



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 883 OF 2014

JARED ASUNA ABUORA.....CLAIMANT

VERSUS

MABATI ROLLING MILLS LTD.....RESPONDENT

JUDGEMENT

1. By a memorandum of claim filed on 27th May, 2014 the claimant averred that he was employed by the respondent on 30th September, 2008 as a fitter/welder and served the respondent faithfully until 22nd February, 2014 when he claimed the respondent wrongfully and unlawfully dismissed him.
2. The claimant contended that on 17th February, 2014 he was served with a notice to show cause why disciplinary action should not be taken against him for an oil spillage that had occurred. He responded to the show cause letter and contended throughout that he strictly served in accordance with the terms of service. According to the claimant, the grounds for his dismissal were unreasonable, unfair and unjust. It was his view that he offered satisfactory explanation on the spillage of the furnace oil.
3. The claimant contended that the respondent failed to appreciate the fact that he tried in the circumstances to save a rather worse situation by shifts A employees as he was working alone. The claimant therefore averred that he suffered loss as a result of the termination and sought an order for compensation against the respondent.
4. The respondent denied the claimant's assertion and averred that on 17th February 2014, the claimant negligently and without authority or notification to his supervisor, transferred furnace oil spillage from supply chain tank to the boiler tank without taking the necessary precaution which caused massive spillage of oil and loss to the respondent.
5. According to the respondent the claimant was dismissed due to the fact that he was not candid and wrongly asserted that the oil spillage was due to rain and darkness whereas the investigations had revealed that there was enough flood light at the fuel storage area. The respondent further pleaded that the claimant had previously and without authority pumped furnace oil and had been warned against it.
6. Concerning procedure for dismissal the respondent asserted that it adopted the right procedure as set out in the memorandum of agreement before the dismissal and afforded the claimant the right to be heard in the meetings held before his dismissal. The respondent additionally counterclaimed for the value of the oil lost during the spillage attributing it to the claimant's negligence.

7. During oral testimony the claimant further stated that he was trained as a mechanical welder and only one person by the name Buluma was trained to handle boiler issues. On the material day he was the only person on shifts at the time as his partner Mr Mutangi was always late or absent.

8. According to him he reported to duty at 11:30 pm on the material day and his colleagues in the outgoing shift told him while handing over that the boiler had no furnace oil. He further stated that from time to time he tried to inform the operations manager about the issues with the boiler but was always dismissed. He stated in cross-examination that the supply chain tank is 22,500 litres and provides oil to the production tank. There are times blockage on the pipes lead to no oil in the boiler tank. It was his evidence that the oil was pumped cold and at times clogs. He feared that when it rained the production tank would be low on oil as the boiler tank had a problem.

9. On the material day he opened the supply chain tank so as to push the oil inside. This being an emergency he did not consult his supervisor as required. He stated that what used to happen was that one on duty would either inform the security officer or the storeman prior to opening the supply chain tank. He further stated in his statement in response to the show cause letter he never mentioned the staff member who was late. He further stated in his statement that there was poor lighting around the tanks.

10. The claimant further stated on 18th February, 2014 he was issued with a show cause letter and gave an explanation. He further admitted writing a letter of apology and offered that the value of the oil lost be deducted in bits from his salary until payment in full.

11. The respondent's witness Mr Isaac Yugi Otieno informed the court that on 17th February, 2016 he received a call from a supervisor Mr Munyoki that there was fuel spillage in the storage area which required his attention. The supervisor had interrogated the two employees who were on duty. They were Mr Mutangili and the claimant. From his investigation he established that on 15th February, 2014 at around 1230 hours the opening stock level for the furnace oil was 8400 litres at the main storage tank.

12. He further found that the spillage was not mechanical, operational or technical fault but was as a result of negligence of the claimant. In his findings he stated that claimant left the production tank oil valve open while transferring furnace oil from the main tank. The claimant was assigned to work in the area when the spillage occurred. According to Mr Otieno, the claimant had no power done to transfer oil. The transfer had to be notified to the supervisor and security who had to be physically present. He further observed that there was no need for the fuel transfer on the material day since there was sufficient oil to run the boiler. It was also his evidence that the claimant never reported the spillage to his immediate supervisor or any supervisor. Mr Otieno further denied there was any flooding in the area although it had drizzled.

13. Regarding procedure for dismissal he stated that the claimant was taken through a disciplinary hearing and minutes prepared by the Human Resource Manager. The claimant signed the minutes. According to him the claimant accepted negligence and offered to pay for the loss through monthly deductions. Mr Otieno further stated that the claimant had previous incidents of negligence where he pumped fuel without authority and which led to spillage.

14. In cross –examination he stated that the areas where the spillage occurred was well drained and that the floodlight was well enough to light the valve area. Dismissal from employment or termination of contract of service can happen for a valid or justifiable reason. Once the reason is established as valid reason warranting a dismissal or termination of services, an employee must be taken through a disciplinary process that conforms to rules of natural justice. That is to say the charges must be laid out to the employee, he must be called upon to defend himself against the charges and call witnesses if any.

15. In this particular case, there appears to be no contestation over the procedure followed in terminating the claimant's services. He was issued with a show cause letter to which he responded. He was thereafter called for a disciplinary interview which he attended and later on signed the minutes as evidence of true record of what took place at the hearing. He was eventually dismissed summarily by the respondent because of the view that the spillage was as a result of the claimant's negligence.

16. The claimant seemed to have a problem with the finding that he was negligent in handling the oil from the main tank to the boiler leading to the spillage. The respondent through its witness Mr Isaac Otieno informed the court that oil transfer from the main tank to the supply chain tank and the boiler must be done in the presence of a supervisor and security. This procedure was not contested by the claimant. Whereas the claimant alleged that he was informed by the outgoing shift that the oil level at the furnace was low he did not state or allege that he alerted his supervisor and security before attempting to transfer the oil.

17. Failing to follow a crucial procedure in carrying out work leading to loss or injury is obviously an act of negligence and dismissal on account of negligence is valid and justifiable.

18. In this particular case, the claimant has merely alleged that he was alone on the material shift and that his partner was habitually late or absent. He however did not say if at all he tried to contact his supervisor and security as required prior to attempting the oil transfer. This was negligence on his part for which the respondent was justified in dismissing him. The claim is therefore found without merit and is hereby dismissed.

19. Concerning the counter-claim, although pleaded, the respondent neither led any evidence on the issue nor produced any documentary evidence to prove that the pleaded amount was the actual value of the oil lost during the spillage. To this extent the court also finds that counter-claim has not been proved and dismisses the same.

20. Neither party being successful each shall bear their own costs.

21. It is so ordered.

Dated at Nairobi this 21st day of July 2017

Abuodha J. N.

Judge

Delivered this 21st day of July 2017

In the presence of:-

..... for Claimant

.....for Respondent

Abuodha J. N.

Judge