



Pwani University Council v Universities Academic Staff Union; Ministry of Labour and Social Protection & another (Interested Parties) (CBA E082 of 2023) [2024] KEELRC 2217 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2217 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CBA E082 OF 2023
L NDOLO, J
SEPTEMBER 19, 2024

BETWEEN

PWANI UNIVERSITY COUNCIL EMPLOYER

AND

UNIVERSITIES ACADEMIC STAFF UNION UNION

AND

MINISTRY OF LABOUR AND SOCIAL PROTECTION .. INTERESTED PARTY

ATTORNEY GENERAL INTERESTED PARTY

RULING

1. Pursuant to an objection raised by the Employer, I delivered a ruling on 26th October 2023, remitting the Collective Bargaining Agreement (CBA) for the period 2013-2017, between the Employer and the Union, for renegotiation of Clause 11(a) of the CBA.
2. The impugned clause relates to the retirement age of employees who are members of the Union; it states as follows

“The mandatory retirement age for academic staff shall be seventy five (75) years, but an employee may opt for voluntary/early retirement at fifty five (55) years.”
3. The Employer submits that, the said clause is contrary to government policy, which places retirement for universities academic staff at seventy (70) years.
4. The Employer relies on the decision in CBA Nos 1, 2 & 3 of 2020: Inter Public Universities Council Consultative Forum v Kenya Union of Domestic, Hotels, Educational Institutions and Hospital



Workers (KUDHEIHA), Universities Academic Staff Union (UASU) & Kenya Universities Staff Union (KUSU) where it was held that:

“The current practice as set out in the pension schemes for universities, the policies and guidelines in place and the provisions of any law that governs retirement age in the public sector shall apply.”

5. The Respondent further submits that the subject clause is contrary to the normal retirement age provided in the Pwani University College Staff Retirement Benefits Scheme Trust Deed.
6. On its part, the Union maintains that because the parties had voluntarily signed the CBA, the Court ought to register it, without any amendment. Registration of CBAs is however not a mechanical exercise and this is why parties are required to appear before the Court to confirm their concurrence with the document submitted for registration.
7. The Union makes a case out of the fact that there was no objection from either the Ministry of Labour or the Salaries and Remuneration Commission. Nevertheless, where a primary party to a CBA raises an objection, the Court must pay attention.
8. In raising its objection, the Employer states that the impugned clause runs contrary to government and institutional policy and practice. The Union did not present any evidence to contradict the Employer’s assertion. The Court is therefore satisfied that the Employer has made out a case for review of the CBA, which is allowed.
9. Consequently, the parties are directed to submit a revised CBA within the next fourteen (14) days from the date of this ruling.
10. In the spirit of harmonious industrial relations, I direct that each party will bear their own costs.
11. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY SEPTEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Kabuthi for the Employer

Ms. Kariuki h/b for Mr. Koceyo for the Union

Ms. Kirina for the Interested Party

