



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 448 of 2011

TRANSPORT & ALLIED WORKERS UNION.....CLAIMANT

VERSUS

DUALE TRANSPORT SERVICES LTD.....RESPONDENT

Mr. Nasibu Mokua for Claimant

Mr. Omwenga Jackson for Respondent

AWARD

The Claimant's case is that the Grievant Mr. Joseph Cheryot Chirchir was employed in 1987 by the Respondent as a heavy commercial driver. That he worked continuously for the Respondent until the 25th April 2008, when the Truck he was driving KTQ 571 was sold to a company by the name Eagle Freight who then took him up as a driver with the help of the Respondent. He worked for the new company until the year 2010 when he was retrenched. He now claims;

1. service pay from the Respondent at the rate of 15 days salary for each completed year of service;
2. 1 month's salary in Lieu of Notice in the sum of Kshs.20,000; and
3. payment in lieu of leave days for the years 2006 and 2007 in the sum of Kshs.28,000.

In his testimony, he told the Court that he was registered with NSSF by the Respondent and was paid Kshs. 38,995 as lump sum pension after he was retrenched by Eagle Freight in 2010.

He did not demand payment from the Respondent when he moved on to the new employer until his employment was terminated by the second employer.

The Respondent opposes the claim by the grievant stating that it did not terminate his employment but had helped him to move on with the company that purchased the Truck it had employed him to drive. The issue of termination did not therefore arise.

The Respondent demonstrated that it had at all material times remitted monthly contribution for the Claimant to NSSF and he was therefore not entitled to any severance pay from the Respondent when he moved on.

The Respondent also avers that it did not owe the grievant any leave days and that is why he did not claim any payment in lieu of leave days when he joined his new employer.

The Respondent offered to pay the grievant one month's Salary in Lieu of Notice to settle the matter and the offer was recorded as an order of the Court during the hearing of the matter.

The Respondent did not call any witness in support of its case and opted to rely on its pleadings and annexures thereto.

A quick analysis of the facts of this matter clearly demonstrates that the grievant was during his employment with the Respondent registered with NSSF and the Respondent had regularly remitted its contribution. He indeed admitted that he was paid lump sum pension by NSSF when he stopped working in the year 2010.

The grievant failed to demonstrate to the Court that he was owed any leave days by the Respondent and indeed did not make any written demand for payment in lieu of leave days not taken, when he left the employment of the Respondent in 2008. This clearly came as an afterthought when he left his new employer in the year 2010. His Claim is not credible and same is dismissed.

The employment of the grievant was never terminated by the Respondent and he should in fact be grateful to the Respondent for helping him to get employment with the purchaser of the Truck he had been employed to drive by the Respondent.

The Respondent having offered to pay the grievant one month's salary

in Lieu of Notice, the Court finds that the grievant is entitled to payment of Kshs.20,000 accordingly. There will be no order as to costs.

It is so ordered.

DATED and DELIVERED in Nairobi this 24th day of January, 2013.

Mathews N. Nduma

PRINCIPAL JUDGE.