



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NO. 1130 OF 2011

UNION OF NATIONAL RESEARCH & ALLIED

INSTITUTE STAFF OF KENYA (UNIRISK).....CLAIMANT

VERSUS

KENYA INDUSTRIAL RESEARCH AND

DEVELOPMENT INSTITUTE (KIRDI).....RESPONDENT

AWARD

(Rule 27(1) (a) of the Industrial Court (Procedure) Rules 2010)

1. The Claimant Union filed its Statement of Claim on 11th July, 2011. It states to have a valid Recognition Agreement, with the Respondent State Corporation.
2. The Parties registered a Collective Bargaining Agreement at the Industrial Court, entered in the registry as RCA Number 198 of 2008.
3. According to the Claimant, the Respondent employed a total of 335 Employees. 93 were Members of the Union; 240 were not Members of the Union; they were free-riders. They benefited from the CBA without paying anything to the Union. This claim is based on these free-riders.
4. The Claimant submits the Minister for Labour gave an order for collection of agency fees, with regard to free-riders benefitting from CBAs, negotiated by the Claimant union. The order is contained in Gazette Notice number 13179 of 11th December, 2009.
5. The Claimant seeks to enforce the Ministerial Order, with regard to the 240 Employees who benefitted from the CBA, and are non-Union Members. The Claimant seeks to have agency fees recovered from these beneficiaries, and deposited in its KCB Bank Account No. 234 793 886, Moi Avenue.
6. The Respondent filed its Statement of Response on 16th September, 2011.
7. Its position is that it has implemented the CBA with respect to the Unionized as well as Unionisable Staff. It has complied with Gazette Notice 13179.
8. The dispute was subjected to conciliation. The Conciliator appointed by the Minister found the Respondent had acted on the Ministerial Order. It was recommended by the Conciliator that the dispute is marked as settled. The Respondent submits in view of this, the Claimant has no basis for initiating the

Claim. The Claimant has not shown why it disagreed with the Conciliator's findings and recommendation.

9. The Respondent submits the Claimant has not followed all the procedural requirements needed in effecting agency deductions. To grant the order would lead to disaffection from the 240 Employees, and lead to industrial unrest. The Respondent urges the Court to dismiss the Claim.

10. The Claim was heard on 19th April, 2016 in the absence of the Respondent.

The Court Finds

11. Parties have a Recognition Agreement. They registered a CBA, RCA No. 198 of 2008. There is in place a Ministerial Order, contained in Gazette Notice Number 13179 of 11th December, 2009. The Order requires Employers who have entered into labour contracts with the Claimant, to deduct agency fees and pay to the Claimant Union. There is no dispute on existence of the Recognition Agreement, the CBA and the Ministerial Order.

12. The dispute was taken through conciliation. In the Report filed in Court on 18th February, 2010, the Conciliator confirmed the presence of a Recognition Agreement, the CBA, and the Ministerial Order. Further findings are that,

a) In January, 2010, Management effected the Ministerial Order by deducting agency fees with regard to 86 Employees,

b) The Respondent has a labour force of 335 Employees, 93 are active Members. 156 Employees are not deducted agency fees, with the Respondent contending they belonged to Management,

c) Parties have not categorized Management Staff and Unionisable Staff in their CBA and Recognition Agreement. All terms and condition of work for all Employees from Grade 1 to 15, including the Director's, are negotiated in the CBA,

d) Although all staff are beneficiaries under the CBA, there are certain cadres of staff, who may be excluded from union representation, due to the nature of their work, as provided for in the Industrial Relations Charter.

13. The Conciliator recommended that since the Respondent had effected the Minister's Order, the dispute should be considered as settled.

14. Unfortunately, the Respondent, though served with the hearing notice, did not attend Court on 19th April, 2016. This dispute was fixed for hearing by the Court, and notices issued upon the Parties, as part of the Court's service week exercise, when old and inactive files are brought out of their shelves, and moved forward or terminated for want of prosecution.

15. Section 49 of the Labour Relations Act requires that Employees who are not Members of the Union, and who benefit under a CBA negotiated by the Union, pay agency fees to the Union. This is as opposed to Trade Union dues, paid by Employees who are recruited as Members of the Union, the subscription fees being regulated under Section 48 of the Labour Relations Act. The agency fee is supposed to combat the problem of free-riders. It ensures there are no Employees who benefit from the resources put in place by the Trade Union in negotiating the CBA, without paying a minimal fee for the effort that go into the crafting of the CBA. This arrangement also benefits Employers. They do not have to negotiate multiple employment contracts for various Employees working at their enterprise.

16. The Conciliator concluded, that all Employees, from Grade 1 to 15, including the Director, were beneficiaries under the CBA.

17. Agency fees apply to unionisable Employees covered by the CBA, who are not Members of the Union. 'Unionisable' under Section 2 of the Labour Relations Act, means Employees who are eligible for membership of the Union.

18. The Director and other Management Staff are not unionisable Employees. They are not covered by the Ministerial Order. However, the Parties have not, as the Conciliator found, categorized Employees into Management and Union ranks. All Employees were taken as beneficiaries under the CBA. The Parties themselves did not have a demarcated list of Employees, as would be justified under the Industrial Relations Charter. All were treated in the CBA, as unionized or unionisable. The Court must not interfere with this treatment.

19. The Court does not see why the Conciliator, having concluded all Employees benefitted from the CBA, and having no evidence of clear lines drawn between Management and Unionisable Staff, should have recommended that the dispute is settled on the basis that the Respondent had complied with the Agency Order. As all Employees benefitted, the presumption would be all enjoyed the representation of the Union in preparation and registration of the CBA. None should therefore have been allowed a free ride. Not even the Director. The Conciliator appears to have arrived at his recommendation, as a matter of convenience. This should not be so.

20. The Court is satisfied the Claimant has established its Claim, and makes the following orders:-

- a) The Respondent shall deduct and remit agency fees with regard to all Employees, who benefitted from the CBA.
- b) Deduction shall be from the date the CBA came into force, until that CBA is terminated, rescinded or modified.
- c) Parties are directed to draw clear lines of demarcation between Management and Unionisable Staff in their next CBA.
- d) Costs of this Claim shall be met by the Respondent.

Dated and Signed at Nairobi this 20th day of April, 2016.

JAMES RIKA

JUDGE