



Wahome v Farmers Choice Limited (Employment and Labour Relations Cause E689 of 2021) [2024] KEELRC 409 (KLR) (29 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 409 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E689 OF 2021**

**BOM MANANI, J
FEBRUARY 29, 2024**

BETWEEN

JOSEPH MATHU WAHOME CLAIMANT

AND

FARMERS CHOICE LIMITED RESPONDENT

JUDGMENT

1. The instant dispute questions the validity of the Respondent's decision to terminate the Claimant's contract of service. The Respondent hired the services of the Claimant to repair and maintain its refrigeration equipment. However, this contract was terminated on 8th March 2021 after the Respondent accused the Claimant of negligence in the performance of his duties.
2. According to the Respondent, the Claimant was tasked with the role of regularly inspecting and maintaining its refrigeration equipment at its Kasarani plant. On 13th February 2021, the said machines suffered a breakdown. When investigations were carried out to ascertain the reason for the breakdown, it was discovered that the machines had not been fitted with protective devises. This, according to the Respondent, caused damage to the machines which cost more than Kenya Shillings one million (Ksh. 1,000,000.00) to repair.
3. The Respondent blames the Claimant for the occurrence. According to the Respondent, the damage was the direct consequence of dereliction of duty by the Claimant.
4. The Respondent contends that had the Claimant ensured that the machines were fitted with the protective devises, the damage would have been avoided. It is the Respondent's contention that since the Claimant had been assigned the duty of regular inspection and maintenance of the machines in question, he ought to have detected the need to fit them with the protective devises and caused the same to be done. However, he failed to do so thereby exposing the machines to the risk of damage.



5. On the Claimant's part, he denies that he was responsible for the damage to the machines. According to him, he was not the technician on duty when the damage on the machines occurred. As a matter of fact, he was away representing the Respondent at a funeral in Kisumu. Therefore, he cannot be blamed for the damage.

Issues for Determination

6. After analyzing the pleadings and evidence on record, I form the opinion that the following are the issues that require determination in the cause:-
 - a. Whether the Claimant's contract of service was terminated unfairly.
 - b. Whether the parties are entitled to the reliefs that they seek through their respective pleadings.

Analysis

7. There is no dispute that the Respondent's refrigeration equipment at its Kasarani plant were damaged on 13th February 2021 following a power surge. Indeed, this is confirmed by the Claimant in his response to the notice to show cause dated 1st March 2021.
8. The issue for determination is where blame for the damage lies. Whilst the Respondent blames the Claimant for the damage, the Claimant denies responsibility for it.
9. The Claimant asserts that he was off duty on the material day. He avers that one Jamleck Mutuma and one Kenneth Okomo were the technicians on duty.
10. The Claimant contends that when he reported back on duty the Monday after 13th February 2021, he realized that the machines were dysfunctional with their compressors destroyed. He also realized that the machines had a wiring problem and that their circuit breakers had been damaged.
11. The Claimant denies responsibility for the damage. He avers that the damage occurred when he was off duty. Further, he contends that the site had a number of technicians and he wonders why he was singled out with claims of negligence against him.
12. On its part, the Respondent states that besides the other technicians visiting the facility to fix emergent problems, the Claimant had been assigned the site for purposes of routine inspections and maintenance. Therefore, the duty of ensuring that the equipment were safe rested with him. This included recommending fixing of safety devises on the equipment to prevent damage to them arising from power surges.
13. The Respondent contends that the Claimant failed to discharge this function when he failed to ensure that the machines were fitted with protective devises. Therefore, whether he (the Claimant) was on duty or not on 13th February 2021 would not have saved the machines from destruction as they did not have the protective devises.
14. I have looked at the minutes of the disciplinary case. From the said minutes, it is clear that the Claimant conceded that he had been assigned the Kasarani site more than a year before the date of the incident. However, he asserted that his supervisor had not prepared a duty roster to indicate when he (the Claimant) should visit the facility for regular inspection and maintenance.
15. The record shows that the Claimant's supervisor informed him that he did not require a duty roster to visit the facility and inspect the machines now that he had been allocated the site. All that he required was to notify the facility manager of his visit and prepare and submit reports on the status of the machines.



16. The evidence on record shows that the Claimant had been at the facility for a couple of days working on the machines before he left for Kisumu on 13th February 2021 when the incident occurred. This being the case, the Claimant ought to have noticed that the machines had not been installed with protective equipment. Indeed, the only reason that the Respondent had deployed the Claimant's expertise to the site was to detect and report areas of concern on the machines. The fact that he did not do so was clear dereliction of duty by him.
17. Importantly, the Respondent called one Benedict Mativo who went to repair the machines after the damage on 13th February 2021. Before the Disciplinary Committee (DC), this individual appeared as the Claimant's witness. The record of the DC states as follows on the subject:-

“The engineering manager also stated that when a different team was sent to repair the machines, they noticed that there were no safety components in place, which is what caused the damage, adding that had the safety components been functional, the damage would have been avoided. Mr. Benedict Mativo echoed his sentiment as the electrician sent to repair the damaged machine.”
18. The above statement demonstrates that the Claimant's witness at the DC confirmed that the machines were damaged because of the failure to install protective equipment on them. As indicated earlier this was the responsibility of the Claimant to have flagged out but which he failed to do.
19. As indicated above, Benedict Mativo eventually testified in court but for the Respondent. He did not say anything new. He only reiterated what he is recorded to have affirmed before the DC.
20. The Claimant's immediate supervisor also testified both before the DC and in court. He confirmed that the Claimant was reporting directly to him. He confirmed that he had assigned the Claimant to take care of routine inspection and maintenance of refrigeration equipment at the Respondent's Kasarani plant. The witness, who is an engineer by profession, stated that the damage to the refrigeration equipment was caused by the failure to equip them with protective devices. The witness blamed the Claimant for failing to flag this need during his routine inspection of the machines.
21. The evidence on record overwhelmingly lays blame for the mishap at the Respondent's Kasarani plant at the Claimant's doorstep. The Claimant had been entrusted with the duty of regular inspection and maintenance of the refrigeration equipment at the plant. As a matter of fact, he had spent more than a day at the plant working on the same machines just before the incident in question.
22. The Respondent relied on the Claimant's expertise to flag the need to equip the machines with protective equipment. He (the Claimant) failed to flag this need resulting in damage to the machines.
23. The Claimant's conduct constituted dereliction of duty. This conduct amounted to negligent behavior for which the Respondent was entitled to terminate his services under section 44 of the [Employment Act](#). Consequently, I reach the conclusion that the Respondent had a valid reason to terminate the Claimant's services.
24. The record shows that after the incident in question, the Respondent issued the Claimant with a notice to show cause to explain why disciplinary action should not be taken against him for the infraction. There is evidence that the Claimant wrote a response to the Respondent's letter. There is evidence that the Claimant was thereafter subjected to a disciplinary hearing where he was allowed to bring his witnesses and offer his defense before the Respondent rendered its verdict.



25. Having regard to the foregoing, it is evident that the Claimant was granted a fair process before the decision to terminate his contract was made. In the premises, I find that the Respondent complied with the requirements of due process.

Determination

26. Having regard to the evidence on record, I am satisfied that the Respondent had a valid reason to terminate the Claimant’s contract.

27. I am also satisfied that the decision to sever the employment relation between the parties was arrived at in accordance with due procedure.

28. In the premises, I find that the instant action against the Respondent is devoid of merit.

29. Accordingly, the case 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

