

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 149 OF 2012

AND ALLIED WORKERS UNION.....CLAIMANT

DELMONTE KENYA LTD.....RESPONDENT

RULING

On 23/5/2013 the parties attended court and requested for more time to finalize calculating the quantum payable to each grievant. When they returned to court on 25/6/2013 the parties informed the court that they had only agreed on the quantum payable to the grievants who were permanent employees. They then requested to be heard on the quantum for the grievants who were seasonal staff after failing to reach amicable settlement.

Mr. Atela for the claimant relied on his bundle of documents filed on 3/7/2013 while Mr. Okeche for the respondent relied on the bundle of documents filed on 16/7/2013. On the issue of Notice pay, Mr. Atela submitted that seasonal staff should be granted 65 days just as the permanent staff as per clause 10 of the CBA. Mr. Okeche however differed with the claimant and contended the CBA did not provide for the notice period for the seasonal staff and as such he submitted that the answer to notice period should be Section 35 which provides for one month notice or salary in lieu.

The said staff were represented by the claimant in negotiating the CBA and they all along knew that the seasonal staff were distinct from the permanent staff. They also deliberately omitted them from the benefit of clause 10 of the CBA. The court will not at this point act to correct a bad bargain in the contract (CBA) between the parties herein.

As regards the issue of service pay, I reiterate the sentiments I made earlier on the issue of notice pay. It is true the court in its judgment ordered service pay under clause 5 of the CBA. However there was neither proper pleadings nor evidence adduced. The court is however persuaded by the submissions and evidence adduced by the respondent that some people were paid all or part of their service pay. That those who did not collect their pending service pay can go and claim it in the sums indicated by the respondent in her document filed in court on 16/7/2013. The court believes that the claimant knew about the truth about the issue of service pay but dishonestly chose to hide it from the court.

Signed, dated and delivered this 4th October 2013.

JUDGE