hereinafter called the grievant).

J.P. Owiti, Deputy Secretary General, for the Claimants (hereinafter called the Union).

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

A W A R D

The Minister for Labour referred this dispute to the Court for consideration and determination on 16th May 2001, in exercise of the 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 reference, together with the statutory certificates from the Labour Commissioner and the Minister himself pursuant to Section 14, subsection (9)(e) and (f) of the Act, were received by the Court on 23rd May 2001, and the dispute was listed for mention on 15th June, 2001. On this occasion, Mr. L.W. Kariuki, Senior Executive Officer, F.K.E., appeared for the Company, but there was no appearance for the Union. In the circumstances, the case was listed for another mention on 22nd June, 2001 and the parties were duly notified to attend. On this occasion, Mr. Jackton Okata appeared for the Union but there was no appearance for Company. The matter was listed for yet another mention on 29th June 2001, and the parties were again notified to attend. On this date, Mr. Justus M. Okenye appeared for the Union but there was no appearance for the Company again. Despite the latter’s absence, however, the dispute was fixed for hearing on 12th September 2001; and meanwhile the Union was directed to submit its memorandum on or before 20th July 2001, and the Company was ordered to file its reply statement on or before 13th August 2001. The Union submitted its memorandum on 19th July 2001. The Company, having neither filed its reply statement nor appeared as stated hereinabove, the case was heard *ex-parte* on 12th September 2001.

In a nutshell, Mr. Owiti submitted that the grievant was “interviewed” by the Company for the job of a heavy commercial driver on 1st April 1997, and was orally or verbally engaged as such at a consolidated salary of Kshs. 12,000/= per month. He was dismissed from service on 27th January 1998 for allegedly failing to account for the loss of 12 bales of blankets, 260 litres

of diesel and money paid as compensation, worth in total Kshs. 125,050/=.

After a failure of bilateral negotiations for settlement between the parties, the Union reported a formal trade dispute to the Minister for Labour on 7th October 1998 in accordance with Section 4 of the Act. The Minister took cognisance of the dispute; and, under Section 7 of the Act, appointed Mr. L.K. Bii of Industrial Area Labour Office to act as the Investigator. On the basis of the investigation report, which was released to the parties on 19th October, 2000, the Minister found, inter alia, as follows:-

“FINDINGS.

..... that Mr. Alloys Kaleli was an employee of Express Trucking Ltd. working as a heavy commercial driver, with effect from June, 1997. His salary by the time of the dismissal was Kshs. 5,500 per month. The Union’s assertion that his salary was Kshs. 12000 per month was found to be false and without basis as payment vouchers kept by the company clearly showed the grievant salary to be Kshs, 5,500 per month.

.....that the grievant dismissal emanated from his failure to account for the loss of 12 bales of blanket worth Kshs. 106,330 lost while on transit to Burundi. He was accused of being unable to account for 260 litres of diesel worth Kshs. 8,320. Lastly, the grievant was unable to account for money paid as compensation for an accident amounting to Kshs. 10,400. All those claims were in relation to the trip the grievant made to Burundi on 6th September 1997.

Mr. Kaleli’s explanation that they only discovered the loss of the 12 bales of blanket after being alerted by a passer-by that the truck cabin door and the container door was open, was unconvincing, as a seasoned driver like him, was expected to have thoroughly inspected the said door before departing from Gilgil. Furthermore it must have taken some considerable time to steal 12 bales of blanket from the container and as such both the grievant and his turnboy should have detected the same. The blame for the lost blankets therefore lay with him as it happened because of his negligence and lack of diligence in the performance of his duties.

Notwithstanding the above, Kaleli failed to co-operate with the management when asked to record a statement about the theft, which was needed for purposes of lodging an insurance claim on the stolen goods. The statement would also have facilitated the payment of transport services by World Vision International. This was highly irresponsible behaviour not expected from an employee especially in a situation where the company stood to lose a substantial amount of revenue through the theft.

In view of the foregoing..... the action taken against the grievant was justified, as the management had a responsibility of preventing further likely liabilities resulting from the grievant continued employment.

RECOMMENDATION.

..... I recommend that the Management’s action to dismiss Mr. Kaleli be upheld. However, he should be paid his outstanding salary balances amounting to Kshs. 12086.00 plus his earned pro-rata leave”.

The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of the dispute. It is not clear whether the Company accepted the recommendation but the Union rejected it on the ground that the dispute was not properly investigated.

In its tabulation or computation of the grievant’s entitlements on the record, the Union demand a total of Kshs. 200,556/=, representing outstanding salaries and balances thereof, one month’s salary in lieu of notice, refund for the purchase of padlocks, conversion of Uganda currency into Kenya currency, transport expenses and six (6) months’ compensation. The Union has alleged that the grievant was earning Kshs. 12,000/= per month, while the Investigator has stated in his investigation report that he was earning a monthly salary of Kshs. 5,500/=. I do not agree with the Investigator’s finding on this point because, as a long distance heavy commercial driver between Kenya and Burundi, the grievant could not in all fairness earn such a meagre amount of Kshs. 5,500/=. It is possible that the grievant was earning Kshs.12,000 per month as stated by the Union, but I doubt the genuineness of its (Union’s) assertion that the grievant did not receive his full salary for all that period of 10 months from April 1997 to January 1998. Hence the demand.

With the foregoing short discussion in mind, and doing all I can in the circumstances, I am of the considered view that it would be in the interests of justice and equity if the grievant is paid Kshs.56,657/= made up as follows:-

(a) Outstanding balance of salary as per

the Minister's recommendation: = Kshs. 12,086/=.

(b) Pro-rata leave for 9 months:

1¾ days per month x 9 months = 15 days

21 days

. Kshs. 12,000x15.75 days = Kshs. 8,571/=.

. . 21 days per month

(c) 1 month's salary in lieu of notice: = Kshs. 12,000/=.

(d) Two (2) months' *ex-gratia*

payment for loss of employment:

= 2 x Kshs. 12,000/= = Kshs. 24,000/=.

Total = Kshs. 56,657/=

All other demands are rejected for lack of proof.

I so award and order.

MEMBERS:- We agree.

DATED and delivered at Nairobi this 14th day of January 2002.

Charles P. Chemmutut,

JUDGE.