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**NOTICE OF PUBLICATION OF A CONSTITUTIONAL INSTRUMENT**

The following Constitutional Instrument is published today:

Third Session of the Seventh Parliament (Commencement) Instrument, 2019 (C.I. 110)



REPUBLIC OF GHANA

**NLC**  
**NATIONAL LABOUR COMMISSION**

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Our Ref: \_\_\_\_\_

Your Ref: \_\_\_\_\_

Date: 8<sup>th</sup> August, 2018

**IN THE MATTER BETWEEN INDUSTRIAL AND  
COMMERCIAL WORKERS' UNION (ICU)  
(COMPLAINANT)**

**AND**

**KINAPHARMA GHANA LIMITED  
(RESPONDENT)**

**REPORT AND DETAILS OF THE COMPULSORY ARBITRATION  
AWARD MADE ON FRIDAY 3<sup>RD</sup> AUGUST, 2018  
(COPY OF THE SAID AWARD ATTACHED)**

**THE COMPLAINT**

By a letter dated 27<sup>th</sup> June, 2018 received by the NLC on 28<sup>th</sup> June, 2018 the ICU formally lodged a complaint of lockout of its members by the Respondent Company on Monday 25<sup>th</sup> June, 2018 in the process of negotiating a Collective Bargaining Agreement (CBA).

The parties submitted written Statements of Case and documents to the NLC which were made available to the Compulsory Arbitration Panel. These Statements and documents as Exhibits were adopted at the Arbitration proceedings.

**ISSUES**

The parties agreed that the issues to be determined by the Compulsory Arbitration Panel bordered on Fair or Unfair Labour Practices in relation to:

- (a) Lockout
- (b) Strike

**APPLICABLE LAWS**

- (a) Labour Act 2003 (ACT 651)
- (b) Alternative Dispute Resolution Act 2010 (ACT 798)

GSE

Location: Ghana Olympic Committee Building (5<sup>th</sup> floor) Adjacent to the Ridge hospital

### THE CASE OF THE COMPLAINANT

A summary of the Statement of Case of the Complainant signed by the Greater Accra Regional Officer (Statement of Case dated 20<sup>th</sup> July, 2018) and the final address of the General Secretary of the Union dated 2<sup>nd</sup> August, 2018 as well as oral evidence at the proceeding indicates as follows:

1. That the lockout happened as a consequence of Union and Management's failure to resolve an issue which would have concluded negotiations and signing of a maiden Collective Agreement (CA) at a Standing Negotiating Committee meeting held on 21<sup>st</sup> June, 2018 because of the absence of the CEO of the Respondent Company who had travelled out of jurisdiction.
2. That ICU-Ghana unionized the workers of Kinapharma Limited on 6<sup>th</sup> September, 2005.
3. The Rules and Regulations of the Standing Negotiating Committee between Kinapharma Limited and ICU-Ghana was signed as far back as 30<sup>th</sup> July, 2007.
4. That the first Collective Agreement proposal to the Respondent was submitted on 30<sup>th</sup> October, 2007 but did not receive any response from the Respondent.
5. That the Management of Kinapharma frustrated all attempts at negotiating and concluding a maiden Collective Agreement (CA) until November, 2015 when negotiations were started and one excuse after another mainly on the part of Respondent prolonged the signing of the CA leading to the events of 25<sup>th</sup> June, 2018.
6. That the members of the Union who had been waiting patiently for the signing of the CA became frustrated when they were informed on the 25<sup>th</sup> of June, 2018 that the CA could not be signed because the Group Chairman was out of jurisdiction.
7. That the Union members stayed off work and went out to peaceful protest outside the factory gate with the thought that Management of Kinapharma Limited was deliberately trying to yet again stall the maiden Collective Agreement that was being finalized and that the workers did the demonstration without recourse to the Union Leadership.
8. That as Leadership of the ICU came later and was persuading its members to back down, Management locked out its members and would not allow the workers entry in violation of Section 159 of Labour Act 2003 (ACT 651).
9. That the workers reported to work on Tuesday 26<sup>th</sup> June, 2018 but were since not allowed to work.
10. That Management on same day posted the notice "Factory Closed. Private Property, No Loitering" on the premises and also posted at the gate that all employees had been sacked and also declared vacancies for the jobs that union members have been holding which events the Union deemed Unfair Labour Practice to its members.



### CLAIM OF THE COMPLAINANT

A summary of the Claim of the Complainant indicates as follows:

1. That Management should call off the lockout and call back the workers back to work.
2. That the Lockout is declared illegal.
3. That Management should kindly withdraw the dismissal and re-application notices posted on the factory notice board.
4. That Management be advised to go back to conclude and sign the Collective Agreement.

### THE CASE OF THE RESPONDENT

A summary of the Statement of Case of the Respondent signed by the Group Chairman of the Respondent Company dated 20<sup>th</sup> July, 2018 indicates as follows:

1. That after securing a Collective Bargaining Certificate, Management has been negotiating with the Union on the CA for some time now.
2. That as of 20<sup>th</sup> June, 2018 only one out of the ten (10) contentious issues was left unresolved i.e “on attainment of ten (10) years’ service, an employee should be given a long service award of two months’ salary and 32 inches colour television.”
3. That on 22<sup>nd</sup> June, 2018 at about 4:30pm the Human Resource clerk reported that there were posters all over the factory which read “No Union, No work on Monday.”
4. That on 25<sup>th</sup> June, 2018 some workers in its Production Department refused to work, their reason being that the CA being negotiated had not been signed.
5. That the Group Human Resource Manager (GHRM) and his team went out to invite the demonstrating workers into the spacious factory premises to be informed about what had happened at the SNC meeting the previous week concerning the Collective Bargaining Agreement negotiations but Management’s request was rejected with shouts, insults and threats to bring the company down.
6. That the General Manager of the Respondent found it necessary to protect company property and therefore caused the factory to be closed down.
7. That queries were issued out to all the employees for refusing to work and embarking on illegal strike and that copies of the queries were issued in Memos and posted on the notice boards, main gates and walls of the factory to notify the striking workers which the workers failed to comply with at the instigation of one Thomas Attiah of the ICU.

### CLAIM OF THE RESPONDENT

A summary of the Claim of the Respondent indicates as follows:

1. That the provisions of Section 168 (1) to (4) be invoked for Respondent to recoup the sum of USD 200,000.00 estimated to be losses it incurred from the onset of the illegal strike.
2. That the NLC rules the strike illegal.
3. That Mr. Thomas Attiah, the Greater Accra Regional Officer of the Union be withdrawn and replaced in their Collective Bargaining Agreement negotiations with the Union and that another person be nominated by the General Secretary of the Union.

### FACTS, EVALUATION OF EVIDENCE, OBSERVATIONS AND FINDINGS

The Arbitration Panel studied and evaluated all the Written Statements and documents (Exhibits) submitted to the NLC as well as oral testimonies made on oath at the Compulsory Arbitration meeting.

1. In submitting its Statement of Case dated 20<sup>th</sup> July, 2018 the Complainant submitted Exhibits marked 3 up to 51 variously in support of the Union's alleged frustrated efforts on the part of Respondent in their journey from signing of the Rules and Regulations of the SNC on 30<sup>th</sup> July, 2007 as well as the first Collective Agreement proposal given to the Respondent dated 30<sup>th</sup> October, 2007 up to the events of 25<sup>th</sup> June, 2018 all bordering on getting the Collective Agreement signed with Management.
2. The Panel finds that the Workers engaged in illegal strike and Management responded by an illegal lockout.
3. The Complainant pleaded prolonged frustration on the part of Management to sign the Collective Agreement. It is the opinion of the Panel that the Complainant could have referred their concerns back to the NLC to be addressed as they had done in the year 2015 when they had difficulties with Respondent (**Complainant's Exhibit marked 20**) rather than resort to illegal strike.
4. It is obvious that the workers called off their illegal strike action and reported to work on 26<sup>th</sup> June, 2018 but they were disallowed by Management and the lockout has remained since then. It is the observation of the Panel that the Respondent, having no credible evidence to support the illegal lockout could have equally reported the illegal strike action to the NLC. There is no tangible reason for perpetrating of the illegal lockout.
5. The Respondent did not provide any factual evidence to show destructive act on the part of the striking Complainant who had gathered at the gates of the Respondent's premises on the 25<sup>th</sup> of June, 2018 and thereafter. No evidence has been adduced in support of the perceived threat to Respondent's property which Respondent claimed necessitated the illegal lockout. The Respondent did not provide any evidence to show intent or actual manifestation of any act of the Complainant, purporting to cause damage to its Property to warrant the continued illegal lockout when the Complainant reported for work on the 26<sup>th</sup> of June, 2018.



6. It is not enough for the Respondent to merely state that it had to resort to illegal lockout on mere speculations of threat. The Respondent is obligated to adduce further and compelling evidence in some positive way in proof of the alleged threat to property which necessitated the illegal lockout.
7. The workers complied with the directive of the NLC which instructed the parties to stay any action until determination of the matter by the NLC when they appeared before the NLC on Friday 6<sup>th</sup> July, 2018. That directive was confirmed in a letter by the NLC dated 9<sup>th</sup> July, 2018 to the parties and marked **“VERY IMPORTANT”** which in part stated that **“The disputing parties are further advised that with the matter pending before the National Labour Commission, any and/or all on-going action or intended action must be stayed until a final determination of the dispute by the Commission”** ending that **“PARTIES ARE ACCORDINGLY ADVISED”**.
8. The Respondent elected to disregard the letter and has continued the illegal lockout in obvious effrontery. It is instructive to further state that the said directive for all parties to stay action was in pursuance of Article 161 (1) of Labour Act 2003 (ACT 651) which forbids any strike or lockout during the period when negotiation, mediation or arbitration proceedings are in progress.
9. The allegation of lockout on the part of the Complainant was not controverted by the Respondent. Similarly, none of the facts stated in evidence by the Complainant was controverted when witness of the Respondent was given the opportunity to cross examine the Complainant's witness during the hearing process conducted on 3<sup>rd</sup> August, 2018. Witness of the Respondent said he had no question for the Complainant's witness.
10. The Panel noted that consequential to the CBA negotiations on 21<sup>st</sup> June, 2018, both the Complainant and the Respondent on the 25<sup>th</sup> June, 2018 indulged in Unfair Labour Practices by resulting to illegal strike and illegal lockout respectively as contained in Section 127 (3) and (4) of Labour Act 2003 (ACT 651).
11. Section 175 of the Labour Act (Interpretation) interprets lockout to mean **“the closing of a workplace, the suspension of work by an employer or refusal by an employer to employ or re-engage any number of his or her workers, in consequence of an industrial dispute.”** In the opinion of the Panel, by the legal interpretation of **“lockout”**, and the Panel having determined the illegality of both the strike action and the lockout with the subsequent orders made by the Respondent were also illegal and of no consequence.

## CONCLUSION

1. Both Complainant and Respondent violated and were in breach of Sections 159 and 160 of Labour Act 2003 (ACT 651). Similarly, both parties are respectively liable under Section 168 (2) (4) and (5) of Labour Act 2003 (ACT 651).

2. On the basis of the principles of equity, neither the Complainant nor the Respondent can satisfactorily claim any of the reliefs provided under Section 168 (4) and (5) of the Labour Act 2003 (ACT 651). Both parties having been found to have acted in violation and in breach of Sections 159 and 160 of Labour Act 2003 (ACT 651) supra. It is not for Respondent to respond to an illegal strike action by indulging in equally illegal lockout in remedy.
3. The parties also acted in violation and in breach of Section 127 (3) and (4) of the Labour Act 2003 (ACT 651) by acts clearly intimidating to either party.
4. No exclusive award may be given by the Panel to either party in the noted instances of mutual violations and breaches (illegal strike and illegal lockout) and similarly in the face of acts of contributory negligence affecting the signing of the CBA which led to the events of 25<sup>th</sup> June, 2018.
5. The Panel unanimously concludes that the Complaint lodged by the Complainant on the issue of illegal lockout and the Respondent counter allegation of illegal strike are all matters which hinge on Unfair Labour Practices. In consequence the award shall be made in accordance with Section 133 of Labour Act 2003 (ACT 651) in full cognizance of Section 168 on matters relating to illegal strikes and lockouts.

DATED: 8<sup>TH</sup> AUGUST, 2018.

#### COMPULSORY ARBITRATION PANEL MEMBERS OF THE NLC

Dr. James Atta Nuamah

..... (Out of jurisdiction  
as at date of signing)

Mr. Kwame Ofori-Gyau

Mr. Fidelis P. Seddoh

**IN THE MATTER OF COMPULSORY ARBITRATION****BETWEEN****BRT AAYALOLO WORKERS****AND****MANAGEMENT OF BRT AAYALOLO****COMPULSORY ARBITRATION PANEL**

Mrs. Rose Karikari Anang, Chairperson	-	Employers' Representative
Dr. James Atta-Kruffi Nuamah, Panel Member	-	Government Representative
Mr. Francis Kofi Davoh, Panel Member	-	Organized Labour Representative

**APPEARANCES BEFORE THE PANEL****COMPLAINANTS**

BRT AAYALOLO Workers

General Transport, Petroleum and Chemical Workers' Union (GTPCWU) of TUC

**RESPONDENTS**

Management of BRT AAYALOLO

Ministry of Transport

Ministry of Local Government & Rural Development

Mayor of Accra



**FACTS OF THE CASE**

The workers of BRT AAYALOLO per letter dated 8<sup>th</sup> June 2018 notified the National Labour Commission of “Sit-Down Strike” by the Achimota Terminal, A.G.P.R.T.U. BRT Transport Ltd., Ofankor Terminal and Co-operative BRT Transport Ltd., Amasaman, effective 11<sup>th</sup> June 2018.

In response to the notice of “Sit-Down Strike,” the National Labour Commission invited the disputing parties, i.e. the Workers and Management of BRT AAYALOLO to appear before it on Monday, 11<sup>th</sup> June 2018.

The Commission further instructed in the letter inviting the parties that, the Workers must desist from all or any intended action and appear before it.

**APPEARANCE BEFORE THE COMMISSION**

The parties appeared on 11<sup>th</sup> June 2018 as directed and were represented as follows:

**Workers’ Representatives**

- Interim Management Committee (IMC), BRT Aayalolo Workers
- General Transport, Petroleum and Chemical Workers’ Union (GTPCWU) of TUC

**Employers’ Representatives**

- Greater Accra Passenger Transport Executive (GAPTE), Regulators
- Management Representatives of Amalgamated BRT Transport Ltd.
- Co-operative BRT Transport Ltd.
- GPRTU BRT Transport Limited

**THE ISSUES IN DISPUTE**

The Workers submitted the following as their issues:

- Outstanding Salaries (Part paid salaries)

- Salary arrears
- Unionization

Management confirmed the issues in dispute, but explained that dispute arose due to both administrative and financial challenges.

#### **ORDER BY THE COMMISSION**

The Commission heard the parties on 11<sup>th</sup> June 2018 and ordered as follows:

- 1) "That as essential service providers under Regulation 20 of Labour Regulations, 2007 (L.I. 1822); the workers are prohibited from strike under Section 163 of the Labour Act, 2003 (Act 651).
- 2) That the parties must in accordance with Section 162 (1) enter into negotiations with immediate effect.
- 3) That pursuant to Section 162 (2), should the parties fail to settle the issue in dispute same must be referred to the Commission.
- 4) That should the parties fail to settle as in paragraph 3 above, the Commission shall trigger Compulsory Arbitration under Section 162 (3) of Act 651.
- 5) That the parties shall file a Report on the outcome of the negotiations before the close of work on Thursday, 14<sup>th</sup> June 2018."

#### **SUBMISSION OF REPORT**

##### **UNION**

On 27<sup>th</sup> June 2018, the Union filed a Report on the outcome of the negotiations with the following details:

BRT AAYALOLO is a public transport service, which started operations on 1<sup>st</sup> November 2016 as a pilot project. At the inception of the project, it was a free ride system for one month, i.e. until 1<sup>st</sup> December 2016, after which normal operations commenced.

Greater Accra Passenger Transport Executive (GAPTE) was set up to coordinate the project. GAPTE contracted three (3) transport companies to manage the activities of the project.

The companies were:

- 1) Cooperative Transport Services
- 2) Amalgamated Transport Services
- 3) Accra GPRTU

These three transport companies recruited workers – drivers, dispatchers, maintenance staff and other administrative staff to man the operations of the project.

Upon appointment, the workers were to operate three basic routes with the following number of personnel:

- |                      |   |    |
|----------------------|---|----|
| 1) Achimota Terminal | - | 31 |
| 2) Ofankor Terminal  | - | 60 |
| 3) Amasaman Terminal | - | 38 |

### **Payment of Salaries**

Payment of salaries had been irregular from the inception of the project. Workers were not being paid their appropriate salaries per the terms of the appointment letter, and this resulted in accumulation of salary arrears.

### **Unionization**

The workers opted to join a Union to represent them in discussions with management due to the irregular payment of salaries. In March, 2018, Management was formally notified of the unionization of the workers by the General Transport, Petroleum and Chemical Workers' Union and on 25<sup>th</sup> April 2018, the Union applied to the Chief Labour Officer for the issuance of Collective Bargaining Certificate (CBC) in order to represent the workers and engage management in negotiations.

Management however, frustrated the verification and so the process was stalled.



**Position of Parties at the Time of Deadlock**

On 13<sup>th</sup> June 2018 in a meeting with management, management admitted the outstanding salaries and said it was committed to paying, but then it did not have the money to pay.

**SIT-DOWN STRIKE**

On 3<sup>rd</sup> July 2018, after the parties had appeared before the Commission and had been ordered to negotiate settlement and report the outcome, the Commission received information of a "Sit-Down Strike" by BRT Aayalolo Workers, the parties were therefore invited to appear with a directive to the workers to call off the strike immediately since the Commission was already seized with the matter, and also because they were essential service providers.

**MANAGEMENT'S SUBMISSION**

On 4<sup>th</sup> July 2018, Management filed its report on the outcome of the negotiations between the parties as directed by the Commission with the following details as per the Order of 11<sup>th</sup> June 2018.

- **Brief Background to the whole issue**

Aayalolo BRT Project is a transport project commissioned by the former President, HE. John Dramani Mahama in November 2016, on a three-week trial period. The project was introduced as a social intervention programme and so does not charge commercial fare, which means government would have to provide financial support. This financial support is not forthcoming as a result of which the project is encountering serious financial challenges in its management.

These financial challenges, which started at the inception of the project, range from payment of salaries to meeting operational expenses and so the business is being operated on credit management for salary and fuel, including other operational expenses.

- **Naming the Specific Issues in Dispute**

Outstanding salaries and non-payment of monthly salaries on time

- **Parties' Positions at the time of Deadlock**

That in consultation with GAPTE, the system Regulator, Management shall continue to pay half monthly salary up to the end of this year, i.e. 2018.

For the four months' salary in arrears, management was in discussion with the Board to raise money to support operations and as soon as negotiations were concluded, the arrears would be paid.

### **COMPULSORY REFERENCE TO ARBITRATION**

On 6<sup>th</sup> July 2018 upon the parties appearance before the Commission and their reporting failure to settle at the negotiations, the Commission referred the dispute to Compulsory Arbitration pursuant to Section 162 of the Labour Act, 2003 (Act 651).

The Compulsory Arbitration Panel was constituted in pursuance of Section 164 of Act 651.

### **COMPULSORY ARBITRATION HEARINGS**

The Compulsory Arbitration Panel held four formal hearings on the dispute as follows:

- 11<sup>th</sup> July 2018
- 18<sup>th</sup> July 2018
- 1<sup>st</sup> July 2018
- 3<sup>rd</sup> August 2018

### **FINDINGS BY THE PANEL**

#### **WORKERS' CASE**

##### **Outstanding Salary Arrears**

- March 2017 – full salary
- February 2018 –  $\frac{3}{4}$  arrears
- March 2018 –  $\frac{3}{4}$  arrears
- April 2018 – full salary
- June 2018 – full pay

**GPRTU Ofankor Branch – Outstanding Salaries**

- January 2017 – ½ salary
- February 2018 – GHS296.00 out of GHS1,183
- March 2018 – GHS296.00 out of GHS1,183
- April 2018 – full salary
- June 2018 – full salary

**Co-operative Amasaman**

- March 2017 – GHS400 out of GHS1,183

**Issue of Unionization**

Unionization with the General Transport, Petroleum and Chemical Workers' Union (GTPCWU) – call for recognition

**MANAGEMENT'S CASE**

- Arrears owed are different for the various companies. Arrears also include other staff but management decided to pay the junior staff who are the drivers and other support staff.
- Management was in financial difficulty and according to GAPTE, the regulators due to poor cash inflows, the payments cannot be done immediately.
- Business is not running at full capacity, reduction in the number of buses running from 58 buses to 30 buses due to driver absenteeism.

**BACKGROUND TO THE PROJECT**

BRT AAYALOLO is a World Bank project. The programme was designed by a Committee made up of:



- Ministry of Roads and Highways
- Ministry of Transport
- Ministry of Local Government
- Consultants

GAPTE was appointed as a Regulator to manage the project in the Greater Accra Region.

GAPTE is made up of the sixteen Assemblies in the Greater Accra Region.

### **IMPORTANT OBSERVATIONS BY THE PANEL**

The Project which was initiated as a social intervention programme is facing serious financial and operational challenges due the following reasons among others:

- Lack of financial support from Government
- Lack of commitment to the project, perhaps due to the huge cost involved in running such a project.
- Lack of dedicated lanes which is affecting patronage of the buses and so the buses compete with the commercial vehicles.
- Human Resources management issues due to irregular payment of salaries and huge outstanding salaries.
- Management and operational challenges due to lack of funding

### **ISSUES FOR DETERMINATION BY THE COMPULSORY ARBITRATION PANEL**

The Compulsory Arbitration in consideration of the dispute that was brought before it, the submissions by the parties and the evidence that was adduced at the hearings, identified three main issues for determination.

These were:

- 1) **Outstanding Salaries**
- 2) **Irregular Payment of Salaries**

### 3) Unionization of the Workers

#### ESTABLISHED FACTS

The Compulsory Arbitration Panel upon consideration of the evidence and facts before it as presented by representatives of the disputing parties that appeared, and all others who were subpoenaed to appear to give evidence, concludes that there is an employment relationship between the workers of BRT AAYALOLO and Management of BRT AAYALOLO.

The employer therefore has an obligation pursuant to Section 9 (a) & (b) of Labour Act, 2003 (Act 651), which states as follows:

*"Without prejudice to the provisions of this Act and any other enactment for the time being in force, in any contract of employment or collective agreement, the duties of an employer include the duty to*

*(a) Provide work and appropriate raw materials, machinery, equipment and tools;*

*(b) Pay the agreed remuneration at the time and place agreed on in the contract of employment or collective agreement or by custom without any deduction except deduction permitted by law or agreed between the employer and the worker"*

The Compulsory Arbitration Panel also established the following facts from the side of the Respondents that:

- (a) There were real operational, financial and managerial challenges right from the inception of the programme to effectively manage the whole project.
- (b) There were no funds readily available to pay for the salaries and salary arrears of the workers.
- (c) There was the urgent need to restructure the whole project and make it more viable for it to achieve the purpose for which it was introduced as a social intervention programme.

The above challenges notwithstanding, the Employer is obliged to pay the workers their salaries including all arrears owed them because these monies are their earnings.

**AWARD**

The Compulsory Arbitration Panel in consideration of all the facts, evidence and requirements of the Law awards as follows:

- 1) The management of BRT Aayalolo in consultation with Government and its representatives and all the relevant agencies and bodies must within two weeks of the date of this Award come out with a workable Plan that will ensure the payment of all the outstanding salaries of the workers within a maximum of period three months.
- 2) The process of unionization shall continue in line with the prescriptions of the Law
- 3) The employer shall take all necessary steps to reorganize the whole project and make it more viable to meet the purpose for which it was introduced.

**SIGNED FOR & ON BEHALF OF THE COMPULSORY ARBITRATION PANEL.**

  
.....  
**ROSE KARIKARI ANANG**  
**PANEL CHAIRPERSON**

  
.....  
**FRANCIS KOFI DAVOH**  
**PANEL MEMBER**

Dated this.....*22nd*.....day of August 2018 at the National Labour Commission



