



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 1835 OF 2011

KENYA ENGINEERING WORKERS UNION..... CLAIMANT

VERSUS

STEEL MAKERS LIMITED..... RESPONDENT

AWARD

By a Memorandum of Claim dated 27th October 2011 and filed in court on 1st November 2011, the Claimant Union alleges that it has a recognition agreement with the Respondent signed on 12th September 2011 which it has attached to the Memorandum of Claim as appendix 1. That the parties have signed a Collective Bargaining Agreement with sister companies including Mombasa, Mazeras and Athi River, and that the relationship between the parties is cordial. The Claimant union further alleges that the Respondent manufactures twisted steel rods for building and construction and its operations are covered by the constitution of the Claimant union.

That the Grievant Mr. Jonah Wekesa was employed on 6th February 2003 as a general labourer at a daily wage of Shs.280/=. He was engaged for loading and unloading materials from stores and trucks. Mr. Wekesa's services were terminated verbally on 7th February 2011. At the time of termination he was earning Kshs.324/= per day and had worked for a total of 9 years as a casual against the provision of Section 37 of the Employment Act.

That the parties failed to resolve the dispute at their own level and the Claimant reported a dispute to the Minister for Labour by letter dated 22nd February 2011. The Minister accepted the dispute and appointed Mrs. Mukanga of Nyayo House Labour Office Nairobi as conciliator.

The conciliator convened 2 joint meetings on 15th July 2011 and 5th August 2011. The Claimant attended both meetings but the Respondent did not attend. As a result the conciliator issued a certificate to confirm that the dispute had not been resolved and could be referred to the next level for arbitration paving the way for filing the dispute in court.

The case was first mentioned on 29th February 2012 when the Claimant attended court but the Respondent did not attend. The case was fixed for hearing on 19th July 2012 at 10 am and the Claimant was directed to serve hearing notice on the Respondent. The Respondent was also directed to file its Reply to the Claim on or before 14th March 2012.

The case was mentioned on 19th July 2012 and 25th September 2012 when the Respondent did not attend court. The case was further mentioned on 13th October and 20th December 2012. The case was eventually heard on 27th May 2013. After ascertaining that the Respondent was properly served on 3rd

may 2013 and an affidavit of service properly filed in court, I allowed the hearing to proceed exparte.

Mr. Omolo for the Claimant informed the court that he would proceed by way of oral submissions and rely on the submissions and documents in the Memorandum of Claim filed in court.

He submitted that the Grievant was employed on 6th February 2003 and worked for 9 years with a clean record. The Grievant was terminated verbally on 7th February 2011. His last salary was Kshs.324/= per day paid weekly.

The reason for termination of the Grievant was that he was found by the Human Resources Manager wearing torn clothes. When she asked the Grievant why he was in torn clothes he informed her that he had not been issued with new clothes. The Human Resources Manager asked the supervisor why he had not provided new clothes to the Grievant and the supervisor responded that the policy of the company is to provide clothes after 1 month and that is why the Grievant had not been issued new clothes.

The Human Resources Manager asked the Grievant to accompany her to her office where she told the Grievant that his services are no longer required by the company and he can go home. The Grievant was not paid any terminal benefits.

Mr. Omollo submitted that it was not the Grievant's mistake that he had not been issued with new uniforms. That it was unlawful for the Respondent to keep the Grievant as a casual for 9 years and that the Grievant was not given a hearing. He prayed that the Grievant be re-instated back to work or in the alternative the court should order the Respondent to pay for days worked, annual leave for 9 years, notice, gratuity and compensation.

The court has noted that although the Respondent was served, it never attended the conciliation meetings called twice by the conciliator, did not file a Reply to the Memorandum of claim and did not attend court.

The court is left to presume that either the Respondent has no defence to the claim or does not have any regard for the due process of the law. In the absence of a defence, the court grants the Claimant the orders as prayed as follows;

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| 1. 3 days worked at Kshs.324 per day | Kshs.972.00 |
| 2. 1 month's salary in lieu of notice (30 x 324) | Kshs.9,720.00 |
| 3. Annual leave for 9 years at 26 days per year | |

(26 x 9 x 324) Kshs.75,816.00

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|----------------------------|------------------------|
| 4. Service pay for 9 years | Kshs.43,740.00 |
| 5. 12 months compensation | <u>Kshs.101,088.00</u> |

Total **Kshs.231,336.00**

Orders accordingly.

Read in open Court this 18th day of September 2013

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

John Barasa for Claimant

No appearance_____for Respondent