



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 1578 OF 2013

BANKING INSURANCE AND FINANCE UNION (KENYA).....CLAIMANT
VERSUS
BARCLAYS BANK OF KENYA.....RESPONDENT

JUDGEMENT

1. This claim was filed by the claimant union on behalf of two grievants namely Peter Mathuku and Francis Ndirangu Wachira. On behalf of Mr Mathuku:

- a) He was employed on 15th February, 1982 as general clerk. He carried out clerical duties including cashier, advances and clearing.
- b) In 1994 he was transferred to the respondent's distribution center in Head Office and worked as Accounts Assistant.
- c) In 2002 he was transferred to the respondent's supplies department along Mombasa Road as an archiving clerk, receiving stationery and other items supplied to Bank customers.
- d) On 3rd November, 2008 the respondent illegally and unlawfully revised terms and conditions of employment of all employees by issuing fresh letters of appointment. The said revision according to the claimant was arbitrary and without consultation with all social partners.
- e) At clause No. 6 of the said revised contract the respondent coerced all employees to agree to the new terms which stated that their continued employment would be subject to good performance and should their performance be found wanting the Bank reserved the right to terminate their employment on grounds of poor performance.
- f) The parties CBA at clause A5 contained reasons which could lead to either termination after warning or dismissal from employment due to gross misconduct.
- g) In the parties CBA there was no other reason which could lead to an employee's loss of job except the ones provided under clause A5

2. For Francis Ndirangu Wachira, the claimant pleaded as follows:

- a) He was employed by the respondent on 9th November, 2007 as a permanent and pensionable employee. His designation was Retail support Staff.
- b) The grievant was a dependable employee who was commended many times for vigilant and extremely exemplary performance.
- c) On 10th May, 2013 he received a surprise letter of termination which stated that following the capability hearing conducted on Friday, 3rd May 2013 regarding his continued poor performance which was below business expectations, the respondent was satisfied that he failed to adhere to clause 6 of the terms and conditions of his employment contract.
- d) The termination letter and all warning letters were not copied to the claimants or the shopstewards as required by clause A5(b) of the CBA.

- e) The claimant made attempts and met the Director of Human Resource and the same arbitrary worked of termination were repeated.
- f) The claimants reported the existence of Trade Dispute between the parties and the Minister accepted the same and appointed a conciliator to endeavor to settle the dispute.
- g) The conciliator submitted his report to the effect that the terminations were unfair and unlawful.

3. Concerning the performance development (PDP) plan the claimant stated that the respondent introduced PDP in 2002 arbitrarily without consultation of the social partners. The original object of the plan was to enhance professional development and career progression. This according to the claimant was an internal arrangement with the Bank and the claimants were not part of the plan since the same item was not part of the parties' negotiable items both in recognition agreement and in the parties CBA.

4. The respondent on their part pleaded that the 1st grievant, Mr Mathuku Mulandi was employed in 1982 at an annual salary of Kshs 20,940. A further contract was signed on 5th December, 2008. At the time of his termination, the claimant was employed as Supplies Processor with annual salary of Kshs 1,093,164/=.

5. The 2nd grievant Mr Ndirangu Wachira was employed on 9th November, 2007 at an annual salary of Kshs 400,992/= and a further contract was signed on 3rd November, 2008. At the time his contract was terminated he was employed as Retail Support at an annual salary of Kshs 461,820/=. By a letter dated 11th February, 2009 the grievant was informed by the respondent's representative one Atul Bhatriagar that his performance for the year was rated as D.

6. In July the 1st grievant was appraised and it was noted that he lacked concentration while undertaking his duties leading to costly errors. It was recommended that he needed to improve on delivery so as to be a true LIMME person. The grievant agreed with the assessor and stated that the assessment was fair. The grievant also promised to improve on all his weak areas as had been highlighted by the assessor.

7. The 1st grievant's performance for the year 2010 was also rated D. It was observed in the appraisal that he required to observe rules maker-checker so as not to compromise controls. The grievant agreed with the assessor and stated the assessment was fair. For year 2011 the grievant's performance was rated D and was informed he was not entitled to any bonus due to his poor performance. The Supplies Manager one Mr Nyaga in his feedback enumerated the grievant's performance which he noted that the grievant had failed to perform well over a period of time despite being given an opportunity to improve.

8. On 6th June, 2012 he was invited to a disciplinary hearing where he was informed that his performance for the period ending December, 2011 was rated D which was way below the business performance expectation. The grievant was also informed of his right to be accompanied to the meeting by a colleague or a union representative. The hearing took place on 13th June, 2012 and the grievant attended. The panelists recommended that the grievant be issued with a warning letter since he had failed to take ownership of the PDP in the department.

9. On 1st November, 2012 after attending yet another disciplinary hearing the grievant was issued with a final warning letter for failing to follow the respondent's regulations contrary to the terms and conditions of his employment. On 3rd May, 2013 the grievant attended yet another disciplinary hearing and indicated he was calling one Peter Mburu as his representative however Mburu did not show up. At the hearing the grievant alleged that he did not know why he was continuously getting "Does not Meet Expectations" rating. He was unable to explain why he did not disagree with his assessor on the rating he was given. The panelists therefore recommended that the grievant's services be terminated for his continued poor performance which was below business expectations.

10. Regarding the 2nd grievant Mr Francis Wachira, in 2010 and 2011 he was rated D "Does not meet expectations" and was informed of the same hence did not receive any bonus.

11. On 13th June, 2012 he attended a disciplinary hearing concerning his poor performance. At the hearing the grievant stated his roles and stated he did not require any training for his position. He however raised the issue of having disagreed with his lime manager on certain roles he was being appraised on. The grievant was issued with a warning letter after the hearing.

12. On 18th October, 2012 another disciplinary hearing was called over the grievant's poor performance during which he admitted that he had been trained on his roles and also knew what the key objectives of his functions were. The grievant however blamed his line manager for having a poor perception of him. The panelists in conclusion recommended that the grievant be issued with a final a warning letter.

13. On 2nd May, 2013 the grievant attended yet another disciplinary hearing where the grievant alleged not to know why he continuously got "does not Meet Expectations" rating. He still insisted that the team leader had a poor perception about him. He further indicated that his role was dependant upon a machine which may have errors. The panelists observed that the grievant lacked the will to make a change in his performance. He did not acknowledge that there was a problem. The grievant was subsequently issued with a termination letter for his continued poor performance.

14. Concerning allegation of arbitrary review of letter of appointment the respondent stated that the claimant never raised any issue over the review of letters of appointment since they knew about it and participated in meetings that brought forth the new letters. Regarding performance development plans the respondent stated that it introduced globally a performance development standard as a framework through which to manage overall and individual performance of its employees in all its branches across the work. The aims of the global standards were to ensure that employees know what is expected of them in relation to performance and reward good and outstanding performance and identify and address declining and unsatisfactory performance.

15. This global standard applied to all the Barclays Group employees irrespective of their grade, location, function or standing throughout the bank branches worldwide. Further on or about December, 2008 the respondent after due consultation with all stakeholders including the claimant union offered revised employment contracts to its employees. The raised contracts did not in any way affect the length of service or replace the appointment letters previously issued.
16. One of the elements included in the revised employment contracts was PDP. The contract stipulated that the employee would be required to agree on a PDP with his line manager and that continued employment would be subject to good performance. Further, the new contract provided that should an employee's performance be found wanting, the respondent reserved the right to terminate employment on grounds of poor performance.
17. In his oral evidence the claimant additionally stated that by the time he was terminated working as a stationery supplies officer. He used to deal with name badges, business cards for senior staff and toners. He used to place orders for these. It was his evidence that he worked well until 2011 when he started having issues with his work. In 2012 he was invited for capability hearing. According to him he was never given any feedback and there was no appraisal. It was his evidence that he had problems with Mr Kahuria after he refused to accept envelopes which he felt were of inferior quality. Kahuria forced him to accept them. Since then his rating went down.
18. The claimant denied he was under performing and that he used to receive a lot of compliments from colleagues and further that he received a Barclays Eagle Award in February, 2012. According to him PDP was for promotion and bonus but not meant for termination. He further stated that the bank in 2007 revised their terms and conditions of service and introduced best performance tools. It was his evidence that they were never consulted before the letters were issued and that they never expected anything wrong so they signed the letters.
19. Their dispute was referred to the Ministry of Labour which recommended that they be included in the early leaver scheme.
20. In cross-examination he stated there were warning letters over the years and that he was taken through performance rating. The targets were set for example business cards would be delivered in two weeks. He further stated that there were warning letters over the years and that he was taken through performance rating. The targets were set for example business cards would be delivered in two weeks. He further stated that he knew his duties as supplies processor and that there were expectations to be met. The claimant also stated that the appraisals were annual and he used to sign them. According to him it was confusing to receive awards at the same time warnings. Upon termination he was paid his terminal dues however he was not paid for the month he worked.
21. The respondent's witness Mr Vaslas Odhiambo stated that from the records, the grievant was a supplies processor by the time he was terminated and that the termination was on account of non-performance. According to him, the claimant was taken through performance improvement program and the claimant indicated he was doing his job well and did not require training however the claimant was slow in processing queries. Mr Odhiambo further stated that the claimant was not put under voluntary exit scheme because he did not qualify.
22. In cross-examination he stated that the claimant had worked for 31 years and that the rating stated in 2007 when he was rated "C" meaning he met some but not all the expected performance areas. Concerning the Eagle Award, it was his evidence that this was an on-spot award and had nothing to do with general performance. He further stated that the union was involved on the PDP program through workers council meetings.
23. The claimant herein was initially employed on 25th February, 1982 through a letter of appointment. He worked for the respondent in the same capacity until 10th May, 2013 when his services were terminated on grounds of poor performance. By a letter dated 3rd November 2008 the respondent reissued the claimant with a new letter of appointment.
24. This letter at clause 6 introduced performance development plans (PDP) which required the claimant to agree with his line manager on annual performance targets and objectives which would be used to measure his performance. The claimant's continued employment was now stated to be subject to good performance and should his performance be found wanting the Bank reserved the right to terminate his employment on grounds of poor performance. This letter and new terms and conditions of service were signed by the claimant to signify his acceptance.
25. Consequently the respondent started subjecting the claimant to performance appraisals and the claimant scored "D" which meant he did not meet expectations. Which was interpreted to mean the claimant was a poor performer.
26. The claimant was subsequently subjected to capability hearings and disciplinary hearing thereafter. At the hearings the claimant insisted he was good at his work and did not need any training. He further stated that his work was so manual and could not be assessed under the PDP. In the claimant's view the PDP was introduced to get rid of older members of staff.
27. Whereas the claimant union alleges that the PDP was introduced without the union's involvement no evidence was produced by the claimant where they contested the application of PDP to their members in the respondent's employment. The dispute over it only arose upon the termination of the grievant's service
28. According to the respondent, the introduction of PDP was a global standard framework which applied to all Barclays Group employees irrespective of their grade, location, function or standing throughout the bank's branches worldwide.
29. The grievant signed the PDP and he conceded that he together with his line manager set the targets against which he was appraised. His attitude however was that the nature of his job could not be subjected to PDP. The claimant did not indicate this when setting the targets with his line manager.
30. It is the court's view that the grievant was bound by the PDP which was a term and condition of his contract of employment. He failed and or took lightly the targets he himself set hence the poor rating which eventually gave rise to the termination of his service. The court is

therefore satisfied that there existed valid reason to terminate the grievant's services. There was no complaint over the process followed in the termination and in any event from the evidence the court was satisfied that due process was followed.

31. The claim is therefore found without merit and is hereby dismissed with no order as to costs.

32. It is so ordered.

Dated at Nairobi this 1st day of March, 2019

Abuodha Jorum Nelson

Judge

Delivered this 1st day of March, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge