



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 119 OF 2016

(Before Hon. Justice Mathews N. Nduma)

UNION OF NATIONAL RESEARCH AND ALLIED

INSTITUTES STAFF OF KENYA (UNRISK).....CLAIMANT

VERSUS

BUKURA AGRICULTURAL COLLEGE (BAC).....RESPONDENT

J U D G M E N T

1. This is an economic dispute and the unresolved issues following negotiations by the parties are:-

- (a) Basic Salary Increase
- (b) House Allowance
- (c) Commuter Allowance; and
- (d) Effective date of the Collective Bargaining Agreement.

2. The dispute was reported to the Ministry of Labour but conciliation efforts resolved some of the issues and others were left unresolved hence the suit.

3. The pleadings and lists of documents were submitted to central planning and monitoring unit, Ministry of Labour and a report dated 11th December, 2017 was filed by the unit following analysis of the dispute and the economic and legal indicators that impact the dispute vis a vis the current Collective Bargaining Agreement (CBA) terms and conditions of service enjoyed by unionsable employees of the Respondent.

Facts

4. It is pertinent to recognize that the Respondent, Bukura Agricultural college CBA is a Government Agricultural College. The Respondent and claimant have a valid Recognition Agreement dated 3rd September, 2014.

5. Bukura was promoted from category PC 1 parastatal to PC 2. This is said to have favourable terms of service implications for the employees in service hence Claimant states that employees ought to have been given the new salary scaled way back from 2011 according to the new status of the institution. This however was not done.

6. The parent Ministry vide a letter dated 27th October, 2015 agreed to the adjustment of salaries in line with the new status and requested the Respondent to seek more funds to facilitate Collective Bargaining Agreement negotiations.

7. The Collective Bargaining Agreement, being negotiated is for two years between 2014 and 2016.

8. The demands by the union and the responses by the Respondent and the analysis in the CPMU report are as follows:-

(a) General Wage Increase

The union demands 100% salary increase for the 1st year and 80% increase for the 2nd year. The Respondent made no offer for

increasement. The basic salary proposals are in line with job groups BAC 1 to BAC 11 as per the new college status (parastatal 11) with effect from 1st July, 2014. This increment proposal is based and driven by cascading the principal's increment at about 36% to all BAC employees as per Government circular (OP/SCAC9/21/2) of 20th January, 2011.

9. The Respondent in its defence filed on 16th June, 2017 states that Basic Salary is procedurally reviewed and allocated pursuant to a job evaluation and recommendation by the salaries and Remuneration Commission; approval by the Board; approval by the Ministry of livestock and fisheries and Budgetary Provisions and allocations of funds from the National Treasury. The Respondent states further, that it was in the process of reviewing basic salaries of employees following the above said procedure.

10. The Respondent states that it is in full compliance with the minimum wage rates pursuant to Regulations of Wages (Agricultural Industry) (amendment) order 2015 that was issued vide Kenya Gazette supplement No. 91 of 26th June, 2015 and in terms thereof, it applies Kshs.296.20 daily rate to General Labourers Kshs.524.30 for wheeled tractor driver and Kshs.542.00 for ungraded Artisans. That these were the categories of unionsable employees of the Respondent.

CPMU Report

11. From the CPMU report, the Respondent made losses of Kshs.(2,977,282) in the year 2014. It last made surplus income of Kshs.4,468,337 in the year 2012 but incurred a huge deficit of (35,062,143) in the year 2013.

12. CPMU concluded that the financial status of the Respondent for the period under review was not healthy and would depend on National Treasury allocation for any salary increasement. That the allocation by Treasury was subject to SRC's harmonization and approval of staff salaries of state parastatals and other Government Agencies.

13. Major revenue to the Respondent was student fees and competition with emergent institutions, of higher learning had put pressure on its revenue source.

14. That the percentage rise in the cost of living indices for the period under review stood at 14.74% which is approximated at 7.4% each year.

15. The 23rd November 2005, wage guidelines also allows for the adjustments of wages based on the firms productivity as an additional wage compensation consideration.

Conclusion

16. Whereas, the Respondent is mandated to follow the set guideline, stated here earlier in its review of salaries, it is also bound under Article 41(5) of the constitution which provides-

“Every trade union employers’ organization and employer has the right to engage in collective bargaining to negotiate with the Claimant union in respect of terms and conditions of services for all unionisable employees and in terms of the recognition agreement it has entered with the Claimant union.”

17. The Respondent fulfils its procedural mandates of obtaining revenues and approvals for any salary increasements and review of other terms and conditions of service without derogating and also violating the right of the union to bargain for better terms and conditions of services for its members.

18. Equally, the Respondent is bound by the minimum terms and conditions of service promulgated from time to time by the cabinet secretary for labour in terms of Labour Institutions Act, 2007.

19. Furthermore, the Respondent is obliged to obey, follow and implement any government circulars and regulations that impact the status of the institution and the terms of service of the Respondent.

20. The CPI variations which are infact actual cost of living indices do not spare anyone and employees must be compensated from the CPI variations to keep them above the poverty line. Accordingly the court makes the following orders:-

(a) The basic wage for the unionsable employees of the Claimant union are increased as follows:-

(i) 7.4% for the 1st year and

(ii) 7.4% for the 2nd year

(iii) The Respondent is bound to and is directed to implement the respective salary scales in line with the new status of the Respondent which is category II parastatal effective from the date of the CBA if not already implemented in line with the current circular (OP/SCA C9/21/2/of 20th January, 2011.

21. For the avoidance of doubt, the 14.74% salary increment for the two year period is to be calculated based on the new status, and scales of the Respondent as recognized by the Government.

House Allowance

22. The claimant union seeks 10,000 per month house allowance increment. The Respondent avers that it has fully implemented house allowance based on SRC's circular effective from 1st July 2016. This being the case, the court makes no award in respect of house allowance.

Commuter Allowance

23. The Claimant union seeks a minimum commuter allowance of Kshs.5,000. The Respondent avers that this is granted as per the recommendations, by SRC circular, and Board resolutions. The court has not found justification to make any award on this item.

Effective date

24. From the analysis by the CPMU that the proposed Collective Bargaining Agreement technically expired on 30th June, 2016 as it was to run from July 2014 to June 2016, and considering the ailing financial status of the Respondent and that this is a first Collective Bargaining Agreement, and non-existed before to herald a new beginning for the parties the concluded CBA will be for the period 2016/2018 and therefore the effective date of the CBA is July 2016 to June 2018.

25. Each party to meet its own costs of the suit.

Judgment Dated, Signed and delivered this 11th day of October, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Zacahria Achacha for Claimant Union

M/s Aliongo for Respondent

Chrispo – Court Clerk