



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 791 OF 2018

BETWEEN

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

ALLOY STEEL CASTING LIMITED.....RESPONDENT

Rika J

Court Assistant; Emmanuel Kiprono

Patrick Makale, Industrial Relations Officer for the Claimant

Kimathi Wanjohi Muli, Advocates for the Respondent

JUDGMENT

1. In its Amended Statement of Claim received in Court on 23rd June 2020, the Claimant Union lists 8 collective bargaining subjects as disputed. These have since been whittled down to a single issue, number 8 on the list, which is, on what date, the incoming CBA should be effective.
2. The Claimant submits that previous CBAs have the 1st day of November, as the effective date. The CBA subject matter of the dispute, should therefore be effective from 1st November 2017.
3. The Respondent filed its Response to the Amended Claim, dated 20th August 2020. It is agreed that there is consensus on all collective bargaining subjects, except on the effective date. It is submitted that the Respondent has been experiencing financial difficulties, a state of affairs known to the Claimant. This difficulty has been exacerbated by Covid-19 pandemic. The Respondent proposes 1st March 2020 as the effective date.
4. Parties agreed to have the outstanding issue considered and determined on the strength of the record. Judgment was reserved for 26th November 2021 but is ready and has been rescheduled for delivery on the date indicated at the end of the Judgment.

The Court Finds: -

5. The issue is dispute on commencement date of the subject CBA, is not different from what came up for determination of the Court, in *E&LRC Cause No. 155 of 2020, Kenya Engineering Workers Union v. East African Foundry Works Limited*. Similar issues arose, canvassed by Mr. Makale and Mr. Muli. The Court suggested that this dispute could be settled based on Judgment in Cause No. 155 of 2020, but for unknown reasons, Parties insisted that the Court must make its Judgment herein. Parties in either case had settled all the issues, save for effective date. Similar arguments about the Employers' financial position being adversely affected by Covid-19, and the proposals made in the tripartite MOU in response to the Covid-19 situation, were made.
6. The Court proposes to adopt a similar approach in resolving the issue, as it did in Cause No. 155 of 2020 above, by picking a date which was suggested by the Respondent in the course of negotiations by the Parties. In the meeting of 30th October 2019, the Respondent proposed 1st August 2019 as the effective date, being the date when negotiations for the CBA subject matter of this dispute, commenced. There is no justification for the Respondent to suggest different dates, after the meeting of 30th October 2019. Such an approach will mean the CBA that

has been concluded, could end up never being implemented. While the Court has taken note of the submissions concerning Covid-19 and the tripartite MOU, it is unrealistic to think that CBA obligations and cycles can be suspended indefinitely. It is wrong for the Respondent to suggest a new effective date with each new year the dispute remains pending before the Court.

IT IS ORDERED: -

a. Parties shall execute the CBA as agreed.

b. The effective date shall be 1st August 2019 as proposed by the Respondent, to run for a period 2 years, and thereafter to remain in force until amended with the consent of the Parties.

c. The CBA to be executed within 21 days of this Judgment.

d. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 15TH DAY OF OCTOBER 2021.

JAMES RIKA

JUDGE