REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 1384 OF 2013

ANN WAMBUI NDIRANGU .....CLAIMANT

VERSUS

SOCIETY GENERALE DE SURVEILLANCE

(SGS) KENYA LIMITED .....RESPONDENT

JUDGEMENT

1. The claimant pleaded that she was employed by the respondent on 1st Janaury, 2011 as a General Assistance weighing at a monthly salary of Kshs. 20,000/-. She worked until 18th June, 2013 when her services were unprocedurally and unfairly terminated. According to her, she was falsely accused of facilitating a vehicle KBU 832K to transgress and without according her a chance to be heard.

2. According to her, on the material day the duty manager Mr. Maurice Marube instructed her to weigh the subject motor vehicle which she came to learn had transgressed the weighbridge. She weighed the first axle and having a background on the operation of the machine she noted the machine was defective as at that particular time because it was indicating overweight. The said manager advised her to leave it void and it be recorded manually by the census clerk. This was done in anticipation that when the scale was repaired the same would be redone. During audit, the auditor misconstrued her explanation to mean power failure instead of machine default which she apologized too him over.

3. On 13th June, 2013 the respondent's weighbridge manager Mr. Hillary Terer wrote to the claimant a show cause letter requiring her to show cause why management should not take action against her on the allegation that she facilitated the transgression. She responded to the show cause letter explaining the true circumstance of the transgression.

4. On 18th June, 2012 the weighbridge manager issued the claimants with a termination letter. The claimant strongly denied that she conspired with others to cause the transgression.

5. The respondent on its part pleaded that it was justified in dismissing the claimant and that it was done following due process.

6. The respondent further stated that it was the duty of the claimant as the respondent's employee to ensure that all trucks passing the Gilgil weighbridge while she was on duty were weighed. According to the respondent the claimant in the cause of her duties made false and or erroneous entries in relation to a truck number KBU 832K.

7. In the oral evidence, the claimant further stated that she only served six (6) months of the last contract. It was her evidence that she was accused of colluding with the transporter for the truck to transgress the bridge. This according to her was not true.

8. In cross-examination she stated that she had not seen the vehicle before and that she was unable to see the road while in her office. It was further her evidence that she recorded in the OB that the reasons the vehicle was not weighed was because of power failure. According to her the machine was not working properly due to previous power failure. She further stated that when a vehicle was overweight it is detained and parked aside. According to the claimant she realized her mistake in the OB where she indicated the problem is power failure. She informed her supervisor who said that was okay.

9. The respondent's witness Mr. Isaac Waithaka Wanjohi stated that the claimant authorized the motor vehicle KBU 832K to pass without being weighed. He further stated that when there was power failure the machines would run on generator so that weighing was uninterrupted. It was his evidence that he was not aware of any generator problems. In cross-examination he stated that he was never involved in the suspension and dismissal of the claimant.

10. The reason of termination of employment is usually tested against a reasonable employer. That is to say would a reasonable employer confronted with the situation for which the employee was dismissed uphold the dismissal or termination mas the most proportionate and reasonable disciplinary measure to hand to the employee in the circumstances of the case? If the answer be in the affirmative, the court will uphold the dismissal.

11. The claimant was accused of collusion with the owner of truck number KBU 832K to transgress the weighbridge without ascertaining the axle load. According to the claimant, the weighing did not take place because there was temporary black out. This, the claimant later changed and said it was a mistake since there was no blackout at the time but the machine malfunctioned. The claimant was issued with a show cause letter and stated the same in her response. The respondent did not find her response satisfactory and proceed and to terminate her contract.

12. The claimant in her show cause letter attached a statement by one Bernard Muema who said that he was on duty on the material day when the vehicle in issue was alleged to have transgressed the weighbridge. According to him he reported the matter to the Duty Manager Mr. Meme who instructed the respondent's driver Mr. Alfred Mbasiri and a police constable Mr. Isaac Musembera and himself to chase the truck. When they caught up with the vehicle the driver refused to return the vehicle to the weighbridge hence the same was detained and its ignition keys and insurance handed over to the police booking office.

13. The respondent's witness Mr. Waithaka Wanjohi stated that Mr.Marube gave him insurance documents for the subject vehicle when he got on night duties at the material time. The following day he heard the vehicle left the holding yard. According to his evidence, insurance for a vehicle is usually removed from the windscreen when it has been detained.

14. In rejecting the claimant's explanation contained in her response to the show cause letter, no reference was made to the statement recorded by her collegue Bernard Muema. Further Mr. Muema's statement coupled with the evidence of Mr. Wanjohi created doubt whether the claimant really had a role in letting the truck leave the yard without being weighed. From the account by Mr. Muema which the respondent never disputed, reasonable steps were taken to detain the truck after it was realized that it transgressed. The respondent did not produce any evidence of claimant's previous conduct to show this was not a one off event. In the court's view, this was an infraction which could have been addressed by a warning letter. A termination of contract was harsh in the circumstances hence makes the same unfair under Section 45 of the Employment Act.

15. The claimant was paid her terminal dues hence the court will only award her ten (10) month's salary, that is to say Kshs. 300,000/- as compensation for unfair termination of service.

16. The claimant shall further have costs of the suit.

17. The decrial sum shall attract interest at court rates from date of judgment until payment in full but subject to taxes and statutory deductions.

18. It is so ordered.

Dated at Nairobi this 20th day of September, 2019

Abuodha J. N.

Judge

Delivered this 20th day of September, 2019

Abuodha J. N.

Judge

In the presence of:-

……...…… for the claimant

……..... for the Respondent

Abuodha J. N.

Judge