



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1340 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT

-Versus-

M/S LOAD TRAILER (EA) LIMITED.....RESPONDENT

JUDGMENT

The claimant is a trade union registered in Kenya to represent employees in motor trade and electrical trade industries. It has a Recognition Agreement with the respondent, a company established in 1954 as a trailer manufacturing company under the name Bhachu Engineering Works but changed its name in 2012 to Load Trailer East Africa limited.

The claimant and the respondent have a Recognition agreement signed on 22nd June 2015. They were in the process of negotiating the first Collective Bargaining Agreement (CBA) when they failed to agree following the respondent's refusal to make counter proposals or to attend any meetings for the purposes of negotiating the CBA.

The claimant was compelled to file a dispute to the minister of Labour as provided under Section 62 of the Labour Relations Act. The Minister accepted the dispute and appointed a Conciliator who invited the parties for a conciliation meeting on 30th September and 9th October 2015 but the respondent failed to submit their proposals at the first meeting and asked for more time to prepare the same but failed to attend the second meeting. The Conciliator was compelled to declare the dispute unresolved to pave the way for reference of the same to this court for adjudication.

By memorandum of claim dated 11th July 2016, the claimant seeks the following remedies –

1. That the court be pleased to find that the action of the respondent for refusal to negotiate is in bad faith and order parties to resume negotiations and conclude the same within the shortest time possible.
2. That the court be pleased to order parties to append signatures on claimant's proposal as no counter proposals have been forwarded within a given time frame.
3. That the court be pleased to fix a mention date to confirm compliance.
4. That the costs of this suit be met by the respondent.

The respondent was served with summons and memorandum of claim but failed to file any response to the claim or to attend court.

The case was therefore heard without the participation of the respondent.

As is customary in economic disputes, the court sought an economic report from the Central Planning and Monitoring Unit of the Ministry of Labour (CPMU) which was filed on 20th June 2017. According to the report, in analysing the dispute, the CPMU made reference to the written submissions from both the claimant and the respondent, Wage guidelines issued on 29th August 1973 and the subsequent amendments thereof, the latest being the one dated 23rd November 2005.

The CPMU further considered the Consumer Price Indices (CPI) Employment and Labour Relations Court Procedure Rules and CBA's in organisations in the same industry as the respondent.

According to the report of the Central Planning and Monitoring Unit (CPMU) of the Ministry of Labour, dated 19th June 2017, the respondent's employment and annual labour cost trends between 2013 and 2016 are follows –

YEAR	UNIONISABLE STAFF		MANAGEMENT STAFF		CASUALS		TOTALS	
	No.	Annual Labour Cost	No.	Annual Labour Cost	No.	Annual Labour Cost	No.	Annual Labour Cost
2013	2	470,180	8	7,890,120	90	13,796,288	100	22,156,588
2014	2	530,140	8	8,559,160	170	24,501,630	180	33,590,930
2015	28	6,951,600	10	10,457,190	92	22,410,410	130	39,819,200
2016	13	3,056,700	18	10,513,719	74	14,204,365	105	27,774,784

The CPMU made a finding that the respondent's financial position was healthy during the period under review (the profit and Loss Accounts for the years ending 31st December 2013, 2014 and 2015) as they posted net losses only once in 2013 while both revenues and gross profits maintained an increasing trend throughout the period under review.

According to the CPMU report, the recognition agreement having been signed on 22nd June 2015, the relevant period for compensation in respect of CPI is June 2015 to June 2017. The report further states that the claimant's members fall within the New Nairobi Lower Income Group. The cost of living for the group during the relevant period was as follows –

New Nairobi Lower Income Group	Consumer Price Index (CPI)
June 2015	162.47
June 2016	193.75
Percent Rise	19.3

The percentage CPI rise in the cost of living during the period stood at 19.3% of 9.65 for wages and 50% of that figure for house allowance as provided in the wages guidelines.

It is on the basis of the forgoing that I proceed to determine the CBA for the parties. Since the respondent did not make any counter proposals, the union's proposals are relevant for purposes of determination.

Award

Clause 1 (a) – Preamble

Adopted as per union proposal

Clause 1 (b) – Recognition

Adopted as per union proposal

Clause 1 (c) – Local Negotiation Committee

Adopted as per union proposal

Clause 2 – Engagement/Probation Period

Adopted as per union proposal

Clause 3 – Hours of Work

Adopted as per union proposal but hours of work to be 48 spread over 6 days, under 3 (a) and 52 under 3 (b).

Clause 4 – Overtime

Adopted as per union proposal

Clause 5 – Annual leave

Adopted as per union proposal but leave days to be 23

Leave Travelling Allowance awarded at kshs.2,000 for both first and second year.

Clause 7 – Sick Leave

Adopted as per union proposal but with 30 days with full pay and 30 days at half pay.

Clause 8 – Compassionate Leave

Adopted as per union proposal but maximum compassionate leave under (2) to be 5 days.

Clause 9 – Maternity/Paternity Leave

Adopted as per union proposal

Clause 10 – Injury while on Duty

Adopted as per union proposal

Clause 11 – Medical Treatment

To adopt Section 34 of Employment Act, 2007.

Clause 12 – Provision of Milk

Rejected to be discussed by parties at subsequent negotiations.

Clause 13 – Transport

Rejected to be discussed at subsequent negotiations.

Clause 14 – Uniforms

Employees who require uniforms or protective clothing to be provided with the same as per Occupational Safety and health Act, 2007.

Clause 15 – Casual Employees

To adopt Section 37 (1), (2) and (3) of the Employment Act 2007

Clause 16 – Termination of Service

Notice to be one month or one month's salary in lieu of notice for all employees.

Clause 17 – Redundancy

To adopt Section 40 (1) of Employment Act, 2007

Death of an Employee

(a) and

(b) to be as proposed by union.

(c) Employer to contribute Kshs.20,000 towards funeral expenses.

(d) Employer to contribute Kshs.10,000 towards funeral expenses of spouse; provided such spouse is registered in the employee's records with the employer.

Clause 19 – Warning Procedure

To adopt Rule 16 of Regulation of Wage and Conditions of Employment (General) Order

16. Warning system

An employee whose work or conduct is unsatisfactory or who otherwise commits a misconduct which, in the opinion of the employer, does not warrant instant dismissal shall be warned in writing and the following procedure shall apply—

a. the first and second warnings shall be entered in the employee's employment record and the shop steward of his union shall be informed accordingly;

b. the second warning shall be copied to the branch secretary of his union;

c. if an employee who has already received two warnings commits a third misconduct he shall be liable to summary dismissal:

Provided that where an employee completes two hundred and ninety-two working days from the date of the second warning without further misconduct any warning entered in his employment record shall be cancelled.

Clause 20 – Certificate of Service

To adopt proposal by union.

Clause 21 – Acting Allowance

To adopt proposal by union.

Clause 22 – Safari Allowance

Employer to meet cost of transport, accommodation and meals of employee

Mid-Month Advance

To adopt proposal by union.

Clause 24 –

To adopt proposal of claimant with the following changes –

a. Up to 5 years – 15 days

b. Over 5 years – 18 days

Clause 25 – Promotions

To adopt union proposal.

Clause 26 – Annual Bonus

To be discussed at subsequent negotiations.

Clause 27 – Suspension

To adopt proposal of union.

Clause 28 –

Basic minimum wages to be fixed at 10% above statutory minimum rates of pay.

b. House Allowance –

15% of basic wage

c. General Wage Increase

9% 1st year and 9% 2nd year

Clause 30 – Summary Dismissal

As per union proposal.

Clause 31 – Letter of Appointment

As per union proposal.

Clause 32 – Night Shift Allowance

To be discussed at next negotiations

Clause 33 – Locking of Employees in Workshop at Night

Adopt as per union proposal.

Clause 34 – SACCO/Welfare

To be discussed by employees on their own. Employer to support employee initiatives by making any deductions from wages and remitting to SACCO/welfare as agreed by employees.

Clause 35 – Agency Fees

As provided in Section 49 of labour Relations Act.

Clause 36 – Protection of Shop stewards

Adopt as proposed by union provided that days away from duty shall not exceed 10 in a year, provided that at most two shop stewards shall be allowed to attend all meetings for CBA negotiations

Clause 37 – occupational Safety

Adopt as per union proposal.

Clause 38 – Effective Date and Duration

CBA to be effective from 1st January 2018 and remain in force for 24 months and thereafter to continue in force until amended by subsequent CBA.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF APRIL 2018

MAUREEN ONYANGO

JUDGE



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