



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 404 OF 2013

BOB CHARLES AUCH.....CLAIMANT

v

RIFT VALLEY RAILWAYS LTD.....RESPONDENT

**JUDGMENT**

1. On 24 April 2018, the Deputy Registrar scheduled this Cause for hearing on 12 June 2018.
2. The Claimant was directed to serve a hearing notice upon the Respondent.
3. According to an affidavit of service filed in Court on 6 June 2018, the firm of Triple OK Law acknowledged service on 4 June 2018.
4. The Respondent and its advocate however did not appear for the hearing, and being satisfied with the service, the Court allowed the hearing to proceed.
5. The Claimant testified and also called another witness.

**Unfairness of termination Procedural fairness**

6. The Claimant testified that he was a *Regional Permanent Ways Inspector* and that around 19 June 2012 he got a call from the Respondent's Regional Security Officer, North Rift who informed him of an attempted theft.
7. According to the Claimant, he later got a show cause letter dated 18 July 2012 asking him to respond within 72 hours and that the show cause also informed him that he could seek a face to face engagement with the Disciplinary Committee.
8. The Claimant responded through a letter dated 19 July 2012, and in the response he requested to make oral representations to the Disciplinary Committee.
9. On 27 August 2012, the Respondent dismissed the Claimant.
10. The Claimant impugned the dismissal on the ground that he was not afforded an opportunity to make oral representations to the Disciplinary Committee.
11. Considering that the Respondent had assured the Claimant of the opportunity to make oral representations before the Disciplinary Committee but failed to avail him of that opportunity when he so requested, the Court finds that the dismissal was tainted with procedural unfairness.

**Substantive fairness**

12. The Respondent failed to attend Court to discharge the burden placed upon employers by sections 43 and 45 of the Employment Act, 2007 and therefore the Court can conclude that the dismissal of the Claimant was not substantively fair.

**Appropriate remedies Lost income**

13. The Claimant sought Kshs 13,474,337/- which he alleged he would have earned had he served the Respondent up to retirement.
14. The Claimant did not lay any legal foundation to this head of relief and it is declined.

## **Compensation**

15. Although the Claimant did not expressly seek compensation, it is the view of the Court that having served the Respondent for about 6 years (2007 to 2013) without any disciplinary cases, he ought to be awarded compensation.

16. Considering the length of service, the Court will award the equivalent of 6 months gross wages (gross wage was Kshs 134,743/-).

## **Conclusion and Orders**

17. The Court finds and holds that the termination of the Claimant's contract was unfair and awards him

(a) Compensation **Kshs 808,458/-**.

18. Claimant to have costs.

**Delivered, dated and signed in Nairobi on this 20<sup>th</sup> day of July 2018.**

**Radido Stephen**

**Judge**

## **Appearances**

For Claimant Mr. Otieno instructed by Odero Osiemo & Co. Advocates

For Respondent Ochieng, Onyango, Kibet & Ohaga Advocates

Court Assistant Lindsey