



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 538 OF 2015**

**EDWARD RASHID MAKORE.....CLAIMANT**

**VERSUS**

**RIFT VALLEY RAILWAYS (K) LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

- Edward Rashid Makore, the Claimant in this case, was an employee of Kenya Railways Corporation (KRC) for a period of 20 years running from 1996 until 2006.
- Pursuant to a Concession Agreement between KRC and Rift Valley Railways (K) Limited (RVR), the Respondent herein, the Claimant’s services were transferred to RVR effective November 2006.
- The Claimant worked for RVR for 8 years until 29<sup>th</sup> October 2014, when his employment was terminated on account of redundancy. The Claimant now claims that the said redundancy was unlawful and that RVR did not pay him his full terminal dues.
- The Respondent filed a Statement of Response on 21<sup>st</sup> August 2015 but did not participate in the trial in spite of due notification.
- The Claimant gave *viva voce* evidence and further filed written submissions.

**The Claimant’s Case**

- By his Memorandum of Claim dated 28<sup>th</sup> July 2015 and amended on 27<sup>th</sup> January 2016, the Claimant states that he took up an appointment with RVR after working for KRC for 20 years.
- On 29<sup>th</sup> October 2014, the Claimant received a letter from the Respondent retiring him on account of redundancy. The letter notified the Claimant that he would be paid his full dues. At the time of leaving employment, the Claimant earned a monthly salary of Kshs.47,159.70
- The Claimant claims that the termination of his employment on the ground of redundancy was unlawful and that he was underpaid in terminal dues. He states that the Respondent miscalculated his dues under the KRC service and further did not explain how it arrived at the figures paid out to him.
- The Claimant tabulates his claim as follows:

a) Severance pay for 20 years (47,159.70x1x20).....	Kshs. 943,194
Less paid.....	(266,050)
Balance.....	677,144
b) Compensation for illegal/unfair redundancy.....	<u>565,916</u>
<b>Total.....</b>	<b>1,243,060</b>

- The Claimant also asks for costs plus interest.

## **The Respondent's Case**

11. In its Statement of Response dated 18<sup>th</sup> August 2015 and filed in court on 21<sup>st</sup> August 2015, the Respondent states that the Claimant worked as Assistant Yard Master in charge of coordinating, shunting, marshalling, receiving and dispatching of trains in the yards including making arrangements for line to clear; communicating train particulars originating from the depots to control office; and liaising with control office on the projected and planned outward trains, arrivals and composition of trains terminating as Mombasa Yard.
12. On 15<sup>th</sup> August 2014, the Respondent notified the Railways and Allied Workers Union as well as the Labour Commissioner, the reasons for and extent of an impending redundancy exercise.
13. In addition, the Respondent issued a notice of redundancy to the Rift Valley Workers Union-K on 20<sup>th</sup> August 2014.
14. The Respondent avers that through the notice of 15<sup>th</sup> August 2014, it notified the Union and the Labour Commissioner that the impending redundancy was due to automation of its key operations. The Respondent states that it had installed an Operations Control Centre (OCC) in its Nairobi Headquarters plus On-Board Computers (OBC) in its locomotives.
15. The Respondent further states that the OBC in the locomotives linked the train crew with the OCC to manage and control the train movement in a safe mode from the OCC. In addition, the Respondent installed self- regulating switches to direct the movement of trains and manage train crossings.
16. The Respondent avers that the foregoing automation of its key operations resulted in head count reduction in the affected areas especially the train control at the station levels.
17. The Respondent states that the Claimant's services were rendered superfluous following installation of the OCC in Nairobi and OBC in the locomotives.
18. The Respondent's case is that it conducted the redundancy exercise in strict compliance with all the relevant laws, Collective Bargaining Agreement (CBA) and the Concession Agreement dated 23<sup>rd</sup> January 2006, among KRC, the Government of Kenya and RVR.
19. The Respondent states that the Claimant signed letter dated 29<sup>th</sup> October 2014 and acknowledged the sums stated thereunder as the correct dues owed to him.

## **Findings and Determination**

20. Although in his Memorandum of Claim, the Claimant lays a claim for unlawful redundancy, when he appeared before the Court, he testified that his only issue was the factor of monthly salary used to tabulate his severance pay with regard to his service at KRC.
21. In this regard, the Claimant states that the Respondent ought to have used the factor of KShs.47,159.70, being his last monthly salary at RVR.
22. The Claimant's retrenchment letter dated 29<sup>th</sup> October 2014 reads as follows:

***"Dear Edward Rashid,***

### **RETRENCHMENT**

*The company continues to review its structure and staffing levels with a view to obtaining improved operational efficiency. Such a review has just been completed and I regret to inform you that your services have been found to be excess to company requirements. Consequently, this letter serves to notify you of the company's decision to terminate your services from the company with immediate effect.*

*In accordance with the Kenya Concession Agreement, your letter of appointment and the Employment Act, 2007, your severance package will be computed and all your dues remitted to your account as follows:*

#### *1. Severance pay*

*(a) KRC service-one (1) month's salary for every completed year of service for pensionable employees or two and a half (2 ½) months' salary for each complete year worked for non-pensionable employees and pensionable employees with less than 10 years' service.*

*(b) RVR Service- One (1) month's salary for every completed year of service*

*1. Golden handshake of ksh. 120,000.*

*2. One (1) month salary in lieu of notice.*

3. Up to one month salary in lieu of outstanding leave if due.

4. Transport allowance of KSh. 10,000.

6. Retirement benefits for RVR service as specified under the existing Provident Fund Scheme.

Your final dues computation which is the net of the outstanding amounts owed to the Company and subject to taxation in accordance with the Laws of Kenya is hereto attached.

Also arrange to hand over all Rift Valley Railways property in your possession to your immediate supervisor and obtain appropriate clearance certificate to this effect. You will then be issued with a Certificate of Service upon clearance.

On behalf of the Board of Directors of RVR (U), the management and staff would like to take this opportunity to record the Company's appreciation for your services and wish you and your family all the best in future.

Kindly acknowledge receipt on the copy attached

Yours Faithfully,

**For and on behalf of Rift Valley Railways Ltd**

(signed)

Fabio Steffler

**CHIEF OPERATIONS OFFICER"**

23. Evidently, this letter does not address the issue raised by the Claimant. Further, the Concession Agreement which would have contained the terms of transfer of services from KRC to RVR was not availed to the Court.

24. In the result, the Claimant's assertion that RVR used the wrong monthly salary to calculate his severance pay for the period he worked at KRC was not supported by any evidence. His claim was therefore not proved and is consequently dismissed with no order for costs.

25. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 5<sup>TH</sup> DAY OF DECEMBER 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Oddiaga for the Claimant

No appearance for the Respondent