



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Before: Charles P. Chemmutut, J.

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

CAUSE NO.12 OF 2002.

AMALGAMATED UNION OF KENYA METAL WORKERS.....Claimants.

- v -

REMCO LTD.....Respondents.

Issue in Dispute:-

“Recognition Agreement”.

Tom M. Tindi, General Secretary, for the Claimants (hereinafter called the Union).

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

A W A R D.

On 6th March 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); and his reference, together with the statutory certificate from the Labour Commissioner under Section 14, subsection(9) (e) of the Act, were received by the Court on 8th March 2002. The dispute was then listed for mention on 4th April 2002, when Mr. Tindi appeared for the Union but there was no appearance for the Company. Notwithstanding the absence of the latter, however, the parties were directed to submit or file their respective written memoranda or statements on or before 18th April and 9th May 2002, and the dispute was fixed for hearing on 6th June 2002. Mr. Tindi again appeared for the Union, but there was no appearance for the Company. In the circumstances, the dispute was rescheduled for hearing on 19th June 2002, and the Company were allowed to file their reply statement on or before 14th June 2002, but they either neglected or refused to do so. On each occasion during the foregoing arrangements, the parties were notified through their proper addresses on the record.

On 19th June 2002, Mr. Tindi appeared for the Union, and Mr. F. Buyakane, Administrative Manager, who appeared for the Company, applied for an adjournment of the dispute on the ground that they did not receive the Union’s memorandum and the correspondence on this matter. Mr. Tindi objected to the application for adjournment simply because the Company’s address on the record was correct and all the communication to them on this case must be presumed to have reached them. In reply to a question put to him by the Court, Mr. Buyakane conceded that the address on the record and to which the Union’s memorandum and all other correspondence were forwarded belonged to the Company. In view of this admission and the Company’s neglect or refusal to file their reply statement in spite of proper service, the application for adjournment was rejected and the dispute proceeded for hearing *ex-parte*.

The Union is registered under Section II of the Trade Unions Act, Cap.233, Laws of Kenya, to represent all unionisable employees in the metal industries, and the Company from which they have sought recognition are a limited liability concern, incorporated under the Companies Act, Cap.486, Laws of Kenya. They deal mainly with installation and repair of refrigerators,

air conditioning equipment and ventilation engineering; and it is stated that their economic activities are relevant and fall within the Union's area of representation.

Mr. Tindi submitted that in May 1998 the Union approached the Company for recognition mainly on the following grounds:-

(a) that they had recruited 33 out of 45, or 73.3%, unionisable employees as union members;

(b) that they are the sole and rightful or appropriate Union to represent the unionisable employees of the Company on matters pertaining to their terms and conditions of employment, and

(c) that there is no rival union claiming representation or recognition from the Company.

But the Company are alleged to have used all kinds of tricks and tactics in the book in order to evade or avoid recognition of the Union, and also threatened, coerced and intimidated the employees not to join the Union (see Annexures A, B, C, D, F and G).

On 1st September 1998, the Union reported a trade dispute to the Minister for Labour in accordance with Section 4 of the Act (see Annexure E). The Minister accepted the dispute and appointed Mr. P.M. Macharia of the Ministry of Labour Headquarters to act as the Investigator; and in his subsequent report which was released to the parties on 17th July 2001, the Minister found and recommended as follows:-

FINDINGS.

..... Ms. Remco Ltd., is a company whose main line of business is the installation and repair of refrigerators, air conditioning and ventilation contractors.

It has a labour force of 62 unionisable employees at the workshop and on various sites.

..... by virtue of its registered constitution, Amalgamated Workers is the appropriate Union to represent the employees' interests in M/S. Remco Ltd.

..... by August 1998, the Company had 57 unionisable employees out of which 33 had joined the Union by signing the check-off forms. In percentage terms, the signed members represents 57.8% membership which is more than the simple majority required by law.

Under the country's constitution and in the Trade Disputes Act, every employee enjoys the right to join a Union of his or her own choice and thus the management's act of circulating a memo requiring the employees to declare their Union status must be seen as intimidation and an attempt to deny the enjoyment of freedom of association.

Finally..... there is no rival Union seeking or claiming representation of the same employees.

RECOMMENDATION.

.....

..... I recommend that M/S Remco Ltd., accord Amalgamated Union of Kenya Metalworkers formal recognition to pave way for collective bargaining process/negotiations".

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 the Company rejected it. Hence this dispute for consideration and determination.

There is nothing in rebuttal in this case; and I have, therefore, no reason to disbelieve the Union's case. It is evident from the submissions of the Union and the annexures on the record that the Company engaged, through threats, coercion and intimidation, in dissuading their employees from joining the Union. But the Company should realise that trade union power is an economic factor which has to be taken seriously into account and certainly is not capable of being overcome by crude show of force; and, as I have observed elsewhere on several occasions before "some employers in this country resent the emergence of trade unions in their concerns because they want to dictate terms and conditions of service to their employees. These employers are fighting a battle they cannot win, and the soon they encourage unions to stand on their own feet the better, otherwise they (employers) will continue to have trouble on their hands as there will be no recognised employees' leader to whom they can talk".

In the result, I am satisfied that the Union have fulfilled the requirements under Section 5(2) of the Act. Accordingly, I uphold the Minister's findings and recommendations, and award that the Company should accord formal recognition to the Union and sign a recognition agreement with them (Union) forthwith.

Both members are in full agreement with this decision.

DATED and delivered at Nairobi this 25th day of July, 2002.

Charles P. Chemmutut,

JUDGE.