



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NUMBER 162 OF 2013

BETWEEN

MICHAEL WAWERU WAINAINA.....CLAIMANT

VERSUS

BAMBURI CEMENT LIMITED.....RESPONDENT

Rika J.

Court Assistant: Benjamin Kombe

Mr. Stephen Oddiaga Advocate , instructed by Stephen Oddiaga & Company Advocates for the Claimant

Mr. Njeru Advocate , instructed by Njeru & Company Advocates for the Respondent

ISSUE IN DISPUTE: TERMINAL BENEFITS

AWARD

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

1. Michael Waweru Wainaina was a Brick Layer Foreman, working for the Respondent for 32 years, between 1975 and 2007.
2. He retired on attaining the age of 55 years, on 1st January, 2008.
3. He was paid gratuity of Kshs.1,864,235.10 on 20th August, 2010, and Kshs 143,126.90 on 5th May, 2011.
4. In his Statement of Claim filed on 2nd November, 2012, the Claimant disputes the mode of computing gratuity. He asserts he was unionisable from 1975 to 1989, and his terms and conditions of employment subject to the CBA concluded between the Respondent and the Claimant's Union.

could have been based on the CBA for the years 1975 to 1989, not on the Pension Scheme.
6. He joined Management from 1989 to the date of retirement. According to him, the Respondent calculated gratuity for the whole period of 32 years worked, based on the Pension Scheme. The effect was that he was denied gratuity for the years under the Union.
7. In his submissions filed on 27th November, 2014, the Claimant abandons the above argument stating:

“The Claimant is however contented with only pushing for compensation for the late payment and demands interest on the money for the period it was withheld”.

8. He argues that he was retired effective 1st January, 2008, but only received his benefits on 20th August, 2010 and 5th May, 2011 respectively. The Respondent should be punished, for late payment of the Claimant's benefits.

9. The Respondent filed its Amended Statement of Response on 8th August, 2014. Its position is that the Claimant was paid all his rightful dues, accepted payment, and discharged the Respondent from further obligation.

10. The Claimant was only paid in accordance with the rules of the Pension Scheme, for the years he was in Management from 1989.

11. The payment could only be made upon the Claimant, once he signed the acceptance form. This he did on 6th August, 2010 for the payment made on 10th August, 2010; and on 10th March, 2011, for the one made on 5th May, 2011. No loss was suffered as the benefits were computed up to the date of retirement.

The Court Finds:

12. There were 2 issues in the Claim presented before the Court – the mode of computing gratuity; and whether delay in payment of gratuity, should be remedied through a grant of interest on the sums paid.

13. The Claimant seems to have resolved the first issue in his Submissions, through abandonment of the argument on the mode of computation of gratuity.

14. There was good reason to do so. The material supplied to the Court shows the Pension Scheme rules applied for the period in management, from 1989. The Claimant accepted transfer of gratuity for the period served as a Unionisable Employee, in the document he signed on 6th August, 2010.

15. The Respondent adequately explained why there was delay in releasing the Claimant's benefit. Payment depended on the Claimant's acceptance. He made his acceptance on 6th August, 2010 and was paid the initial amount on 10th August, 2010. He made his second acceptance on 10th March, 2011, and received his final payment on 5th May, 2011.

16. An order for payment of interest is not justifiable. Payment depended on specific action of the Employee. He was not prejudiced in any event, computation having been pegged to the date of payment, and not the date of retirement.

IT IS ORDERED:-

a) The claim is dismissed with no order on the costs.

Dated and delivered at Mombasa this 22nd day of May 2015.

James Rika

Judge