



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU
CAUSE NO. 32 OF 2019

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

V

FARM ENGINEERING INDUSTRIES LTD.....RESPONDENT

JUDGMENT

1. Kenya Engineering Workers Union (the Union) and Farm Engineering Industries Ltd (the Respondent) have a valid recognition agreement.
2. The Union and the Respondent signed a collective bargaining agreement which lapsed on 31 July 2017.
3. On 30 June 2017, the Union forwarded to the Respondent its proposals for a new collective bargaining agreement. The parties met severally but could not agree on some 9 Issues
 - i. Minimum wage.
 - ii. General wage increase.
 - iii. House allowance.
 - iv. Annual leave.
 - v. Leave travelling allowance.
 - vi. Safari allowance.
 - vii. Redundancy.
 - viii. Retirement benefits.
 - ix. Effective date.
4. The Union reported a trade dispute to the Cabinet Secretary, Labour on 9 March 2018 and he accepted the dispute and appointed a Conciliator. The Conciliator requested the parties to submit their submissions on the 9 items.
5. The Union submitted its memorandum but the Respondent only submitted its submissions after prodding by the Conciliator.
6. Despite the Respondent not cooperating fully with the Conciliator, the Conciliator issued a report dated 2 October 2018 setting out his findings and recommendations.
7. The Respondent declined to accept the recommendations and this prompted the Union to move the Court on 4 April 2019.
8. The Statement of Claim was not drafted with precision as it was presented by an official of the Union, nor the prayers outlined with clarity, but the body of the Statement of Claim leave no doubt as to what the real Issues in contention were.

9. Filed together with the Statement of Claim was a Motion seeking interlocutory relief.
10. The Respondent filed a replying affidavit in opposition to the Motion on 18 July 2019.
11. On 17 September 2019, the Court directed that the Cause proceed to hearing and the parties were ordered to file and exchange pleadings. At the same time, the Court directed the Central Planning and Monitoring Unit to prepare and file an Economic Report in Court.
12. In spite of the Court orders of 17 September 2019, the Respondent did not file a Response.
13. On 16 December 2019, the Court granted the Respondent another 21 days to file a Response. The Response was not filed within the 21 days.
14. When the parties next appeared in Court on 10 March 2020, the Court directed the Respondent to deliver to the Central Planning and Monitoring Unit copies of financial records to enable it conclude preparation of the Report.
15. The Central Planning and Monitoring Unit filed its Report on 14 August 2020 indicating that there were now 6 outstanding Issues, and on 12 December 2020, the Court directed the parties to file and exchange submissions (the Union had filed its submissions on 30 November 2020).
16. The Respondent's submissions were not on record by the agreed timeline of 18 December 2020.
17. The Court has considered the material on record.

General Wage increase

18. The Union had proposed a general wage increase of 50% spread over 2 years. The Respondent did not make any counter offer.
19. The Central Planning and Monitoring Unit considered the consumer price index of 15.2% over the material time (7.6% for each year).
20. The Conciliator had in his report recommended a 12% pay rise spread over 2 years (6% per year).
21. The Conciliator had indicated that he had considered the current cost of living (then) of 15% of the consumer price index, reduced bargaining power of employees, current productivity (then) of the employees and the fact that the Respondent was a regional leader in the industry.
22. Both the Central Planning and Monitoring Unit and Conciliators under the Ministry of Labour have developed expertise in these types of disputes and seeing the convergence on the findings and recommendations, the Court would adopt the same and award a 12% general wage increase spread over 2 years (at 6% per year).

House allowance

23. The Union had proposed house allowance pegged at 20% of an employee's basic salary.
24. The Central Planning and Monitoring Unit after considering inflation recommended an increase of the then existing house allowances by a factor of 7.6% per year.
25. On the basis of the recommendation, the Union stated that the minimum house allowance should be Kshs 3,012/80.
26. The Conciliator on his part had recommended that the allowance remain at then existing rates.
27. The Court will adopt the recommendations by the Conciliator.

Leave travelling allowance

28. The Union demanded an increase of leave travelling allowance from Kshs 2,500/- to Kshs 4,000/-.
29. The Conciliator had again recommended that leave traveling allowance remain at the then existing rates until there was a positive economic situation.
30. The Respondent did not make a counter-offer or make submissions on the Item. The Central Planning and Monitoring Unit did not make any recommendation.
31. Consequently, the Court will defer to the recommendation by the Conciliator that the rates remain at the rates in the lapsed collective bargaining agreement.

Safari allowance

32. Safari allowance is a facilitative allowance while an employee is on official duty and the Union had proposed increases by Kshs 70 up to Kshs 950.

33. The Conciliator had recommended that the same remain at the then prevailing rates while the Central Planning and Monitoring Unit made no recommendations.

34. Considering that this allowance is ordinarily a *current allowance* payable at a particular time, it would not be fair to send the Respondent back to its books to recalculate the amounts it paid the employees if at all.

35. The Court will therefore again, defer to the recommendations of the Conciliator.

Redundancy

36. On redundancy, the Union had proposed that there be an upward review of the rate for payment of severance pay from 15 days for each completed year of service to 19 days for each completed year of service.

37. To buttress the proposal, the Union filed in Court a copy of a collective bargaining agreement between it and the Minor Engineering Group of the Federation of Kenya Employers (an employers' association comprising employers operating in the same sector as the Respondent).

38. Considering that this collective bargaining agreement applied to several employers within the industry the Respondent operates in, the Court is of the view that to maintain uniformity of standards, it would be appropriate to incorporate similar term of 19 days' pay for each completed year of service.

Effective date

39. The Respondent did not cooperate with the Conciliator. It gave all sorts of reasons to call off meetings called by the Union and the Conciliator.

40. The Respondent equally did not comply with Court orders such that it did not even file a substantive Response to the Statement of Claim. It did not see need to file submissions to assist the Court.

41. The Court therefore is of the view that the collective bargaining agreement be backdated to 1 August 2017 and run to 31 July 2019.

42. Before concluding the Court has an observation about the significance of conciliation within industrial relations arena.

42. Industrial relations require utmost good faith. Capital requires labour. It is a social partnership for the benefit of capital and labour. Without labour there would be no profit for capital.

44. Consequently, social justice must imbue the relationship. When differences and dispute arise, it is for the good of both the social partners to cooperate with the Conciliator, who plays a statutory role in helping to achieve mutually beneficial outcomes for both capital and labour.

45. The Respondent herein did not cooperate with the Conciliator in utmost good faith. It failed to make submissions on an issue which directly impacted its financial well-being.

Conclusion and Orders

46. The Court finds and orders the parties to sign a collective bargaining agreement within 30 days before the County Labour Officer incorporating the following terms

(a) GENERAL WAGE INCREASE

(i) From 1 August 2017

The employees who were in the service of the employer as at 1 August 2017 will receive a general wage increase of 6%.

(ii) From 1 August 2018

The employees who will be in the service of the employer as at 1 August 2018 will receive a general wage increase of 6% to cover the period up to 31 July 2019.

b) Effective date

(i) The Collective Bargaining Agreement to run from 1 August 2017 to 31 July 2019.

47. The Union to have costs of the Cause.

Delivered through Microsoft teams, dated and signed in Kisumu on this 3rd day of February 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mr. Makale, Industrial Relations Officer

For Respondent Mr. Omwenga instructed by M.M. Gitonga & Co. Advocates

Court Assistant Chrispo Aura