



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI.

(Before: Charles P. Chemmutut, J.,

A.K. Kerich & S.M. Maithya, Members.)

CAUSE NO.14 OF 1996.

KENYA ELECTRICAL TRADES & ALLIED WORKERS' UNION.....Claimants.

- v -

KENYA POWER & LIGHTING CO. LTD.....Respondents.

Issue in Dispute:-

“Wrongful dismissal of Gilbert Oduori, No.7490” (hereinafter called the grievant.)

W.D. Wambua, Industrial Relations Officer, for the Claimants (hereinafter called the Union).

James Gitau Singh, Advocate, of Hamilton, Harrison & Mathews, Advocates, for the Respondents (hereinafter called the Company).

A W A R D.

The Court delivered its ruling on the Preliminary Objection raised by the Company in this dispute on 12th November, 1996, and the main case was heard on 5th February, 28th May, 11th June, 15th October, 10th November 1997 and the parties filed their written final submissions on 20th November and 3rd December, 1997 respectively. The Union examined the grievant himself (C.W.1), while the Company examined Messrs William Ngugi Karanja (R.W.1), Desterious Mula (R.W.2), George Oyaya (R.W.3) and Kirore Kamau (R.W.4).

The grievant was employed by the Company as general worker, Grade II, on 1st April, 1978 at a consolidated salary of Kshs.430/= per month. He worked in various departments of the Company's establishment and also earned some promotions. On 26th September, 1988 he was terminated from service on disciplinary grounds for gross misconduct, i.e. theft of an Issue Note No.568650 and a cable. He was also accused of insubordination. The said letter of termination reads *in extenso* thus:-

“RE: TERMINATION OF SERVICE.

Investigations carried out by the Company Auditors revealed that you stole an Issue Note, presented it to Isiolo Road Store and obtained Company materials worth Kshs.4,428.20 by false pretences and converted them to your own personal use.

In view of the seriousness of the matter you are advised that the Management has decided to terminate your services for gross misconduct.

You will be paid your salary upto 26th September, 1988 together with 3 months' salary in lieu of notice. By a copy of this letter the Paymaster is further authorized to pay you the equivalent of your 60 days terminal leave.

You will be advised under separate cover regarding your interest in the Provident Fund.

Yours faithfully,

for: THE KENYA POWER & LIGHTING CO. LTD.

(Sigd.)

DISTRIBUTION MANAGER”.

The parties attempted to settle the matter at their own level but were unable to agree. On 1st September, 1992 the Union reported a formal trade dispute to the Minister for Labour in accordance with Section 4 of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter

referred to as the Act). The Minister accepted the dispute, and it was investigated as usual. On the basis of the investigation report, which was released to the parties on 1st February 1995, the Minister found and recommended as follows:-

“Findings.

The background against which Mr. Oduori's services were terminated would appear to be issue note that was used to collect materials in question.

The issue note was properly authorized. However, after collecting the materials and loading them on to the vehicle,

Mr. Oduori did not hand them over to the team leader who would have procedurally signed for them indicating the handing over the responsibility for the materials.

It is the finding of this investigation that the materials in question were all loaded on the vehicle in full view of the team members. An allegation by the team leader that he saw

Mr. Oduori walk away with the cable and did nothing at that point is simply not acceptable. It does not in any way sound convincing.

Apart from the obvious mistake by Mr. Oduori not to have handed the materials collected to the team leader, the accusation by the management of obtaining the materials by false pretences has not been proved.

I, therefore, find that the decision to terminate Oduori's services after rendering the company services for about 10 years, was rather harsh.

Recommendation.

I would recommend that besides his normal terminal benefits, Mr. Oduori be paid compensation for loss of job amounting to 4 months salary".

Finally, the Minister 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. Wambua challenged the order of termination of the grievant on disciplinary grounds and prayed that he should be reinstated to his job, without loss of salary and back benefits. He stated that the order of the grievant's termination from service was null and void because no proper enquiry was conducted and the grievant was not afforded any reasonable opportunity to defend himself.

In a nutshell, the Learned counsel for the Company, Mr. Singh, vehemently resisted the Union's case and insisted that the grievant committed the aforementioned offences for which he was terminated from service on disciplinary grounds.

I have very carefully gone through the record of the case, and the representatives of the parties were also heard at a considerable length. During his examination-in-chief and cross-examination, the grievant, (C.W.I), consistently and vehemently denied that he stole the said Issue Note and the cable, while the witnesses of the Company testified to the contrary. The grievant insisted that the Issue Note was issued to him by the technician, a Mr. Mulaa, to go and collect the cable from the Company Store at Isiolo Road, and he maintained that "the cable was in a box on the lorry when he alighted at Kariobangi". The team leader, Mr. William Ngugi Karanja, (R.W.I), who said that he had good working relations with the grievant, deponed in his examination-in-chief that he saw the grievant with an issue note purportedly given to him by Mr. Mulaa for issuance of a cable from the stores, which he (grievant) loaded in the vehicle, Reg. No.KTH 962; and that he saw the grievant "carry away the cable, measuring 28 metres x 35 milimetres, when he alighted at Mathare North after the completion of work". On the next day, he reported the matter to Mr. Mulaa. In cross-examination, Mr. Karanja admitted that, as a team leader, he was in charge of all the materials and tools on the lorry. However, he said, the grievant took away the cable when he alighted and refused to return it on being requested to do so. He stated on re-examination that he "could not stop the grievant from collecting the cable because Mr. Mulaa had signed the issue note".

Mr. Desterious Mulaa, (R.W.2,) told the Court that Mr. Karanja, (R.W.I,) reported to him that the grievant collected the cable from the Company store at Isiolo Road, and took it away. He, (R.W.2,) requested the grievant to return the cable, measuring 28 metres, but the grievant denied having taken it. In the circumstances, he reported the matter to the Engineer in-charge, Mr. Abdalla Nasher. On cross-examination, he (R.W.2,) denied having given the issue note to the grievant to collect the cable from the stores.

Mr. George Oyaya, (R.W.3,) denied any knowledge of the additional words "after the job, we left everything in the vehicle as issued" on a misleading letter attached to the submission of the Union as App.XIII(b).

The Assistant Administration Manager, Mr. Kirore Kamau, (R.W.4,) stated that the grievant admitted to having taken the cable, worth about Kshs.4,400/=, and promised to return it, but he did not. The grievant was given every opportunity to defend himself during the investigation for misconduct and consequently he was terminated from service. In cross-examination, Mr. Kamau stated that the matter was not referred to the police for prosecution because disciplinary matters were the preserve of the management, which had the adequate machinery to deal with them.

The sum total of the evidence by the Company witnesses was that the grievant collected the cable from the Company stores at Isiolo Road and converted it to his own personal use. But the main reason for his termination on disciplinary grounds was that he "stole an Issue Note" and used it to collect materials therefrom, which he converted to his own personal use. Therefore, the evidence on the record vis-à-vis the reasons for the grievant's purported termination from service are completely contradictory. In the circumstances, I accept the findings of the Investigator.

The grievant was terminated from employment on disciplinary grounds fourteen (14) years ago; and this being the case, I am unable to reinstate him to his former job; but in my considered view, however, he is entitled to normal termination of service,

with full terminal benefits and compensation for loss of employment. Accordingly, I AWARD and ORDER that the termination of the grievant on disciplinary grounds be reduced to normal termination of service and he be paid all his terminal benefits, including his own and the Company's contributions to the Provident Fund Scheme, in terms of the parties "collective agreement", in force at the material time. In addition, the grievant be paid compensation equivalent to ten (10) months' salary for loss of employment.

Both members of the Court support this decision.

DATED and delivered at Nairobi this 8th day of October, 2002.

Charles P. Chemmutut,

JUDGE.