



IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI.

(Coram: Charles P. Chemmutut, J.,

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

CAUSE NO. 96 OF 2000.

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

- v -

QUEENSWAY PROPERTIES LTD.....Respondents.

Issues in Dispute:-

- 1. House Allowance.**
- 2. Leave Travelling Allowance.**
- 3. Redundancy.**
- 4. Retirement/Gratuity.**
- 5. Funeral Expenses.**
- 6. Long Service Award.**
- 7. General Wage Increase.**

Agapio Muriuki, Assistant Secretary General, for the Claimants (hereinafter called the Union).

L.W. Kariuki, Senior Executive Officer, F.K.E., for the Respondents (hereinafter called the Company).

A W A R D.

The Notification of Dispute, Form 'A', dated 13th January 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 7th September 2000. The dispute was then listed for mention on 20th September 2000, and the parties were notified accordingly. On this occasion, Messrs. K.A. Luvega and J.N. Namasake, who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements on or before 11th October and 10th November 2000, and the dispute was fixed for hearing on 9th January 2001. The Union submitted its memorandum on 17th October 2000, and the Company belatedly filed its reply statement on 3rd January 2001. The opening submissions of the dispute were heard as aforesaid, i.e. on 9th January 2001, and final submissions were made on 1st February 2001.

The main business of the Company is entertainment; and according to the Economic Planning Division's report, (which is hereinafter referred to as the EPD) the Company was acquired from 20th Century Fox Organization of U.S.A. in 1986, and its three cinemas, namely, Kenya Cinema, 20th Century Cinema and Fox Drive-In Cinema, were henceforth operated or managed by the Company (Queensway Properties Ltd.), Springfield Properties Ltd., and Thika Road Properties Ltd., respectively. It is stated that the Company had a total labour force of 82 employees as at the end of December 2000, of whom 66 were

unionisable and are affected by this dispute. The total labour cost as at December 2000 was Kshs.14.8 million.

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 period 1st January 1997 to 31st December 1998. After an exchange of proposals and counter-proposals, the parties met at their own level and agreed on all other issues, but recorded a deadlock on the following twelve(12) issues:-

1. House Allowance.
2. Annual Leave.
3. Leave Travelling Allowance.
4. Sick Leave.
5. Redundancy.
6. Termination of Employment.
7. Retirement/Gratuity.
8. Funeral Expenses.
9. Long Service Increment.
10. Medical Expenses.
11. General Wage Increase.
12. Job Classification.

On 20th August 1999, 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.A. Oketch of Industrial Area Labour Office to act as the Conciliator. During their conciliation meeting held on 12th January 2000, the parties amicably settled five(5) issues, i.e. Nos. 2, 4, 6, 10 and 12, hereinabove, re: Annual Leave, Sick Leave, Termination of Employment, Medical Expenses and Job Classification, but were unable to compromise or agree on the seven(7) issues now before the Court for consideration and determination (see Union Apps.1 to 6).

In its analysis for the relevant period under consideration in this dispute, the EPD has stated that the level of management staff declined from 17 in 1999 to 16 in 2000, and their corresponding labour cost also dropped from Kshs.6.9 million to Kshs.6.8 million during the same period. The number of the unionisable employees rose from 49 in 1999 to 66 in 2000 and their labour cost similarly rose from Kshs.6.1 million to Kshs.8.0 million during the same period. As regards the casual workers, the report shows that there were 23 in 1999, whose labour cost stood at Kshs.1.6 million, but there were none as at December 2000. Overall, therefore, the Company's total labour force fluctuated between 82 and 100 during the period under consideration, and the ratio between the management staff and the unionisable employees stood almost at 1:4. The corresponding total labour cost increased modestly from Kshs.14.6 million in 1999 to Kshs.14.8 million in 2000.

On the financial position of the Company during the period under review, the EPD report shows that it suffered a net loss of Kshs.2.5 million in 1999 due to high cost of importation of films, depreciation of the Kenya shilling, insecurity, non-compliance of the anti-piracy rules, licensing of video television theatres and libraries, e?t?c?.

With the foregoing observations in view, and after consultation with the two members of the Court, I now proceed to consider the seven(7) issues before me and award accordingly.

1. General Wage Increase.

The Union demand a general wage increase of 80% for the first year and a further 80% for the second year, or a total of 160% for the two years' period, against the Company's offer of 10% for the first year, and a further 10% for the second year, or a total of 20% for the two years' period.

In support of the demand, Mr. Muriuki for the Union submitted that the employees, who fall in the middle income group and are poorly paid, deserved the wage hike in order to cushion them against the escalating cost of living and runaway inflation. He pointed out that the Company was able to meet the demand, and, therefore, urged the Court to uphold the same.

In a nutshell, Mr. Kariuki strongly pleaded inability by the Company to meet the demand beyond the 10% wage increase each year, or 20% for the two years' period, because of severe economic hardship which has negatively hit the cinema industry, increase in overheads cost, deteriorating security in the country, increased cost of imported films, piracy of copyright material, poor attendance of cinemas, increased taxation, e?t?c?. (see Company Apps. I(a) – (x)).

During its investigation, the EPD established that the wage earners cost of living indices rose by 8.0%, 14.5% and 15.6% for the lower, middle and upper income groups respectively, or by an average of 12.7% for the three income groups; and since the

Union members fall in the middle group, their full entitlement pursuant to the rise in consumer price indices would be 14.5% for the two years' period, or 7.25% each year. If, therefore, the demand by the Union were to be granted, the additional labour cost would amount to Kshs.1.9 million for the first year and a further Kshs.2.7 million for the second year, or a total of Kshs.4.6 million for the two years' period, against the offer by the Company of Kshs.0.5 million for the first year and a further Kshs.0.5 million for the second year, or a total of Kshs.1.0 million for the two years' period. Assuming that the employees are granted maximum consumer price indices entitlement, then the additional labour cost will be Kshs. 0.3 million for the first year and a further Kshs.0.4 million for the second year, or a total of Kshs.0.7 million for the two years' period. On the wage bill for the Company's workforce during the period under review, the EPD report shows that the management staff wage bill dropped marginally from Kshs.6.9 million in 1999 to Kshs.6.8 million as at December 2000, while the unionisable employees' wage bill stood at Kshs.5.3 million in December 2000. The overall total wage bill in December 2000, was Kshs.12.1 million.

I have observed on numerous occasions before that the primary objective in deciding industrial disputes with regard to wage increase to the employees 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. The EPD report established that, according to the rise in consumer price indices the employees are entitled to full compensation of 14.5% for the two years' period or 7.25% each year. The Company has offered 10% wage increase each year, or 20% for the two years' period.

In the circumstances, I consider the demand by the Union of 80% wage increase each year, or 160% for the two years' period, as wild, high and unreasonable. This being the case, and taking into consideration the poor business performance of the Company, I uphold the offer by the company of 10% wage increase each year, or 20% for the two years' period, and award accordingly.

2. House Allowance.

The Union demand that the current house allowance of Kshs.800/= per month be raised to Kshs.1,600/= per month against the offer by the Company of Kshs.900/= per month. In support of the demand for a decent accommodation, Mr. Muriuki cited the high house rents charged by landlords, dearth of reasonable accommodation, inadequacy of current house rent, insecurity in slum areas, etc. He pointed out that the Company's employees live in various estates in Nairobi where the rents range between Kshs.4,500/= and Kshs.5,000/= per month, for 8'x8', 10'x10' and 12'x12' rooms.

On the other hand, Mr. Kariuki submitted that in terms of Section 9 of the Employment Act, Cap 226, the offer by the Company is reasonable, adequate and fair. He, therefore, urged the Court to uphold it.

In accordance with Wage Guideline (iv), the unionisable employees are entitled to a house allowance increase of a half (½) of the consumer price indices of 7.25% per year; and if this is allowed, the current house allowance will come to Kshs.858/= per month for the first year and Kshs.920/= for the second year. The EPD report shows further that the house allowance bill for management staff dropped from Kshs.0.5 million in 1999 to Kshs.0.4 million in 2000, whereas the unionisable employees' house allowance bill rose modestly from Kshs.0.61million in 1999 to Kshs.0.64 million in 2000. Majority of the unionisable employees stay or live in Huruma, Dandora, Kayole, Umoja, Mathare North, Kariobangi and Satellite, where the monthly rent for a 10'x10' single roomed permanent house, situated in accessible areas vary between Kshs.1,800/= and Kshs.2,500/=: while the rent for those houses situated in inaccessible areas are less. However, rents for one bed-roomed house in such areas range between Kshs.3,000/= and Kshs.3,500/=. According to information availed to the EPD by the unionisable employees, they pay house rents of between Kshs.2,000/= and Kshs.3,000/= per month, which means that they have to dig deeper into their pockets for this purpose. If, therefore, the demand by the Union is granted, the additional cost on this item will amount to Kshs.0.6 million over and above the total house allowance bill for the year 2000; and if the Company's offer is allowed, the additional house allowance bill will be Kshs.80,500/= over and above the total bill for the same year.

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 earnings (see *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.*). On the other hand, Section 9 of the Employment Act, Cap.226, Laws of Kenya 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.....”.

In view of the above Wage Guideline (iv) entitlement and the legal position on this matter, I am inclined to improve the Company's offer of Kshs.900/= per month by a further Kshs.100/=: to make it Kshs.1,000/= per month, and I so award.

3. Leave Travelling Allowance.

Clause 13 of the parties' collective agreement provides, inter alia, that:-

“When an employee is proceeding on his annual leave, travelling allowance will be paid at Kshs.600/= to all permanent unionized employees irrespective of their grades.....”.

The Union demand that the current leave travelling allowance be raised to Kshs.1,500/= against the Company’s offer of Kshs.660/=. Mr. Muriuki submitted that the allowance is inadequate due to the escalating transport costs for an employee and his family, i.e. his wife and four(4) children, when they proceed on annual leave to places like Busia, Malindi, Mombasa, Wajir, Kitale, Mandera, e?tc?. For example, an employee and his family would require between Kshs.4,000/= and Kshs.5,000/= for bus fare to Malindi. He, therefore, urged the Court to find that the demand is justified and award accordingly.

Mr. Kariuki submitted that the offer of Kshs.600/= over and above the current leave travelling allowance of Kshs.600/= is adequate, and any increase beyond this amount will be unbearable by the Company. After all, the Company is only responsible for leave travelling allowance in respect of its employees and not their families. In the circumstances, he urged the Court to uphold the Company’s offer as adequate.

The EPD report shows that the employees’ areas of domicile are spread all over the country, but majority of them come from Bondo, Machakos and Maragwa. Unfortunately, the report does not show any fares of various destinations.

I have observed on numerous occasions previously that leave travelling allowance is personal to the employee himself/herself. In my considered opinion, and keeping in view the unpredictable escalating transport costs, I award that an employee be paid Kshs.750/= as leave travelling allowance when he or she proceeds on annual leave.

4. Redundancy.

The relevant provision under Clause 17 of the parties’ collective agreement states that:-

“17. Redundancy.

Where the employment of an employee is to be terminated on account of redundancy the following procedures shall apply:

- (a).....
- (b)
- (c)
- (d)

such employee shall be paid severance pay at the rate of eighteen(18) days pay for each completed year of service.

.....
.....”.

The Union demand that an employee who is terminated on account of redundancy be paid severance pay at the rate of twenty five(25) days for each completed year of service.

The Company urged the Court to maintain the *status quo* in view of the fact that their poor business performance and bleak financial position will not meet the demand.

The EPD established that no employees have been declared redundant between 1995 and 2000.

The Union have not advanced any reasons for the enhancement of the severance pay days from 18 to 25 days. In the

circumstances, the demand is unacceptable and the same is hereby rejected.

5. Retirement/Gratuity.

Clause 29 of the parties' collective agreement provides as follows:-

“An employee who has served the Company for over five years and is retired shall be given the normal notice of termination and paid all other terminal benefits and in addition he shall be paid eighteen(18) days salary for every completed year of service”.

The Union demand that such an employee be entitled to 25 days pay for every completed year of service.

The Company has made nil offer on this issue, and prayed that *status quo* be maintained.

In this case, the Union has also not given any reasons for the improvement of the pay days. I, therefore, consider that the retirement/gratuity scheme in the parties' collective agreement is quite equitable and does not call for any interference by this Court. The demand as it stands is rejected.

6. Funeral Expenses.

This is a new demand which the Union wish to be incorporated in the parties' collective agreement. The Union, therefore, demand that when an employee dies while in employment, the Company should provide a coffin, transport and Kshs.30,000/= towards funeral expenses.

The Company has pointed out that it has in the past voluntarily contributed a major portion of the cost towards funeral expenses, and in the circumstances the existing arrangement should stay and continue.

The EPD has established that nine(9) employees died between 1995 and 2000.

In *Cause No.66 of 1998: Kenya Chemical & Allied Workers' Union v. Eveready Batteries Kenya Ltd.*, I observed 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 order to foster industrial peace and harmony and to avoid uncertainties and confrontation between the parties, I am of the considered opinion that Kshs.15,000/= be contributed by the Company towards the funeral expenses of an employee who dies while in employment, and I so award.

7. Long Service Award.

This is also a novel demand which the Union propose that it should be inserted in the parties' collective agreement as follows:-

- (a) Less than 5 years - Kshs.200/=.
- (b) 5 – 10 years - “ 400/=.
- (c) 10 years and over - “ 500/=.

Mr. Muriuki submitted that the award will maintain the seniority differentials and to “assist less privileged workers who cannot be promoted”.

The Company has resisted the demand on the ground that in this era of economic globalisation and liberalisation, wage increases should be based on productivity, improved performance and merit, rather than length of service.

I find no force in this demand, and would advise the Union to encourage the employees to work hard in order to earn the

increments on merit. The demand is, therefore, rejected.

DATED and delivered at Nairobi this 16th day of April 2002.

Charles P. Chemmutut,

JUDGE.