



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 851 OF 2013

KENYA CHEMICAL WORKERS UNION.....CLAIMANT

VERSUS

GENERAL PLASTICS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Kenya Chemical and Allied Workers Union, a trade union registered to represent interests of workers in chemical and allied industries. The issue in dispute is violation of working hours.
2. By consent of the parties, the matter proceeded by way of written submissions.

The Claimant's Case

3. The Claimant states that the Respondent has violated clause 2 of the Collective Bargaining Agreement (CBA) which provides for normal working hours. The Claimant's complaint is that by distributing the 44 working hours over 4-5 days instead of 6 days, the Respondent is in contravention of this clause of the CBA.
4. The Claimant states that the work schedules adopted by the Respondent exposes workers to exhaustion. The Claimant also takes issue with the mode of compensating workers for excess hours worked by way of off days, instead of payment in cash.
5. The Claimant further states that attempts at conciliation did not bear fruit hence this claim.
6. The Claimant asks the Court to find that the Respondent is in violation of the CBA. The Claimant also seeks an order to compel the parties to respect the CBA.

The Respondent's Case

7. The Respondent entered appearance on 11th June 2013 but did not file a reply. The Court will therefore proceed on the basis that the facts as pleaded by the Claimant are not in contest.

Findings and Determination

8. Clause 2 of the CBA which is the subject of this dispute provides as follows:

“An employee shall normally be required to work, whether on shift or otherwise a total of 44 hours spread over 6 days of the week, exclusive of the meal break hours, provided that an employee who is required to work in excess of such hours shall be paid for such excess hours at the appropriate rate as provided by clause 3 of this Agreement.”

9. Section 27 of the Employment Act, 2007 provides that an employer shall regulate working hours of each employee in accordance with the law. While this provision gives the employer some leeway to implement work shifts, I do not think it allows for unilateral alteration of the terms of either a CBA or an individual contract of employment.

10. In *Daniel Njuguna Mwangi v De La Rue Currency and Security Print Limited [2017] eKLR* this Court held that under Sections 10(5) and 13(1) of the Employment Act, 2007 any changes to the terms of employment can only be effected with consultation of the employee and notification thereof must be made in writing.

11. From Clause 2 of the CBA, it is clear that the parties negotiated and agreed on 44 hours of work per week spread over 6 days. The Claimant states and the Court agrees that any variation to this work schedule ought to have been agreed upon by the parties to the CBA. The Court did not see any such agreement nor was there evidence that the affected employees had been notified of the changes in writing.

12. For the foregoing reasons, the Court finds that the work shifts adopted by the Respondent are in violation of clause 2 of the CBA. However in light of the time lapse since filing of the case and being oblivious of subsequent negotiations between the parties, I will make no further orders.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF AUGUST 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Mueke (Union Representative) for the Claimant No appearance for the Respondent