



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 347 OF 2016

KENYA NATIONAL PRIVATE SECURITY

WORKERS UNION.....CLAIMANT

v

G4S SECURITY SERVICES (K) LTD.....RESPONDENT

JUDGMENT

1. The Cause was heard on 7 February 2018 when Evans Odhiambo Ogweno (the Grievant) testified and on 16 November 2021, when a Human Resource Officer with G4S Security Services (K) Ltd (the Respondent) testified.
2. The Kenya National Private Security Workers Union (the Union) filed its submissions on 15 December 2021.
3. The Respondent filed its submissions on 20 January 2022.
4. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

Procedural fairness

5. The Union challenged the procedural fairness of the dismissal of the Grievant on the ground that due process was not followed and that the Respondent did not consider the his appeal.
6. The Grievant was suspended through a letter dated 26 August 2015, to facilitate investigations into allegations of fuel siphoning.
7. The investigations were concluded and on 1 September 2015, charges were preferred against the Grievant (the charge was siphoning of 26 litres of fuel).
8. The Grievant received a copy of the charge sheet on 4 September 2015 and a hearing was conducted the same day.
9. The Grievant was accompanied to the hearing by 2 shop stewards and the he was afforded an opportunity to be heard and on 9 September 2015, he was dismissed.
10. The Grievant was notified of charges to confront and he was afforded an opportunity to make representations at an oral hearing. He was accompanied by 2 shop stewards.
11. Although alleging that the Respondent did not consider his appeal, the Grievant did not disclose when the appeal was made or produce a copy of the same.
12. The Court is satisfied that the Respondent was in compliance with the tenets of procedural fairness as envisaged by sections 35(1) and 41 of the Employment Act, 2007.

Substantive fairness

13. Sections 43 and 45 of the Employment Act, 2007 places a burden on the employer to not only prove but prove as valid and fair the reasons for dismissing an employee.

14. To discharge the burden, the Respondent called its Human Resources Officer.
15. The witness testified that a routine fuel usage audit conducted on 26 August 2015 established that the vehicle assigned to the Grievant had poor fuel consumption.
16. The witness stated that as part of the audit, the Grievant was sent to fuel the vehicle to capacity which he did, and that upon return to the workplace after covering a distance of about 1-km, he was again sent to the fuel station to fuel and about 26 litres fuel was put into the vehicle (receipts produced).
17. According to the witness, an examination of fuel trends for the vehicle also revealed high fuel consumption.
18. On his part, the Grievant had testified that the vehicle's fuel tank had a leakage due to a faulty lid and that he had reported the fault to his supervisors.
19. During cross-examination, the Grievant admitted that it had been established that on 26 August 2015, the vehicle had consumed 26 litres of fuel over a 1-km distance.
20. By the stretch of any imagination, it is not plausible that the vehicle assigned to the Grievant would consume 26 litres of fuel within a 1-km distance.
21. Further, the Grievant did not disclose the name of the supervisors he reported the faulty lid and leakage to.
22. The Court finds the explanation an afterthought.
23. It is more probable that the Grievant was interfering with the fuel, and the Court finds that the Respondent had valid and fair reasons to dismiss him.
24. Compensation is therefore not available as remedy to the Grievant.
25. Reinstatement is also not available as more than 3-years have elapsed since the dismissal of the Grievant.

Breach of contract

August 2015 wages

26. The Respondent offered the Grievant wages up to date of dismissal on 9 September 2015, and if the same were not paid, the Respondent should pay.

Overtime

27. The Respondent equally offered to pay the Grievant outstanding overtime up to date of dismissal. If not yet paid, the Respondent should pay.

Wages during suspension

28. The question of wages during suspension does not arise considering that the Respondent had offered to pay the Grievant wages up to date of dismissal without any demur save to hand-over as required by the policies in place.

Conclusion and Orders

29. From the foregoing, the Court finds no merit in the Cause and it is dismissed with no order on costs.
30. The Grievant should hand-over to the Respondent in order for his dues to be processed as outlined in the dismissal letter.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 16TH DAY OF FEBRUARY 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mr Odima, Industrial Relations Officer

For Respondent Ms Ruto instructed by Hamilton Harrison & Matthews Advocates

Court Assistant Chrispo Aura