

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI.

(Present: Charles P. Chemmutut, J.,

J.M. Kilonzo & O.A. Wafula, Members.)

CAUSE NO. 1 OF 2006.

TRANSPORT & ALLIED WORKERS' UNION Claimants.

v.

GENERAL FREIHTERS LTD. Respondents.

Issue in Dispute:-

“Wrongful termination of Mr. Augustine Mutala and failure by the management to pay terminal dues”.

Mr. Nasib Makuwa, Education and Industrial Relations Officer, for the Claimants (hereinafter called the Union).

Mr. K.K. Nyaencha, Advocate, of M/S. Nyaencha Waichari & Co., Advocates, for the Respondents (hereinafter called the Company).

AWARD BY CONSENT.

On 23rd December, 2005, the Minister for Labour referred this dispute to the Court under powers vested in, or conferred upon, 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 certificates from the Labour Commissioner and the Minister himself under Section 14(9)(e) and (f) of the Act, were received by the Court on 5th January, 2006. The dispute was then listed for mention on 25th January, 2006, when Mr. Makuwa appeared for the Union but there was no appearance for the Company. In the circumstances, the matter was listed for another mention on 7th February, 2006, when Mr. Makuwa again appeared for the Union, but there was no appearance for the Company. However, in spite of the absence of the latter's representative, the parties were directed to submit or file their written memoranda or statements on or before 1st and 22nd March, 2006, respectively, and the dispute was fixed for hearing on 9th May, 2006. Mr. Makuwa belatedly submitted his memorandum, on behalf of the Union, on 16th March, 2006, and the learned counsel for the Company, Mr. Nyaencha, also belatedly filed his reply statement on 19th April, 2006.

Consequently, the parties took some adjournments to explore the possibility of an amicable settlement out of Court; and this morning, during the proceedings of the dispute in Court, they agreed to settle the case on payment by the Company to the grievant of Kshs.34,398/= in full and final settlement, made up as follows:-

(i) One month's pay in lieu of notice: Kshs.8,534/=.

(ii) Underpayment ” 262/=.

(iii) Three(3) months' salary as compensation for loss of employment pursuant to the Minister's recommendation.

Kshs.8,534/=x3 ” 25,602/=.

Total Kshs.34,398/=.

The settlement was signed by Mr. Nasib Makuwa, on behalf of the Union, and by Mr. Shital Bhandari, Managing Director, on behalf of the Company. It was witnessed by Mr. K.K. Nyaencha, Advocate, who also appended his signature thereon.

In our considered opinion, the terms of the settlement are fair and reasonable, and we award as hereinabove and mark the case as settled.

DATED and given in Nairobi this 1st day of August, 2006.

Charles P. Chemmutut, MBS.,
JUDGE.

J.M. Kilonzo, O.A. Wafula,
MEMBER. MEMBER.