



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2556A OF 2012

WYCLIFF OTIENO OCHILLO.....CLAIMINAT

VERSUS

KENYA AIRWAYS LIMITEDRESPONDENT

J U D G E M E N T

1. The Claimant herein pleaded that he was employed by the respondent as a Materials Officer – Stock Room for a period of five years from 8th January,2007 was summarily dismissed on 21st December 2009 on grounds he contended were unjustified and baseless as he had been carrying out functions that he had been directed by his supervisor.
2. The respondent first invited the Claimant to show cause over alleged employment offences that the Claimant had been using outdated picking slips to transact on some hardenee tins, that he had been issuing hardenee tins when there had been no outstanding pick up slips for them and also that he had been issuing the hardener for aircrafts 5Y KQP that had not been at base on 18th October 2009.
3. The Claimant responded to the show cause letter vide his letter dated 9th November,2009 after having previously given an explanation through his letter dated 29th October,2009 in which he explained that he had been completing transactions that had been done by some other employee pursuant to the directive by his Superior through an email dated 5th Uue,2009.
4. The Claimant further pleaded that the responded caused a disciplinary hearing to be done in which the evidence of the Claimant was ignored and he was thus summarily dismissed with effect from December ,2009.
5. The respondent on its part pleaded that the Claimant was employed under contract commencing on 8th January 2007 for a period of five years but denied that the Claimant summary dismissal was unjustified and baseless.
6. The respondent admitted receiving a response to show cause letters from the Claimant and the contents of the said response considered by the respondent and found unsatisfactory therefore the Claimant was invited for a panel hearing on 3rd December,2009.
7. The respondent observed that the picking slips used to transact the hardener tins were outdated as they related to 11th November,2012, 5th November,2006 ,27th November,2007 and 3rd July,2008 yet the Claimant did the transaction on 18th October,2009. According to the respondents, the transaction in the hardenee should have been supported by the hardener being in the relevant picking slip reports. In this case, picking slip reports were for 14th October, 2009 and 16th October,2009. These reports did not have hardenee as pick items and any report having hardener as a pick items was suspect since it did not emanate from Mawora who was the supervisor. The respondent further observed that aircrafts 5Y-KQP to which 7 tins of the hardener were allegedly issued was not in Nairobi on 18th October,2009 but in /relends and further that the Claimant had not been allocated any pick on the 14th and 16th October,2009.
8. AS a result of the transactions by the Claimant on 18th Ocrober,2009, seventeen tins of hardener worth Kshs. 232,529.40 could not be accounted for.
9. The respondent further pleaded that the evidence adduced by the Claimant in the response to show cause letter had been taken into consideration by the hearing panel but the same could not be accepted owing to the reasons stated. The Claimant appealed the decision of the hearing panel through a letter dated 5th January ,2010 but the appeals body upheld the decision to terminate the Claimant. At the panel hearing the Claimant was represented by his Union to whom the notes and a copy of the panel's decision were sent.
10. In his oral evidence the Claimant further stated that he was issued at the respondent's headquarters and was responsible for tining of aircrafts parts. He was also responsible for issuing aircraft parts to engineers. The procedure was that the usel picks the part using the slip which he later posts in the system. The person on duty should finish the transactions by issuing the part and posting in the system.

11. According to the Claimant, an outdated pick slip is one whose works order has closed. The item remains on pick. Concerning the items in question it was his evidence that he posted them in October, 2009 after being tasked to do so by Mr. Mawora, It was his evidence that engineers were complaining that parts were indicated as available yet out of stock. According to the Claimant, he did the posting to clear the system.

12. Concerning procedure for his dismissal he stated that he was issued with a notice to show cause and that he informed the panel that he was never responsible for any loss. According to him, he performed his duties as required. In cross-examination he stated that no item could be issued without a pick slip.

13. The disputed items were merely posted and that nothing was removed from the store. It was further his evidence that he was represented at the panel hearing by his Union.

14. The respondent's 1st witness Mr. Hassan Wanyama stated that he was investigation specialist and that he had worked for the respondent since 2005. He was the one who investigated the case and prepared a report. According to him, on 18th October, 2009 the Claimant transacted outdated slips whose work orders were closed. According to him the Claimant ought to have had instructions from his supervisor to transact outdated slips. The supervisor denied giving such instructions.

15. In cross-examination he stated that his report was presented at the disciplinary hearing although he never attended the disciplinary hearing. He further stated that there was no confirmation that the Claimant took the hardenees but he updated the system. He further stated that no posting can be done later but by the person who issued the items. It was further his evidence that he never interviewed those who issued the items posted by the Claimant and that Mr. Mawora had not explicitly denied assigning the Claimant the task of updating the system. The respondent's second witness Mr. David Rimberid stated that he worked for the respondent as Employee relations Managers. According to him, the disciplinary procedure was in accordance with the human resource manual. He stated that the process involved two stages. One was informal which was for minor offences and another was formal for serious offences. The formal procedure was followed in the Claimant's case.

16. The Claimant was dismissed on grounds that he used outdated picking slips when making transactions regarding seventeen tins of hardener on 18th October, 2009. Prior to dismissal, the Claimant was called upon to show cause why he should not be dismissed. In his response, the Claimant stated among others that the Outdated picking slips did not fall within his mandate. That they were done long ago but were not posted in the system and what he did was to complete the transactions while issuing was done by someone else. The Claimant further stated that his supervisor was aware of what he did with his authority and had the documents relating to what he did since he (the supervisor) was the only one who had authority to allow a transaction.

17. The respondent did not find the Claimant's explanation satisfactory proceeded to dismiss him. According to the respondent, as a result of the Claimants actions it lost seventeen tins of hardener worth Kshs. 232,529.40. The respondent however, did not exhibit in Court any evidence of stock levels to show what could have been lost as a result of the Claimants actions.

18. According to the Claimant he was asked to complete these transactions by Mr. Mawora his supervisor since engineers were complaining that the system was showing some aircraft parts were available yet they were actually out of stock. His action was therefore intended to clear the system of these anomalies.

19. The Claimant attached an email dated 5th June, 2009 from Mawora to Tech-store Staff where he was telling them as follows:-

“These are on pick items which we must get rid of immediately. Let us all cooperate to ensure all this is cleared”.

20. This email coupled with the testimony of the respondent's witness, Mr. Hassan Wanyama who stated that Mr. Mawora never explicitly denied assigning the Claimant the task of updating the system and that he never interviewed those who issued the items posted by the Claimant make the claimant's explanation plausible. The Court has further perused the pleadings and documents filed by the respondent but was unable to find any statement or allegation that Mr. Mawora ever recorded any statement or attended any of the disciplinary or investigative stages of the issue to refute the Claimant's allegation that it was he, Marowa who authorized him to clear the system by posting outdated picks.

21. The burden to show that unfair termination has occurred rests on the employee while proof of the validity of reasons for the termination is on the employer. Considering the evidence as a whole and witness testimonies, the Court is persuaded that the Claimant has discharged his evidentiary burden while the respondent has failed to do so. The Court therefore finds and holds that the termination was unfair and awards the Claimant as follows: -

Kshs.

(a) One month's salary in lieu of notice 52,204

(b) Eight months salary as compensation

For unfair termination service. 417,632

469,836

(c) Costs of the suit

22. Items (a) and (b) shall attract interest at Court rates but subject to taxes and statutory.

23. It is so ordered.

Dated at Nairobi this 18th day of October, 2019

Abuodha Jorum Nelson

Judge

Delivered this 18th day of October, 2019

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge