

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA.

(Present: Charles P. Chemmutut, J.,

J.M. Kilonzo & O.A. Wafula, Members.)

CAUSE NO. 117 of 2006.

KENYA GAME HUNTING & SAFARIS WORKERS' UNION.....Claimants.

v.

POLLMAN'S TOURS & SAFARIS LTD.....Respondents.

Issues in Dispute:-

- (a) Minimum Wages.**
- (b) Long Service Wage Increase.**
- (c) Effective Date and Duration.**

J.M. Ndolo, General Secretary, for the Claimants (hereinafter called the Union).

A.O. Ambenge, Senior Executive Officer, F.K.E., for the Respondents (hereinafter called the Company.)

A W A R D.

The Notification of Dispute, Form 'A', dated 26th May, 2006, together with the statutory certificate from the Labour Commissioner under Section 14(7) and (9)(e) of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act), were received by the Court on 9th November, 2006, and the dispute was listed for mention on 6th December, 2006. On this occasion, Messrs. J.M. Ndolo and Salim Wa Mwawaza, who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements on or before 27th December, 2006 and 27th January, 2007, and the dispute was fixed for hearing on 14th February, 2007. Mr. Ndolo belatedly submitted his memorandum on 11th January 2007, and on 14th February, 2007, the matter was rescheduled for hearing in Mombasa on 7th March, 2007. Mr. Ambenge filed his reply statement on 23rd February, 2007, and the dispute was heard as aforesaid, i.e. on 7th March, 2007.

The Union is registered as such under Section 11 of the Trade Unions Act, Cap. 233, Laws of Kenya, while the Company, which deals with tourism activities, is a limited liability concern, incorporated in Kenya under the Companies Act, Cap. 486, Laws of Kenya.

The parties have a valid recognition agreement and have also negotiated and entered into several collective agreements which govern and regulate the terms and conditions of service of the unionisable employees of the Company. The present dispute arose when the parties embarked on a review or revision of their two years' latest collective agreement, which expired on 31st December, 2004. By exchange of proposals and counter-proposals and several meetings at their own level and during the course of conciliation proceedings to resolve the issues, the parties failed to reach a settlement on the issues now before the Court for adjudication and determination (see Union Apps. 1 to 4 and Company Anns. 1 to 7).

We now consider *seriatim* the issues in dispute and award accordingly.

- (a) Minimum Wages.**

The parties' positions on this issue are as follows:-

Category	Government rates	Union demands.	Company offers.
I	Unskilled labourer and office messenger Kshs.5,195/=		
II	Typist Kshs. 7,012/=	Kshs.7,000/=	Kshs.5,220/=

III	Telephone operator Kshs.8,002/=	” 9,000/=	” 7,050/=
IV	Driver guide and transport officer Kshs.7,012/=	” 10,000/=	8,200/=
V	Tour officers & Relations officers Kshs.9,375/=	” 12,500/=	7,050/= & 10,000/=
VI	Heavy commercial driver and Mechanics, Grades I,II & III Kshs.11,723/=, Kshs.11,723/=, Kshs.9,735/= & Kshs.8,818/= respectively.	” 12,000/=	12,000/=
		” 12,000/=, 12,000/=, 9,735/= & 11,723/= respectively.	” 11,750/=, 11,750/=, 9,750/= & 8,850/= respectively.

It is important to note that the Government rates given by the parties do not tally; and in the circumstances, we do not derive any benefit from them to guide us. However, as regards the demands and the offers by the parties, we are of the considered opinion that a middle ground would meet the ends of justice and equity. Accordingly, we award that the minimum wages be raised by 7% across the board, and we so order.

(b) Long Service Increment.

On this issue, the parties agreed in principle that the employees deserved an increment of Kshs. 1,000/=, but disagreed on the mode or formula of such increment. According to Mr. Ndolo, the formula should be as follows:-

Minimum wages + Kshs.1,000/= + general waged increase.

On the other hand, Mr. Ambenge proposed that the formula should be as under:-

Minimum wages + general increase + Kshs. 1,000/=.

To be honest, we do not understand what the parties want to achieve by putting forward conflicting proposals on this issue. In our view, the most important concern is for the employees to receive fair and reasonable wages in accordance with the provisions of the labour laws, and this Court cannot interfere unless there is want of good faith on the part of the management. In the circumstances, we decline to make a specific award on this issue, but advise the company to pay fair and reasonable wages to the employees.

(c) Effective Date and Duration.

This issue is not in the Notification of Dispute, Form ‘A’, for the adjudication and determination by this court. The notification of is a very important document in the Court’s proceedings since the parties submit to the jurisdiction of the Court only on the issue or issues that is or are recorded in it. The importance of the notification is further enhanced by the fact that it must be signed by a General Manager or Director, on behalf of the employer, and by the Secretary General of the trade union representing the employee or employees. Rule 7 (I) of the Industrial Court (Procedure) Rules provides that:-

“ Where any trade dispute exists and the parties are desirous of referring such dispute to the Court, the parties shall make application to the Court in Form A in the Schedule, and the Court shall thereupon take cognizance of the dispute and register the dispute in the Court Register.”

The parties have to set out in the form, *inter alia*, the issue or issues between them and sign a statement that in accordance with the procedure they have discussed the issue or issues and have failed to reach a settlement. It is through this form that the parties officially notify and request the Court under Section 14(7) of the Act to take cognizance of the dispute. Section 14(7) provides that:-

“The court shall, upon application being made to it in writing jointly by the parties to a trade dispute, or upon a dispute being referred to it by the Minister under Part V or Part VI, take cognizance of such dispute and proceed as soon as practicable to

inquire into the dispute and make an award thereon, and every award so made shall be notified by the Court to the parties to the dispute and to the Minister.”

It would, therefore, be fatal to the Court to exceed its jurisdiction or to act beyond the issue or issues listed in the notification. The Court has to adjudicate and make awards only on clearly defined issue or issues, and cannot step or travel outside the issue or issues in the notification of dispute.

In the circumstances, the request by the parties to have this issue included in the dispute is not maintainable and cannot be entertained as it is beyond the scope of adjudication and determination.

Needless to say, the parties are at liberty to report a fresh dispute on this issue, and the same will be processed in the usual manner and registered by the Court accordingly.

DATED and delivered at Nairobi this 13th day of June, 2007.

Charles P. Chemmutut MBS.,

JUDGE.

J.M. Kilonzo,

O.A. Wafula,

MEMBER.

MEMBER.