



Kaluti v Tata Chemicals Magadi Limited (Employment and Labour Relations Cause 696 of 2018) [2024] KEELRC 433 (KLR) (29 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 433 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 696 OF 2018
BOM MANANI, J
FEBRUARY 29, 2024**

BETWEEN

THOMAS MAKAU KALUTI CLAIMANT

AND

TATA CHEMICALS MAGADI LIMITED RESPONDENT

JUDGMENT

1. The instant action challenges the Respondent's decision to terminate the Claimant's contract of employment. According to the Claimant, the decision was without valid reason. Therefore, it should be declared unlawful and the Respondent ordered to, inter alia, pay him compensatory damages.
2. The Respondent does not admit the claim. It (the Respondent) believes that it had valid reasons to discontinue the Claimant's employment and that the decision was processed in accordance with due process. Consequently, it (the Respondent) prays that the action be dismissed with costs.

Claimant's Case

3. The Claimant avers that he was first hired by the Respondent on 1st November 2007 as an Assistant Permanent Way Team Leader. He contends that he was later promoted to the position of Permanent Way Team Leader.
4. According to the Respondent's General Operating Rules and General Operating Instructions, a Permanent Way Team Leader is essentially a Track Supervisor who is in charge of a maintenance team. This is the team that undertakes routine maintenance and repairs of the Respondent's rail tracks.
5. The Claimant avers that his contract of service was unfairly terminated on 22nd June 2016. The reason for this development was the occurrence of an accident on one of the Respondent's rail tracks on 15th December 2015.



6. On this fateful day, two of the Respondent's wagons (trolleys MT5 and MT7) collided on the Respondent's Kajiado-Singiraini-Magadi rail track. The accident resulted in injuries to a number of the Respondent's workmen who were on board of the two wagons.
7. The Claimant blames the accident on the Respondent. According to the Claimant, the Respondent had failed to ensure safety along the rail tracks as per its General Operations Rules
8. The Claimant argues that the Respondent had failed to maintain a functional radio communication system. He argues that this failure caused communication failure between wagon operators occupying the rail tracks at any one time. As a result, the operators could not monitor movement of their counterparts on the tracks thereby increasing the risk of collisions.
9. The Claimant contends that although the Respondent had resorted to mobile telephone communication to issue instructions and monitor track occupancy, this was not a suitable mechanism for monitoring movement of wagons on the rail tracks. According to him, the only reliable mechanism in this respect was the radio system.
10. The Claimant contends that on the fateful day, the mobile phone network around the area where the accident occurred was weak. As a result, the maintenance team was not able to monitor the movement of wagons on the tracks and hence the occurrence of the accident.
11. The Claimant has also argued that he cannot be blamed for the accident since he was not the driver of the locomotive that caused the collision. He contends that he was just a passenger on the wagon.
12. The Claimant has also blamed the accident on failure by the Respondent to hire competent trolley operators. He further contends that trolley MT7 had not been licensed to operate.

Respondent's Case

13. On its part, the Respondent blames the accident on the Claimant. According to the Respondent, its rail track between Kajiado and Magadi had suffered damage due to heavy rains. Owing to the magnitude of the damage, it (the Respondent) tasked its track maintenance crew from Kajiado and Magadi to undertake repair works on the line on 15th December 2015.
14. According to the Respondent, the crew were given specific sections between KM 102.0 and KM 104.9 for repairs. The Respondent avers that two trolleys (MT5 and MT7) were to ferry the maintenance crew along the allocated work stations. MT5 was to operate from Magadi to Singiraini whilst MT7 was to operate from Kajiado to Singiraini.
15. The Respondent contends that its Rail Traffic Controller (RTC) issued the crew on MT7 Occupancy Control System (OCS) Certificate No.1 to occupy and work on the rail track between the Kajiado and Singiraini stations. On the other hand, crew on MT5 were issued with OCS Certificate No. 3 to occupy and undertake repairs on the rail track between Magadi and Singiraini stations. The crew on the two trolleys did not have the authorization of the RTC to operate beyond the above designated sections.
16. According to the Respondent the occupancy certificate aforesaid had been issued by the RTC to the Claimant in his capacity as the Track Supervisor on board MT7. Therefore, he (the Claimant) was in charge of the safety of the crew on the aforesaid Trolley.
17. The Respondent contends that the Claimant failed to give the Trolley Operator a copy of the occupancy certificate for purposes of counter-checking the occupancy rights. It (the Respondent) further contends that after departure from the Kajiado station, the Claimant instructed the Trolley



Operator to proceed beyond the Singiraini station in contravention of the track occupancy instructions that had been issued by the RTC.

18. The Respondent contends that due to the Claimant's instructions to the Trolley Operator, MT7 proceeded beyond the Singiraini station up to KM 93.9 where it collided with MT5. The Respondent avers that the crew on MT5 had not been notified that MT7 would go beyond its track occupancy limits and occupy a section that was already under the occupancy of MT5.
19. According to the Respondent, this development substantially resulted in the occurrence of the accident in question. The Respondent accuses the Claimant of gross dereliction of duty which resulted in injury to other employees and damage to its property. For this reason, the Claimant's contract of service was terminated.

Issues for Determination

20. The record does not show that the parties agreed on issues for determination. However, they each formulated their separate sets of issues at the stage of final submissions. After analyzing the pleadings and evidence on record, I am of the view that the following are the issues that require consideration:-
 - a. Whether the Claimant's contract of service was unfairly terminated.
 - b. Whether the parties are entitled to the reliefs that they seek through their respective pleadings.

Analysis

21. On the first issue, it is without doubt that the Claimant's contract was terminated as a result of the accident that occurred at the Respondent's premises on 15th December 2015. The parties blame each other for the accident.
22. The evidence on record demonstrates that the Claimant was in charge of operations on MT7. Whilst he (the Claimant) was not the Trolley Operator, the safety of the Trolley and its crew members whilst on maintenance works was substantially in his hands. As the team leader, he was charged with the responsibility of ensuring compliance with track occupancy regulations.
23. Regulation No. 169 of the Respondent's General Operating Rules requires the Permanent Way Supervisor to ensure that he has an OCS Clearance before occupying a rail track. In addition, the regulation requires the Permanent Way Supervisor to nominate one of his staff to counter-check the OCS Clearance before it is acted on.
24. Thus, as the Permanent Way Supervisor, the Claimant had the singular duty of ensuring that he complied with these regulations. He was under duty to obtain the OCS Clearance from the Respondent's RTC. He was under duty to ensure that he nominated a crew member to counter-check the OCS Clearance that was issued to him before occupying the rail track. Finally, he had the singular duty of ensuring that Trolley MT7 operated within the approved section of the rail track.
25. The evidence on record demonstrates that the Claimant was issued with OCS Clearance Certificate to occupy the Kajiado to Singiraini section of the rail track. However, he authorized the Trolley Operator to exceed the track occupancy limits by proceeding beyond Singiraini.
26. The Claimant contends that the cause of the accident was the Respondent's dysfunctional radio communication system. It is true that absence of a functional radio communication system rendered operations on the Respondent's tracks vulnerable. However, the Respondent had mitigated this gap by deploying the use of mobile phone communication to maintain contact along the rail track.



27. Importantly, the evidence on record demonstrates that the root cause for accident in question was the Claimant's decision to exceed the track occupancy instructions that had been given to him by the RTC. Had he (the Claimant) not authorized the Trolley Operator to go beyond Singiraini in contravention of the instructions in OCS Clearance No. 1, the accident would not have occurred.
28. The Investigation Report shows that during the inquiry into the incident, the Claimant asserted that he had been permitted by one Kiongera, the Track Supervisor on MT5 to operate MT7 beyond Singiraini so that the two wagons could meet at KM 103. However and as the report shows, Kiongera denied the Claimant's assertion. Despite the contestation on what the two agreed on, it is clear that the Claimant allowed the operator of MT7 to proceed beyond Singiraini without the approval of the RTC thus occasioning the accident in question.
29. The Claimant's failure to follow the rail track occupancy instructions from the RTC was a clear dereliction of duty on his part. This conduct amounted to gross misconduct under section 44 of the Employment Act for which the Respondent was entitled to terminate the Claimant's services. In the premises, I reach the conclusion that the Respondent had valid reasons to consider terminating the Claimant's contract of service.
30. There is evidence that after the accident of 15th December 2015, the Respondent issued the Claimant with a Notice to Show Cause why disciplinary action should not be taken against him for dereliction of duty. There is evidence that he (the Claimant) responded to the Respondent's letter.
31. There is evidence that the Respondent subjected the Claimant to a disciplinary hearing where his case was considered before the decision to terminate his contract was arrived at. There is evidence that the Claimant appealed against the decision to terminate his contract. There is evidence that the appeal was considered and rejected.
32. The totality of the foregoing demonstrates that the Respondent accorded the Claimant a fair hearing before his contract of service was terminated. In the premises, I reach the conclusion that the Respondent upheld due process in terminating the employment relation between the parties.

Determination

33. Having regard to the foregoing, I arrive at the conclusion that the decision to terminate the Claimant's contract of service was based on genuine reasons. Further, the Respondent upheld due process in terminating the contract.
34. As a result, I find that the Claimant's case against the Respondent is devoid of merit.
35. Accordingly, the action is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF FEBRUARY, 2024

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER



In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE

