



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 485 OF 2014

TRANSPORT WORKERS UNION (K).....CLAIMANT

V

TURBO HIGHWAY COMPANY LTD..... RESPONDENT

JUDGMENT

1. The Transport Workers Union (K) commenced legal proceedings against Turbo Highway Co. Ltd (Respondent) on 2 October 2014 and the issues in dispute were stated as

- i. Failure to remit union dues.
- ii. Failure to recognise the Union.

2. The Respondent filed its Response to the Claim on 10 November 2014, which prompted the Union to file a Rejoinder on 21 January 2015.

3. Witness statements and other supporting documents were also filed and the Cause was heard on 2 December 2015. The Union did not call any witness, while the Respondent called its Legal Officer.

4. A Union is expected to fulfil certain statutory conditions before the employer commences deduction of union dues and is granted recognition.

5. The conditions include the Union demonstrating that it has recruited a simple majority of an employer's unionisable employees; be the right union, i.e. its constitution should allow it to represent employees within the sector or industry the employer operates in.

6. On the issue of deduction of union dues, a Union should recruit and submit check-off (Form S) to the employer and also prove that the Cabinet Secretary has issued an appropriate Gazette Notice.

7. These are the parameters within which the Union's claim ought to be tested.

8. The Respondent's witness stated that it had not refused to recognise the Union and that the Union had not contacted it before commencing legal action.

9. On whether the Union was the right union, the witness disclosed that the Respondent is engaged in importation of fertiliser and not transportation and that it hires transport to ferry the fertiliser from Mombasa.

10. Regarding the deduction of Union dues, the witness stated that only 2 of the persons listed in the check-off forms were its employees.

Recognition agreement

11. There are 2 main reasons why the cause of action relating to recognition does not meet muster and must fail.

12. For one, the Union did not produce its Constitution to demonstrate the sectors/industries it is allowed to operate include employers involved in importation of fertiliser.

- 13.The Respondent's witness testimony that it did not operate within the transport sector was not challenged.
- 14.Secondly, the Union exhibited check-off forms with the names of some 48 employees which it alleged it had sent to the Respondent. The Respondent's witness denied that the names in the forms belonged to its employees save for 2.
- 15.This testimony was also not challenged or controverted.
- 16.Further, the Union did not prove that the 48 employees comprised a simple majority of the Respondent's unionisable employees. On this account as well, the recognition claim fails.

Deduction of union dues

- 17.On the basis of the testimony before Court, it appears that at most only 1 or 2 out of the 48 persons named in the check-off forms are employees of the Respondent.
- 18.However, the Respondent's witness stated on oath that the 2 had disowned their signature on the check-off forms.
- 19.The Union opted not to lead any testimony/evidence, and with the material placed before Court, it is not possible to logically conclude that the Union has in its membership any employee of the Respondent.
- 20.In this regard, even the claim relating to deduction of union dues fails despite the fact that a trade dispute was reported to the Cabinet Secretary who invited the parties to make submissions but the Respondent failed to cooperate.

Conclusion and Orders

- 21.The upshot of the foregoing is that the Court finds no merit in the Union's case and orders that the Memorandum of Claim filed in Court on 2 October 2014 be dismissed. It is so ordered.
- 22.No order as to costs.

Delivered, dated and signed in Nakuru on this 8th day of April 2016.

Radido Stephen

Judge

For Union Mr.Beru, Branch Secretary, Transport Workers Union (K).

For Respondent Ms. Odwa instructed by Nyairo & Co. Advocates

Court Assistant Nixon