



REPUBLIC OF KENYA
THE JUDICIARY
IN THE INDUSTRIAL COURT OF KENYA

CAUSE NO. 130 OF 2012

BENSON NJUGUNA.....**CLAIMANT**

VERSUS

POSTAL CORPORATION OF KENYA.....**RESPONDENT**

JUDGMENT

1. The Claimant filed the claim against the Respondent not for unlawful termination but unlawful retention at work and of retirement benefits. He filed the claim on 31st January 2010. He averred that the Claimant was entitled to partake of the Voluntary Early Retirement offered to the Corporation's employees in 2010. He accepted to be one of the people on the Voluntary Early Retirement and underwent pre-retirement training in December 2010.
2. He claimed that he had suffered due to the anticipated losses in business and inconveniences of his family life due to the action of the Respondent. He thus sought payment of the Claimant's early retirement benefits and release of the Claimant from service, General and exemplary damages, costs of the suit and any other order the Honourable Court may deem fit and just to grant.
3. The Respondent opposed the suit and stated that the Claimant's application to retire early was not approved by the Respondent's Management Committee. The Respondent ascribed the rejection to the age of the Claimant which was 45 years and the shortage of postal officers. The Respondent also denied the particulars of loss and suffering particulars of the Claimant in his claim. The Respondent sought dismissal of the Claimant's suit.
4. The Claimant testified on 27th June 2013 and stated that he was employed by the Respondent on 15th December 1983. He gave his year of birth as 1965. He testified that in February 2010 the Management of the Respondent invited willing members of staff to voluntarily retire early. He applied and forwarded the forms was approved and the staff proceeded on leaving pending early retirement. He was on leave from April 2010 to November 2010. After return in December he was invited to attend the retirement counselling and training after which he received a certificate and awaited retirement.
5. The Claimant testified that the person in charge of early retirement Mr. Tunoi asked the Claimant is the one who had taken the Corporation to court and he replied in the affirmative at which point the Claimant was told there was nothing to discuss. He had been dismissed and after successful appeal was reinstated. The case is pending in Court and relates to the 25 months he was not at work.

6. He testified that it is not true that only staff who had attained the age of 50 years were retired and gave examples of colleagues below 50 who were allowed to proceed on early retirement. He testified the Corporation has no reason to keep him in employment and viewed his continued employment as an attempt to frustrate him and blackmail him to withdraw the other case. He stated that in preparation for the retirement he begun poultry farming and a green house project. He stated these had stalled.
7. In cross-examination he testified that there were no criteria for early retirement and it was open. He believed that his application was approved. He could not however name any particular person frustrating him. He testified that Mr. Tunoi told him when he first went to his office on 3rd or 4th January, 2011 that he would only be released if he withdrew the case. He admitted his letters did not mention blackmail. He confirmed his name was not on the list of staff who were released. Regarding the exhibits produced he noted disparity in the remarks and approval for early retirement. He confirmed his output was not at its best. He stated if he retired now he would lose all his benefits.
8. In re-examination the Claimant testified that there were staff at ages 44 or below who went on voluntary early retirement. He asserted that retirement at present without applying Voluntary Early Retirement would lead to loss of benefits.
9. The Respondent called John Kiyegon Tonui. The witness testified that at the time the organization came up with the Voluntary Early Retirement as staff were consuming 65% of revenue as against the 35% remaining for other investments. He testified the Claimant Grade was one of the grades considered for Voluntary Early Retirement. He testified that those above 50 or poor performers were put on Voluntary Early Retirement. The remarks against the tabulation of the employees' names were by supervisors. Some indicated "discipline case" other "officer has made up his mind". He stated he prepared the list and incorporated the remarks. He denied the authenticity of the document annexed and availed by Claimant showing approval of the Claimant's application.
10. In cross-examination the witness testified that staff who were below 50 and were skilled – computer knowledge and degree were also approved to go on Voluntary Early Retirement. He however denied the Respondent was holding the Claimant to frustrate him.
11. The parties filed their respective submissions and each reiterated their positions. In the Claimant's submissions filed on 16th July 2013, the Claimant submitted that the Respondent failed to bring the form confirming the application was rejected. The allegations made against the Respondent were that the Respondent was keen to frustrate the Claimant. He thus urged the Court to allow his case.
12. The Respondent denied the Claimant's retirement was approved and stated the corporation has not sought to blackmail the Claimant to withdraw the pending case in the Magistrate's court. The Respondent stated that the Claimant's application was not approved.
13. This is a unique case as it's the first time this Court has had to handle a case where an employee seeks separation on grounds of Voluntary Early Retirement. I saw and heard the witness and he genuinely is keen to voluntarily retire early from the Respondent. Mr. Tunoi testified that the Claimant's application was not approved but was unable to avail the application form. The Claimant went on the Voluntary Early Retirement programme training, he went on the pre-retirement leave. These are indicators that there was approval of the Claimant's application. It does not make any sense to train staff you intend to keep on retirement. That is a waste of public funds and illogical. The Claimant proved on a balance of probabilities that he was entitled to go on Voluntary Early Retirement. The upshot of the foregoing is that the Claimant is entitled to go on Voluntary Early Retirement on the terms set out by the Respondent for all staff who were placed on the Voluntary Early Retirement.
14. The Claimant seeks exemplary and General damages but the Court is not able to award any of

these reliefs. However the Respondent will also pay costs of this suit.

It is so ordered.

Dated and Delivered at Nairobi this 6th day of December 2013

NZIOKI WA MAKAU

JUDGE