



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NO. 87 OF 2013

AMOS MBUGUA NJERI.....CLAIMANT

VERSUS

PACKAGING INDUSTRIES LTD.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was employed by the respondent in 2006 as a casual employee and worked until 14th December 2012 when he claimed the respondent terminated his services.
2. The claimant further averred that during the time he worked for the respondent he was never paid house allowance and never went on leave. He further claimed he was never paid commuter allowance. According to the claimant, the decision to terminate his services by the respondent was unprocedural, unlawful and unfair.
3. The respondent on its part averred that the claimant was employed on a six month's contract as at 5th July, 2012. His daily wage was Kshs 520/= and that he was to work for 9 hours a day. The respondent further pleaded that the claimant was paid weekly but issued with monthly payslips. According to the respondent, on 19th December, 2012 it was discovered after the claimant's had completed his shifts that he negligently handled one of the machines causing it to breakdown. He was asked to leave the premises but never came back to work since this incident. According to the respondent therefore, the claimants absconded and absented himself from work from 14th of December 2012 to 31st December, 2012.
4. Counsel for the parties filed witness statements in support of this respective position in which they reiterated most of the averments in the pleadings.
5. According to the claimant, the machine he was accused of negligently handling had not been working for three months. He reported the incident to his supervisor who came with an engineer and had a look at the machine and later said it was now ready for work but when he went back to work to use the machine, it was still not working.
6. The claimant further stated that he was paid weekly and also used to receive Christmas bonus. According to the claimant he had been operating machines in the extrusion department for many years and that the respondent had taken him through vigorous training and had never had any intention to damage or cause breakage to machines. The claimant further stated that he was never given any disciplinary hearing with regard to the alleged damage to the machine. He was further not given particulars of the alleged damage.

7. The respondent on its part through one Mutuku Muai stated that on 14th December, 2012 the claimant was working on the respondent's plants and after the claimant's shift, it was discovered that he had negligently handled the machine he was working with. The claimant was then asked to go home and come back the next day but never came back. According to Mr Muia, the claimant was never dismissed from his job and that he was never disciplined for the negligent manner he handled the machine he was working with.

8. It was common ground that the claimants' separation from employment with the respondent came about as a result of the accusations levelled against the claimant for negligence leading to breakdown of a machine he was working with. According to the claimant he was told to go away and would be called back but was never called but according to the respondent the claimant absconded duties after this incident.

9. To succeed in an accusation of absconding work by an employee, an employer has to be backed by evidence of reasonable steps taken by such employer to contact the employee concerned without success. The respondent in this case did not produce any such evidence. Further the claimant averred that his dismissal was unprocedural in that he was not taken through any disciplinary hearing and further that he was never furnished with the details of the alleged damage he caused to the machine he was working with. Employment Act places the burden of proof of reasons for dismissal as well as fairness of the process on the employer. Where an employer fails to do so the dismissal shall be held as wrongful and the termination unfair.

10. The respondent in this case has failed to discharge that burden leading to the conclusion that the termination of claimant's services was unfair.

11. The court therefore awards the claimant as follows:

a. One month salary in lieu of notice of termination 20,948.15

b. Six months salary as compensation for

unfair termination of services 125,688.90

146,637.05

c. (a) and (b) above shall be subjected to statutory deductions

d. Costs of the suits

12. Other heads of claims pleaded by the claimant are disallowed for lack of sufficient proof.

13. It is so ordered.

Dated at Nairobi this 13th day of October, 2017

Abuodha J. N.

Judge

Delivered this 13th day of October, 2017

Abuodha J. N.

Judge