



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO 1612 OF 2013

KENYA SHOE AND LEATHER WORKERS UNION.....CLAIMANT

VERSUS

HR STRATEGIC PARTNERS LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant union pleaded that the grievant were employees of the respondent working as machine attendant and fleshers. According to the claimant, the first grievant Mr. Stephen Mbugua was employed in January, 2008 as a machine attendant at a salary of Kshs 10,200/= per month. He worked until 8th November, 2011 when he fell sick and sought medication at the nearest health facility. When he resumed duty on 11th November, 2011 he was served with a termination letter.
2. The second grievant Mr Bensons Asembo was employed in January 2002 as a flesher earning a salary of Kshs 11,580 per month. On 18th October, 2011 he was dismissed on the allegation that he slept during the 2nd shift.
3. The 3rd Grievant Mr. George Juma was employed in April 2006 as a flasher at a salary of Kshs. 9,870/- per month. He was terminated on 18th October, 2011 on allegation that he slept during the 2nd shift an allegation he denied.
4. All the grievants averred that they were never issued with show cause letters and that there was no disciplinary hearing. They further averred that they were never paid their terminal dues upon dismissal.
5. The Respondent on its part pleaded that the grievants were engaged as seasonal labourers whose daily rates and calculation was done but paid fortnightly. They were first given verbal warnings in relation to their misconduct and later written warnings.
6. According to the respondent, the 1st grievant Mr. Stephen Mbugua was on various occasions absent without leave from his plac of work. On 8th and 9th November he was absent without leave and reported back on 11th November, 2011 claiming he was sick. The attached document from Limuru Health Care was never presented on the 11th November, 2011. According to the respondent, there was a sick leave sheet to be filled by a worker when he attends to any medical facility and the same was never filled.
7. Regarding Mr. Benson Asembo, the Respondent stated that on 19th October, 2011 he was found sleeping on the drying machine. The offence was serious in nature since it not only violated the respondent's health and safety policy but also exposed him to danger. The grievant was given an opportunity to defend himself and wrote a statement admitting his mistakes on 19th October, 2011. The statement was reviewed and found unsatisfactory and the management made a decision to terminate his services. The same case obtains for George Otieno who was found sleeping on the drying machine on 24th October, 2011. According to the respondent the grievant was not entitled do one month's notice or pay in lieu because he was on a daily wage of Kshs. 380.
8. On the issue of leave, the respondent pleaded that all the claimants went on leave alongside other employees in the month of August when their client Bata Shoe Company shut down the factory for annual maintenance.
9. In their oral evidence the grievants repeated the averments in their memorandum of claim and further stated that they were not issued with a show cause letter before termination and further that their dismissal was not done in presence of a colleague or shop floor official. In cross-examination they stated that they were aware Bata Shoes used to close down in the month of August. CW1 admitted that he missed one day of work and apologised for being absent. It was his evidence that if one got sick he or she was to seek permission from the foreman.
10. The second grievant stated that he too was never given a show cause letter and no colleague was called to witness the accusations against him before he was dismissed.

11. In cross-examination he stated that it was dangerous to sleep near a machine. He admitted writing an apology. It was further his evidence that Bata Shoe Company used to close in August for maintenance.

12. The third grievant Mr. George Juma further stated that he was never issued with a show cause letter prior to dismissal. No colleague was called to witness the dismissal.

13. In cross-examination he admitted that his employer found them asleep in the same room where they were working. According to him, it was break time and that he was asleep on top of the drying machine. The dryer, he said was like a conveyor belt and if one was on top nothing could happen.

14. The respondent on its part called one James Ndungu Mbugua as a witness. He informed the court that he was the respondents Finance and Administration Manager. According to him, the 1st grievant was absent for three days without permission. When he came back he claimed he was sick. He was given the medical sheet to take to the hospital he attended for filling but he refused. It was further his evidence that the 2nd and 3rd grievant were found sleeping on the drying machine and this was dangerous.

15. The reasons for which an employer terminates a contract of an employee are reasons the employer genuinely believed to exist and which caused the employer to terminate the contract. The grievants herein did not satisfactorily refute the allegations against them. The second and third grievant admitted they were sleeping in the same room where they were supposed to be working. In fact the third grievant admitted that he was sleeping on top of the drying machine which according to him was like a conveyor belt and safe to sleep on. The first grievant did not deny he was away from work. He further conceded that if one was unwell he needed to report to the foreman. He never followed the procedure. All the three grievants wrote apology letters for their infractions. The respondent subsequently terminated their contracts.

16. In the court view, the above infractions were justifiable reasons for termination of a contract of service. Regarding procedure followed, the court is of the view that it is not a requirement of the Employment Act that before a dismissal a formal hearing where minutes recorded must take place. Depending on how the parties to the employment contract have handled their affairs, an oral hearing without minutes can still be as good provided all the parties especially the employee is fully aware of the issue at hand and possible consequences. A written explanation for an employee on accusations against such employee may also pass for a hearing provided the employee is clear enough over the accusations and responds as required.

17. In this particular case the court is of the view that there existed valid reasons for terminating the grievants services and that the procedure followed in the termination sufficiently gave the grievant opportunity to respond do the allegations against him which in any event they admitted in court that they engaged in those acts of commission or omission.

18. The court therefore finds the claim without merit and the same is hereby dismissed. With no orders as to costs.

19. 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