



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 295 OF 2015

DAVID CHEPKUTO CHEPKANIA

CLAIMANT

v

PRIME FUELS (K) LIMITED

RESPONDENT

JUDGMENT

1. For determination are the questions, *whether the termination of the employment of David Chepkuto Chepkania (Claimant) by Prime Fuels (K) Limited (Respondent) was unfair, whether Claimant had accrued leave by time of separation, whether the Claimant is entitled to lost benefits and appropriate remedies.*

2. The Memorandum of Claim was filed on 12 October 2015, a Response to Memorandum of Claim filed on 23 November 2015 and the Cause was heard on 18 July 2016 when the Claimant and Respondent's Road Transport Manager testified.

3. The Claimant filed his written submissions on 15 September 2016, while the Respondent filed its submissions on 21 September 2016.

4. The Court has given due consideration to the pleadings, evidence and submissions and will set out each parties case under the identified issues.

Whether summary dismissal was unfair

Procedural fairness

5. The Claimant was informed of his summary dismissal through a letter dated 31 August 2015 and the reason given was failure to record return of a D-Block and loss of 3 cartons of brake-linings.

6. In his testimony, the Claimant stated that he was summoned by the Respondent's Human Resources Manager on 19 August 2015 and in the presence of the Store Manager, Operations Manager and a KK Security guard, he was asked to explain what he knew about the D-Block.

7. He also stated that he was informed that he was involved in the theft of brake linings and that he was also called to the Boardroom on 28 August 2015, and requested to write a statement and that a show cause was given on the same day as the dismissal letter.

8. Despite the testimony, the Claimant asserted that no disciplinary hearing was held.

9. The Respondent showed the Claimant copies of minutes of a disciplinary hearing held on 28 August

2015. The minutes were signed by the Claimant.

10. The minutes clearly indicate that 2 allegations were read to the Claimant and that he made representations after which a recommendation for summary dismissal was made.

11. The minutes which were signed by the Claimant lead to the inescapable conclusion that the Claimant was aware of the charges to confront, was afforded an opportunity to make representations and that he made the representations.

12. In the Court's considered view, the process as conducted by the Respondent met the basic requirements of procedural fairness as envisaged under section 41 of the Employment Act, 2007, and the Court finds that the dismissal was procedurally fair.

Substantive fairness

13. Procedural fairness is not all that is there to unfairness in dismissal.

14. Pursuant to section 43 of the Employment Act, 2007, the employer has the obligation to prove the reasons for the dismissal and further that the reasons were valid and fair in terms of section 45 of the Act.

15. It is not in dispute that the Claimant had issued a D-Block to one Antony Mwangi, a mechanic. The investigations report confirms as much.

16. The dispute concerns whether the mechanic returned the D-Block to the stores.

17. The minutes of the hearing of 28 August 2015 indicate that the Claimant confessed that the mechanic returned the D-Block to him and that he was in communication with the mechanic just around the time the D-Block was found where it had been hidden.

18. The Claimant did not deny the truthfulness/correctness of the contents of the minutes and in this regard, the Court is of the view that with his admission during the disciplinary hearing, the Respondent had a valid and fair reason to dismiss him.

19. The second reason for the dismissal was the loss of brake-linings.

20. The Claimant admitted before the disciplinary hearing that he had custody of the stores key at the time the brake-linings got lost, but sought that 3 other employees in the stores be investigated (3 employees of KK Security were found sneaking the cartons out of the stores).

21. When challenged to produce these other employees, he did not.

22. In Court, the Claimant attempted to explain his non-involvement by stating that the stores were under CCTV surveillance but did not address how stores (brake-linings) could be removed under his nose without his knowledge.

23. Being aware of the case he was to meet, the Claimant should have sought the production of the CCTV images well before the hearing commenced but he failed to do so.

24. The Claimant was at least negligent in the performance of his duties if not complicit in the attempt to remove the brake-linings.

25. The Court therefore finds that the Respondent has discharged the obligation to show that the Claimant was complicit in the attempted theft of the brake-linings and the same was a valid and fair reason to dismiss him.

Accrued leave

26. The Respondent exhibited the Claimant's leave records and the last record dated 26 January 2016 show the Claimant had a balance of 44.5 days.

27. The Claimant admitted in testimony that he was paid the days as part of the terminal dues.

Lost benefits

28. The Claimant sought Kshs 72,000/- on account of lost benefits.

29. There was no explanation in testimony what these benefits were nor was a contractual or statutory basis for the benefits disclosed and therefore in the view of the Court, the head of claim is unsustainable.

Compensation

30. With the conclusion on fairness of dismissal, compensation is not available.

Conclusion and Orders

31. The Court finds and holds that the summary dismissal of the Claimant was fair and that the Claimant is not entitled to any of the heads of claim advanced.

32. The Court orders that the Cause be dismissed with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 30th day of September 2016.

Radido Stephen

Judge

Appearances

For Claimant Ms. Kenduiwa instructed by Kenduiwa & Co. Advocates

For Respondent Mr. Kaniu instructed by Ogola & Mujera Advocates

Court Assistant Nixon