



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT KISUMU
CAUSE NO. 22 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

TIMOTHY OTIENO OBADO.....CLAIMANT

- Versus -

BON TON LIMITED.....RESPONDENT

J U D G E M E N T

By Memorandum of Claim dated 29th January, 2015 which was amended on 5th February, 2016, the Claimant seeks refund of medical expenses in the sum of Shs.25,495 and interest from June 2012 to date of payment. He alleges that he was injured in a road traffic accident and was entitled to refund of medical expenses which the Respondent refused to pay.

The Respondent filed a Reply/Defence to the Claim dated 23rd March 2015 and an Amended Reply/Defence dated 29th February, 2016.

The case was heard on 11th October 2016. The Claimant testified on his behalf while NIRMA SINGH DABAL, a director of the respondent, testified on its behalf. The parties thereafter filed and exchanged written submissions.

Facts of the Case

The facts of the case are not in dispute. The Claimant was employed by the Respondent at KIBOKO BAY RESORT, a hotel and Restaurant in Kisumu City, as a chef. On 23rd June, 2012 the Claimant was a passenger on a motorcycle taxi on his way from work at about 11pm when it was involved in a road accident and the Claimant sustained injuries being a fracture of collar bone. He was treated at NEW NYANZA GENERAL HOSPITAL from where he was transferred to JARAMOGI OGINGA ODINGA TEACHING AND REFERRAL HOSPITAL. He was admitted and discharged after 2 days.

The Claimant was thereafter on sick-leave for about two and a half months during which he was paid full salary by the Respondent who was aware about the accident and hospitalisation.

The Claimant resigned from employment of the Respondent in December, 2013.

The Claimant avers that he paid a hospital bill of Shs.25,495 which he seeks to be refunded by the Respondent but the Respondent has refused to refund the same on grounds that this was only brought to its attention by the union through a letter dated 28th April, 2014. It is the Respondent's position that it

was bound to pay medical expenses for the employees as provided in the Collective Bargaining Agreement that governed the terms of its employees and had made arrangements for the employees to be treated at Jalaram Hospital. For emergency cases the employees were allowed to be treated at any recognised hospital or dispensary and the Respondent would meet the expenses if notified within 72 hours, of the hospital in which the employee was admitted.

Determination

The parties informed the court that they had narrowed down the issues and the only issue for determination was whether the Claimant notified the Respondent of the occurrence of the accident within 72 hours.

The Claimant alleges that he notified the Respondent through a telephone call, a fact that was admitted by RW1, NIRMA DARBAR.

The relevant provision in the Collective Bargaining Agreement is clause 18(a) (ii) which provides as follows -

CLAUSE 18 - MEDICAL BENEFITS

(a) The management shall provide full Medical Treatment as per section 34 of The Employment Act, 2007, Laws of Kenya, any amendment thereof, provided that:-

(i) The employer will notify all employees of the recognized hospital/dispensary to which the employees shall attend for medical treatment.

(ii) Where an employee in an emergency attends a recognized hospital/dispensary, then all the expenses shall be met by the employer subject to the employee notifying the employer within 72 hours of the hospital in which he/she has been admitted while on duty.

(b) The Work Injuries Benefits Act, 2007, The Occupational Safety And Health Act, 2007 Laws of Kenya, shall apply to an employee who sustains an injury in the course of his/her employment while on duty.

(c) An employee retired on medical grounds shall be entitled to gratuity benefits as per this CBA.

All the Unionisable employees shall be treated at Jalaram Hospital at the expenses of the employer.

In this case I do not think the issue for determination is whether or not the claimant notified the Respondent about his admission in hospital. This is a fact that the Respondent was aware of as admitted by RW1 who testified that the Respondent was aware of the Claimant's accident and his admission in Hospital. Both RW1 and the Claimant testified that the Respondent paid the Claimant's full salary during the period he was on sick off.

The issue in my opinion is whether the Claimant brought to the Respondent's attention the fact that he had incurred the hospital bill of Shs.25,495. In my opinion the interpretation of clause 18(a)(ii) of the Collective Bargaining Agreement is that the Respondent would pay the hospital bill if the employee notifies it of the hospital in which the employee is admitted.

In the present case the Respondent was aware about the hospital in which the Claimant was admitted but the claimant did not inform the Respondent that he had incurred a bill which the Respondent was required to either pay directly to the hospital or reimburse him. There is no evidence that the Respondent was aware about the hospital bill before it was notified about the same by the Claimant's union, the Kenya Hotels and Allied Workers Union by letter dated 28th April 2014. The letter from the Union however did not state the amount of the hospital bill or attach a receipt.

Having failed to notify the Respondent about the existence of a hospital bill until almost two years later and long after leaving the employment of the Respondent, it is my opinion that the Respondent was justified in refusing to pay the hospital bill.

The court observed that the Medical Report is issued by JARAMOGI OGINGA ODINGA, TEACHING AND REFERRAL HOSPITAL while the receipt is issued by NEW NYANZA GENERAL HOSPITAL. It is not clear if the two are the same or are different. The court further observed that there is no evidence that the Claimant himself ever notified the Respondent about the hospital bill personally other than the notification through the letter from the union and the demand letter from the advocate. It is further the court's opinion that the CBA does not provide for reimbursement but for direct payment of the bill to the hospital by the Respondent hence the requirement that it be notified of the hospital within 72 hours of admission. It is for the foregoing reasons that I find no merit in the claim and dismiss it with no orders for costs.

Judgement Dated, signed and delivered this 23rd day of February, 2017

MAUREEN ONYANGO

JUDGE