



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 385 OF 2012

KENYA CHEMICAL AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

COSMOS LIMITED.....RESPONDENT

JUDGMENT

1. The bone of contention in this dispute is that grievants claim the respondent until 2008 did not pay them the correct salaries as per the Collective Bargaining Agreement.
2. According to the claimant the Collective Bargaining Agreement in question became effective from 1st July, 2006 up to June 2008. The claimant submitted that the respondent violated the clause 2(b) on new trainee staff which provided that new trainee staff must within one year of commencement of employment be made employee in service and receive not less than their basic minimum rate of pay for that grade. The rate for such employees is contended by the claimant to be the rate vacated by existing employees moving to their second year increments so as to make a gap between the old existing employees and the incoming employees in service.
3. The respondent on their part contended that they did not violate clause 2(b) in the Collective Bargaining Agreement and no employee was underpaid. The respondent further contended that the Collective Bargaining Agreement for 2006-2007 was signed by the parties on 27th June, 2007 and registered by the Court on 31st July, 2007 which was a year after the effective date. According to the respondent, the 1st grievant Benjamin Muriuki was employed in 2006 when the Collective Bargaining Agreement in issue was still under negotiation. He was placed on the salary of the previous Collective Bargaining Agreement being Kshs.10,340 plus 16% house allowance. Upon signing and registration of the Collective Bargaining Agreement, his salary was adjusted to Kshs.12,739/= with effect from 1st July, 2007. The resultant arrears for both wages and house allowance were paid to him together with his salary for the month of July, 2007. This same formula according to the respondent applied to the other seven grievants. The respondent therefore denied that the grievants were underpaid. The respondent further contended that the Collective Bargaining Agreement covered 132 employees hence could not understand why the claimant elected to raise a claim for the eight employees instead of the entire workforce.
4. Clause 2(b) of the Collective Bargaining Agreement provides:

“All new staff employed by the company during the period of this agreement shall receive no less than their basic minimum rate of pay as detailed in the table above and

that new trainee staff must within one year of commencing employment be made and employee in service and shall receive not less than their minimum rate of pay for that grade as detailed in the table above.”

5. Clause 2(a) on wage increase provided that:-

“All existing unionized employees will be given an increase of 11% of their present basic monthly salaries in the first year of amended agreement starting from 1/7/2006. A further 11% increase will be applicable from 1/7/2007 for all grades on basic salary prevailing on 30th June 2007. No employee of the company shall get annual increase of less than increase granted to his or her respective classification as stipulated above.

6. It would therefore mean that all increments by unionizable employees are capped at 11% of their present basic monthly wage.

7. The Collective Bargaining Agreement in contention was for the period 2006-2007 which was signed on 27th June, 2007 and registered on 31st July, 2007 with effective date as 1st July, 2006.

8. According to Collective Bargaining Agreement, the 1st grievant for instance who was employed on 1st August, 2006 as a general packer grade 111b at a basic salary of 10,340 which was then the minimum rate had by then served for a year hence automatically became a new employee of the respondent entitled to basic minimum rate of pay as detailed in the table contained in the Collective Bargaining Agreement (clause 2(b) of the Collective Bargaining Agreement). The new staff wage as per the schedule is Kshs.11,477 while employee in service was Kshs.14,527. The 1st grievant was therefore entitled to Kshs.11,477 with effect from August, 2006 payable until 30th June, 2007 and Kshs.12,739 with effect from 1st July, 2007. This increment was subject to 11% of the basic pay as provided for under clause 2(a) of the Collective Bargaining Agreement. This reasoning applies mutatis mutandis to the rest of the claimants.

9. Having carefully reviewed the document filed by the parties, in support of their respective positions the Court is persuaded that the respondent complied with the Collective Bargaining Agreement in respect of the grievants and indeed all the 132 staff of the respondent.

10. The claim is therefore found unmerited and the same is hereby dismissed with no order as to costs.

11. It is so ordered.

Dated at Nairobi this 5th day of February 2016

Abuodha J. N.

Judge

Delivered this 5th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge