



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI
CAUSE NO. 333 OF 2010
KENYA UNION OF COMMERCIAL FOOD
& ALLIED WORKERS CLAIMANT

VERSUS

M/S INSTA PRODUCTS (EPZ) LIMITED RESPONDENT

Mr. Bill Tacko for Claimant

Mr. Masese for Respondent

JUDGMENT

1. This is an economic dispute with the issue in dispute being refusal to negotiate Collective Bargaining Agreement.
2. The Claimant is the Kenya Union of Commercial Food and Allied Workers whereas the Respondent is M/S Insta Products (EPZ) Limited.
3. The parties have a valid recognition Agreement Annexed to the Memorandum of Claim as Appendix I.
4. On 2nd June 2009, the Claimant union provided proposals to the Respondent set out in Appendix 2 but according to the Claimant, the Respondent refused to engage the union in Collective Bargaining in violation of the Recognition Agreement.
5. The union reported the matter to the Minister in charge of Labour matters who appointed a conciliator on 29th July 2009.
6. Negotiation commenced under the guidance of the conciliator, and a joint Industrial Council Meeting was convened on 1st September 2009. The Respondent had at the time made counter proposals to the proposals submitted by the Claimant.
7. Fourteen (14) issues were agreed upon and the parties failed to agree on 6 issues as follows;

1. House Allowance

2. Wage increase
3. Sick leave
4. Medical benefits
5. Termination of service Clause and;
6. Effective date of the Collective Bargaining Agreement.

8. A certificate of disagreement was signed in terms of the **Trade Disputes Act, 2007** and is annexed to the Memorandum of claim as appendix 8.

9. The Court will consider and determine the issues seriatim based on the Memoranda of the parties and the final submissions filed herein.

CPMN Report

10. According to the Report of the Central Planning and Monitoring Unit (CPMU) which has the mandate to investigate Economic dispute and provide the Court with useful guidelines in consideration of the matter; the Respondent refused to provide the information requested by the visiting CPMU officer. The CPMU was in the circumstances unable to prepare an economic report to assist the Court in this matter.

House Allowance

11. The Claimant proposes a house allowance of Kshs.10,000/= or 25% of the basic wage whichever is higher.

12. The Respondent counters the proposal by offering 15% of the basic wage which is the minimum provided under the General wages order.

13. According to the Respondent the lowest paid employee earns Kshs.12,000 and the average rental in the neighbourhood ranges between Kshs.4,000/= to Kshs.5,000/= average rental which will be covered by the 15% of the basic wage.

14. Going by the proposal of the Respondent, 15% of Kshs.12,000/= is Kshs.1,800/=. This is way below the Kshs.4,000/= in the area. On the other hand 25% proposed by the Claimant would translate to a minimum of housing allowance of Kshs.3,000/= ($\frac{25}{100} \times 12,000$). This amount is still inadequate to pay housing for the lowest paid employee.

15. However considering the economic hardships experienced by enterprises at the EPZ Zone, the Court will award the Claimant 20% housing allowance across the Board. This takes into account the provisions of **Section 31(1)** of the **Employment Act**, which mandates the employer to provide reasonable accommodation at or near the place of employment or pay sufficient rental in addition to the wage or salary.

Wage increase

16. The Claimant proposes 20% wage increase in the first year and further 20% increase in the second year.

The Claimant relies on the 1995 wage guidelines which factors in;

- (i) Rise in cost of living indices

- (ii) Changes in productivity
- (iii) General (National) economic growth rates; and
- (iv) Wage differentials

17. In this regard the Claimant submits that the cost of living indices for May 2009 for lower income group was 62.02%. The Claimant also submits that the basic minimum wage average is Kshs.10,000/= per month. The Claimant therefore states that a 62% wage increase would mitigate the inflationary trends experienced by the employees. However taking into consideration the economic hardship experienced by the Respondent, proposes the 40% increase in the two year period.

Since the Respondent failed to cooperate with the CPMU the Court relies on the submissions by the parties.

18. In doing so, the Court presumes that the respondent had something to hide in failing to co-operate with CPMU and gives the Claimant the benefit of doubt in the circumstances of the case.

The Court awards 15% increment for the 1st year of the CBA and 15% increment for the 2nd year of the CBA.

Sick Leave

19. The Claimant proposes that;

- (i) Employees with less than three (3) years of service with the company to be eligible for two months sick leave at full pay per annum followed with another two (2) months at half pay per annum.
- (ii) Employees with over three (3) years of service or more with the company to be eligible for three (3) months sick leave at full pay followed by another three (3) months with half pay per annum.

20. The Respondent counters the proposal as follows;

- (i) employees with less than six (6) years of service to have up to fourteen (14) days at full pay and seven (7) days at half pay per annum.
- (ii) employees with more than six (6) years active service to have up to twenty one (21) days at full pay and seven (7) days at half pay per annum.

21. In terms of **Section 30(1)** of the **Employment Act, 2007**, an employee is entitled, after two consecutive months of service with his employer to sick leave of not less than seven days with full pay and thereafter to seek leave of seven (7) days with half pay in each period of twelve (12) consecutive months of service.

22. Considering the above the Court awards the Claimants as follows;

- (i) Employees with less than five (5) years of service to have up to ten (10) days of sick leave with full pay followed by ten (10) days of sick leave at half pay per annum;
- (ii) Employees with more than five (5) years of service to have up to 14 days of sick leave with full pay followed by fourteen (14) days of sick leave with half pay per annum.

Medical Benefits

23. The union purposes medical benefits as follows;

- a) in-patient - Kshs.300,000 per annum;
- b) out-patient - Kshs.50,000/= per annum;
- c) optical / dental – 60% cover of the total cost.

24. The Respondent counters the proposal by stating;

the company will be responsible for any injuries that are sustained by the employee while on duty. All employees be examined at least twice a year and any employees found not fit to work under food standards will be terminated on medical grounds. Any other kinds of sickness or injuries shall be covered under the National Hospital Insurance Fund (N.H.I.F.)

25. The Court notes that **Section 34(1)** of the **Employment Act** provides;

“subject to Sub-section (2) an employer shall ensure the provision of sufficient and of proper medicine for his employees during illness and if possible medical attendance during serious illness.”

26. The employee is required in the minimum to provide sufficient medication for his employees during illness. This in the Courts’ view is covered under the NHIF Programme provided all the employees are duly registered with, and subscription timeously remitted to N.H.I.F.

27. However, N.H.I.F. does not sufficiently cover medical attendance during serious illness and an able employer is called upon to organize a contributory / non-contributory medical scheme for its employees and / or provide a medical benefit to the employees.

28. The Court will not impose this on an unwilling employer, who has provided the minimum standard by registering its employees with contribution to the fund for the benefit of its employees.

Termination of Service Clause

29. The Claimant proposes;

giving of one month written notice or payment in lieu thereof to either party for employees who have completed probationary period; three (3) months’ notice or payment in lieu by either party to employees who have served up to three years; and four months’ notice or payment in lieu by either party to employees who have served more than three (3) years.

30. The Respondent sticks to the statutory minimum by providing of one month’s notice or payment in lieu for all employees who have completed probation.

31. The Court notes that Collective Bargaining has the main purpose of negotiating better terms and conditions of employment provided the employer is able to afford while sustaining the viability of the business. A balance informed by a CPMU Report is essential in this regard but the Respondent chose not to co-operate with the unit. The Court will in the circumstances give the Claimant the benefit of doubt and award the Claimant;

Two months written notice or payment in lieu thereof for all employees who have completed probation period.

Effective date and Duration of Collective Bargaining Agreement.

32. The Claimant proposes the effective date to be the 1st June 2009 for a period of two (2) years and any party wishing to amend the CBA to give the other three (3) months written notice. The CBA to

remain in force until it is replaced by another.

33. The Respondent proposes that the effective date be one (1) day after closure of negotiations and that it be in place for 5 years. Further any party wishing to amend gives the other four months' notice.

34. Collective agreements are concluded in terms of **Section 57(1)** of the **Labour Relations Act, 2007**. The negotiations are guided by the **Labour Relations Charter 1964**.

35. The custom and Practice of Collective Agreements is that the same are concluded to cover a period of two (2) years and this practice is entrenched in the Recognition Agreements between employees and employers.

36. To this end, the CBA herein will be for a two (2) year period.

The delay in concluding the CBA is attributed to the non cooperation by the Respondent.

For this reason, the Respondent has to bear the blunt of the delay. The conduct by the Respondent not to cooperate with CPMU is indicative of bad industrial relations, a trend that must be discouraged by this Court.

To this end, the effective date of the CBA is 1st June 2009 for a period of two (2) years.

37. Any party wishing to amend the same is to give a three (3) months' notice.

The Respondent is to pay the costs of this suit to the Claimant.

Dated and Delivered at Nairobi this 16th day of October 2014

MATHEWS N. NDUMA

PRINCIPAL JUDGE