



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 667N OF 2009

KENYA ENGINEERING WORKERS UNION

CLAIMANT

v

ELITE TRAILERS LIMITED

RESPONDENT

JUDGMENT

1. The Cause herein was heard by Chemmutut J on 17 May 2011 after which he directed that he would deliver an award on notice. The Judge ceased holding office of judge before delivering the award. The circumstances under which the judges of the former Industrial Court left office are in the public domain and I don't need to set them out here. When new Judges of the Industrial Court were appointed in July 2012 this was one of the nearly 300 Causes with pending awards. A decision was taken that the files would be distributed among the judges to prepare awards.
2. On 28 September 2012 the Cause was placed before me with notice from the Registrar to the parties to appear for directions. None of the parties appeared. The Cause was again mentioned before Nzioki wa Makau J on 10 December 2012 and similarly none of the parties appeared.
3. On 4 June 2013 the matter was placed before Makau J with notice to the parties. Both parties were represented and they signaled their agreement to my proceeding to prepare a judgment based on the record. A further mention was fixed for 4 July 2013 before me to give a judgment date. On this occasion the parties agreed that I could proceed and prepare an award based on the pleadings and proceedings taken by Chemmutut J. With the agreement of the parties secured, I directed that I would deliver the judgment on 23 August 2013.

Union's case

4. The issue in dispute was stated as *wrongful and non implementation of the basic minimum wages and general wages increase of the Collective Bargaining Agreement.*
5. The Union's case is that it has a valid recognition agreement with the Respondent and that it sought to conclude a Collective Bargaining Agreement with the Respondent but they could not agree. Consequently a trade dispute was reported to the Minister for Labour through a letter dated 21 November 2007, a Conciliator was appointed, but even the conciliation did not resolve the dispute resulting in the parties signing a memorandum of disagreement on 14 July 2009.
6. The Union asserts that the wages which were being paid by the Respondent were below the minimums set out in the Collective Bargaining Agreement between the Minor Engineering Group of Federation of Kenya Employers and Kenya Engineering Workers Union signed on 20 March 2008.
7. The Union therefore seeks an order directing the Respondent to bring up the current basic minimum wages to the new basic minimum wages and to pay the differences between the old rates and new basic minimum wages.

Respondent's case

8. The Respondent filed a Response on 9 June 2010 and it admitted that it has a recognition agreement with the Union. It further admitted that on 19 June 2008 an agreement was signed between the parties to adopt and implement the Collective Bargaining Agreement between the Minor Engineering Employers Group of the Federation of Kenya Employers and the Union with effect from 1 May 2007 and that any arrears would be paid by end of July 2008.
9. The Respondent exhibited a list of the employees and the arrears they were paid in August 2008. Further, the Respondent pleaded that the wages were adjusted.

Evaluation

10. It is not disputed that the parties adopted and agreed to implement the Collective Bargaining Agreement entered into between the Union and Minor Engineering Employers Group of Federation of Kenya Employers.
11. The Union's case was that the Respondent had failed to implement the new basic minimum wages set out therein. According to the Respondent it implemented the new rates and it exhibited a schedule indicating that arrears were paid as agreed.
12. In my view the Union failed to bring forth any material upon which the Court could determine whether in actual fact the wages being paid to the employees were in accord with the Collective Bargaining Agreement signed on 20 March 2008 or not. No computation of the alleged arrears was presented before Court. No pay slips or affidavits were filed.

Conclusion

13. With the material which was placed before the Court, it is not possible to conclude that the Respondent had failed to or wrongfully implemented the basic minimum wages or wages agreed in the Collective Bargaining Agreement which the parties had decided to adopt.
14. I therefore decline the invitation by the Union to find in its favour and dismiss the Cause with no order as to costs.
15. The Deputy Registrar is directed to return this file to Nairobi after delivery of this judgment.

Delivered, dated and signed in Mombasa on this 23rd day of August

2013.

Justice Radido Stephen

Judge

Appearances

Mr. Omollo for Union

Mr. Nduna/Mr. Ombok instructed

by Federation of Kenya Employers for Respondent