



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 31 OF 2019

KENYA ENGINEERING WORKERS UNION CLAIMANT

v

ABYSSINIA IRON AND STEEL LTD RESPONDENT

JUDGMENT

1. Kenya Engineering Workers Union (the Union) and Abyssinia Iron & Steel Ltd (the Respondent) have a valid recognition agreement. The recognition agreement was only signed after a Court order.
2. On an undisclosed date in 2018, the Union forwarded to the Respondent its proposals for a collective bargaining agreement. The parties met severally but could not agree.
3. The Union reported a trade dispute to the Cabinet Secretary, Labour and he appointed a Conciliator.
4. The Union submitted its memorandum but the Respondent only submitted its submissions after prodding by the Conciliator.
5. After conciliation, only 2 items remained unresolved, *general wage increase* and *entitlement to sick-leave*.
6. The Union had proposed a 42% general wage increase while the Respondent did not give any proposals or make submissions before the Conciliator.
7. The Conciliator considered the submissions made and recommended a 12% general wage increase spread over 2 years.
8. The Conciliator 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.
9. On entitlement to sick-leave, the Union had proposed 92 days sick leave on full pay during a period of 12 months and thereafter half pay for 62 days.
10. The Respondent on its part proposed 7 days sick-leave on full pay within 12 months followed with half pay for 14 days before retirement on medical grounds.
11. In his Report, the Conciliator recommended 30 days sick-leave on full pay within a calendar year followed with another 30 days on half-pay.
12. The Conciliator then prepared a draft collective bargaining agreement. The Respondent declined to execute it.
13. The Union moved the Court on 4 April 2019.
14. On 17 December 2019, the Court directed the Central Planning and Monitoring Unit to prepare and file an economic report within 30 days.
15. The Respondent filed Response to the Memorandum of Claim on 11 March 2020, and the Central Planning and Monitoring Unit filed an Economic Investigation Report on 8 October 2020.
16. On 11 November 2020, the Court directed the parties to file and exchange submissions.

17. The Union filed its submissions together with further documents on 13 November 2020 while the Respondent filed its submissions on 13 January 2021.

18. The Union's further documents were filed without leave, and the Court will not consider them.

19. The Court has considered the pleadings, the Conciliator's Report, the Economic Investigation Report by the Central Planning and Monitoring Unit and the submissions.

General wage increment

20. The Union had proposed a general wage increase of 42% per year over a 2-year period.

21. The Respondent did not give any proposals but desired that the wage remain static over the period in contention (1 January 2017- 31 December 2018).

22. The Economic Investigation Report analysed the Respondent's financial position and wage bill from 2014 to 2018.

23. The gross profit in 2014 was Kshs 195,303,365/- and in 2018 it was Kshs 177,286,237/-. The profit after tax for the 2 years was Kshs 37,574,616/- and 2,186,131/- respectively.

24. In the same Report it was noted that the consumer price index had risen by 13.78% (from August 2016 to May 2018).

25. The Report did not give an analysis of productivity during the period but merely stated that the Respondent's financial position had deteriorated.

26. The Economic Investigation Report was prepared using the 42% wage increase proposed by the Union leading to the conclusion that the wage bill rise by Kshs 30,058,271/- and Kshs 4,221,909/- for unionisable staff and management.

27. It is not clear if the Central Planning and Monitoring Unit considered the Conciliator's Report wherein he had recommended a 12% general wage increase spread over 2 years after considering the cost of living at 15% of the consumer price index.

28. The Economic Investigation Report, however, found that the workers purchasing power had reduced by a factor of 6.9% over the period. This finding is in tandem with that of the Conciliator.

29. In consideration of the reduced annual purchasing power of 6.9% over the period in contention, the Court will adopt the recommendation by the Conciliator and award a 12% general wage increase for the period 1 January 2017 to 31 December 2018 (now past) spread over the 2 years at 6% yearly.

Sick-leave

30. In setting the terms of a collective bargaining agreement, the Court finds it useful to consider the trends within the particular industry.

31. The Union had filed a copy of a collective bargaining agreement between the Minor Engineering Group of the Federation of Kenya Employers and the Kenya Engineering Workers Union.

32. The collective bargaining agreement provided for sick-leave at clause 5 in the following term

SICK LEAVE

After two consecutive months of service with an employer, an employee shall be entitled to sick leave with full pay up to a maximum of forty five (45) days and thereafter to sick leave with half pay up to a maximum of forty five (45) days in each period of twelve months service

Provided that:-

a) An employee shall not be entitled to such payment unless he/she produces to the employer a certificate of incapacity covering the period of sick leave claimed, signed by a duly qualified medical practitioner in charge of a dispensary or medical aid centre, or by a person acting on such practitioners behalf.

b) An employee shall not be eligible for sick leave under this clause in respect of any incapacity due to gross neglect on his part.

33. Considering that this collective bargaining agreement applied to several employers within the industry the Respondent operates in, the Court is of the view that similar terms would be fair to ensure uniformity of standards.

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

35. Consequently, social justice must imbue the relationship. When differences and disputes 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.

36. 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

37. The Court finds and orders the parties to sign a collective bargaining agreement incorporating the following terms

(a) **GENERAL WAGE INCREASE**

(i) From 1 January 2017

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

(ii) From 1 January 2018

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

(b) **SICK LEAVE**

After two consecutive months of service with an employer, an employee shall be entitled to sick leave with full pay up to a maximum of forty five (45) days and thereafter to sick leave with half pay up to a maximum of forty five (45) days in each period of twelve months service

Provided that:-

a) An employee shall not be entitled to such payment unless he/she produces to the employer a certificate of incapacity covering the period of sick leave claimed, signed by a duly qualified medical practitioner in charge of a dispensary or medical aid centre, or by a person acting on such practitioner's behalf.

b) An employee shall not be eligible for sick leave under this clause in respect of any incapacity due to gross negligence on his part.

38. Considering the on-going social partnership between the parties, no order on costs.

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. Abande instructed by Omondi, Abande & Co. Advocates

Court Assistant Chrispo Aura