



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT MOMBASA**

**CAUSE NO. 64 OF 2013**

**KENYA ENGINEERING WORKERS UNION.....CLAIMANTS**

**VERSUS**

**MABATI ROLLING MILLS LTD .....RESPONDENTS**

**J U D G M E N T**

**BACKGROUND**

The parties herein negotiated and signed a Collective Bargaining Agreement (CBA) on 12/5/2009 to cover the period between 1/1/2009 and 31/12/2010. Clause 4 of the CBA dealt with “GENERAL WAGE INCREASE” and stated that:

*“with effect from 1st January 2009 all unionisable employees shall get a wage increase of 12% on their basic wage of 31/12/2008 and a further 12% increase on their basic wage of 31/12/2009 provided that those who are below the basic minimum will be brought to the basic minimum wage before the increase.”*

After the effective date the parties disagreed on the interpretation of the said clause 4 and referred the matter for conciliation before the Minister for labour. The claimant disagreed with the conciliators report and brought this suit.

The interpretation according to the claimant is that the CBA provided for 12% increment on the basic salary starting 1/1/2009 provided that if an employee's basic pay of 31/12/2008 was below the minimum wage under the said CBA, the same had to be increased to the new CBA basic pay first before applying the 12% increment. Consequently the second increment of 12% effective from 1/1/2010 was to be based on the basic salary of 31/12/2009.

On the other hand, the respondent interprets the clause to mean that 12% increment was given to all unionisable employees based the basic salary of 31/12/2008 and 31/12/2009 effective 1/1/2009 and 1/1/2010 respectively provided that any employee's basic which fell below the basic minimum wage as at 31/12/2009 had to be topped up by the difference.

After several adjournments to allow the parties to negotiate amicable settlement, the parties agreed to dispose of the dispute by written submissions. The respondent filed submissions on 2/9/2013 and 13/11/2013 while the claimant filed hers on 2/10/2013.

**CLAIMANTS SUBMISSIONS**

It was submitted that the parties to the CBA were bound to strictly follow its contents. That all the unionisable employees earning below the newly negotiated basic minimum wage was from 1/1/2009 to be brought first to the newly negotiated CBA basic minimum wage and then receive 12% wage increase effective 1/1/2009. However, for those employees earning above the newly negotiated minimum wage under the CBA dated 12/5/2009, they were only to receive a general wage increase of 12% of their salary basic wages of 31/12/2008.

The court was then urged to find that the respondent was in error in her interpretation of clause 4 which led to unnecessary suit due to her wrongful implementation of the CBA.

### **RESPONDENTS SUBMISSIONS**

The respondent submitted that the court ought to be guided by the ordinary rules of interpretation and avoid the temptation of re-writing the CBA. Accordingly the respondent urged that the court ought to be guided by clause 3 of the CBA in interpreting clause 4 thereof. According to the respondent, the minimum wage referred to by the CBA was the statutory minimum wage. Consequently, according to her, the clause 4 of the CBA intended to ensure that any one who remained below the statutory minimum wage after the annual statutory increment was brought to the statutory minimum first before any negotiated CBA increase was effected.

Accordingly, the minimum wage under the CBA did not refer to the newly negotiated minimum wage under the CBA otherwise the parties would specifically indicated as such.

### **ANALYSIS AND DETERMINATION**

upon keen perusal of the pleadings and upon considering the submissions filed, the following issues arise for determination:

- a. **whether the minimum basic wage under clause 4 of the CBA referred to the basic minimum wage under clause 3 of the CBA or the statutory basic wage.**
- b. **If view of the answer to (a) above, what is the correct interpretation to clause 4 of the CBA?**

#### **The Minimum basic wage under clause 4 of the CBA**

As urged by the defence, the court has perused clause 3 of the CBA together with clause 4 thereof.

Clause 3 provides for basic minimum wages for the unionisable employees in job groups 1-4. The said minimum basic wages were applicable to new employees only. Clause 4 of the CBA did not define the term basic minimum wage. It follows therefore that, without any other definition being accorded, the term basic minimum wage under clause 4 meant the basic minimum wage provided under Clause 3 of the CBA. If the parties intended it to mean statutory minimum wage, nothing would have been easier than to indicate as such.

The court will not import words into a clear and express written agreement as urged by the defence. Article “the” before “basic minimum wage” means that the basic minimum wage is the one earlier mentioned in the same CBA. Consequently the court finds and holds that the basic minimum wage under clause 4 of the CBA referred to the Basic Minimum wage agreed under clause 3 of the CBA and not the statutory basic minimum wage.

#### **The correct interpretation of Clause 4 of the CBA**

In view of the foregoing findings, the court is of the opinion that the interpretation of clause 4 by the claimant is the correct one. Firstly, there is no ambiguity in the wording of the agreement. Secondly, it is only the respondent who wants to import words which are not contained in the clause in order to give the document a different meaning. Thirdly the court is bound to consider the entire document in order to understand the intention of the parties.

Consequently, the court has considered clause 3 and 4 of the CBA and arrived at a considered view that the parties intended to pay the existing employees higher than new recruits. The new employees were to earn the newly negotiated basic minimum pay under clause 3 while the existing lowest paid employees were to earn under clause 4 of the CBA 12% more than the said basic minimum wage set under Clause 3 of the CBA effective 1/1/2009 and thereafter get a further increment of 12% of their respective basic wage of 31/12/2009 effective 1/1/2010.

It was further intention of the parties that all the existing employees whose basic wages of 31/12/2008 and 31/12/2009 CBA were above the new minimum wage were to get a general wage increment of 12% effective 1/1/2009 and 1/1/2010 respectively.

### **DISPOSITION**

For reasons above stated the court finds that the interpretation and implementation of the clause 4 of the CBA by the respondent to have been wrongful and orders her to forthwith adopt the interpretation by the claimant which is adopted by this court and proceed to compensate the grievants for the deficit in the general wage increment backdated to 1/1/2009. The claimant will also have costs of the suit plus interest.

Orders accordingly.

**Dated, Signed and delivered this 14<sup>th</sup> day of February 2013**

**O. N. Makau**

**Judge**