INTER-CON SECURITY SYSTEMS INC., Petitioner, v**. MESSRS. BIAGO BORMESAHN et al.**, and **G. RUDOLPHUS BROWN**, Assistant Minister/Hearing Officer, Ministry of Labour, Respondents/Appellees.

APPEAL FROM THE NATIONAL LABOR COURT, MONTSERRADO COUNTY.

Heard: May 25, 1994. Decided: September 23, 1994.

1. If a defendant in a labour case fails to appear, plead or proceed to trial, or if the hearing officer or the Board of General Appeals orders a default for any other failure to proceed, the complainant may seek a default judgment against the defendant.

2. On an application for a default judgment, the applicant shall file proof of service of the summons and complaint and give proof of the failure of parties the to appear either in person or by counsel is an abandonment of a cause.

3. The question of whether the party against whom a default judgment is rendered, has taken the stand and produced witnesses does not prevent a default judgment.

4. Once a case has not been completed, the counsel of record is bound to honour all assignments duly issued and served on him until the case is finally decided. Otherwise, he may be presumed to have abandoned his cause.

5. Hearing officers are appointed by the head of the Ministry of Labour. Therefore, any person appointed pursuant to this authority as Hearing Officer has jurisdiction as hearing officer to hear and determine a case assigned to him.

6. Where wrongful dismissal is alleged, the Board of General Appeals has the power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement; but in no case shall the amount awarded be more than the aggregate of two years salary or wages of the employee computed on the basis of the average rate of salary received six months immediately proceeding the dismissal.

7. The Board of General Appeals may assess and order payment of all arrears or remuneration payable in any case referred to it.

8. A person employed under a contract of indefinite duration who is wrongfully dismissed may be awarded under the applicable statute an amount of up to two years' wages.

These proceedings emanate from a complaint of unfair labor practice by appellees against appellant Inter-Con Security Systems, filed with the Director of Labor Standards, Ministry of Labour. From a default judgment rendered in favor of appellees, appellant petitioned the National Labour Court for judicial review. The National Labour Court affirmed the ruling of the hearing officer to which appellant excepted and announced an appeal to the Supreme Court, contending among other things that default judgment cannot be rendered against a party when that party has taken the stand and produced witnesses who testified on his behalf. Appellant further contended that the amount awarded was excessive and that the Assistant Minister of Labour lacked the jurisdiction to hear and determine the matter.

The Supreme Court held that the question of whether the party against whom the default judgment is rendered, has taken the stand and produced witnesses does not prevent a default judgement. With respect to the jurisdiction of the Assistant Minister, the Court held that hearing officers are appointed by the Minister of Labour. Therefore the Assistant Minister having been appointed by the Acting Minister, had jurisdiction as hearing officer to hear and determine the matter. As to the excessiveness of the award, the Court upheld the finding of the hearing officer with modifications that each of the party appellees be awarded 12 months salary. The ruling was therefore *affirmed* with *modification.*

Joseph P. Findley appeared for petitioner/appellant; *Wynston 0. Henries* appeared for respondents/appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellees were employees of Inter-Con Security System, Inc. who received letters of termination on October 23, 1992 and November 16, 1992 respectively for various acts allegedly committed by them. The complaint was reported to the Director of Labour Standard of the Ministry of Labour in a letter dated December 14, 1992. The case was turned over to Assistant Minister G. Rudolphus Brown as Hearing Officer to look into the complaint. The records show that assignment of the case commenced as early as January 12, 1993. The records further reveal that several written excuses were sent by Counsellor Matthias Omejia, Jr. as counsel for the appellant for not being able to attend the hearing.

It would appear that because of the manner in which this case was being dragged, the Acting Minister ordered it to be given priority. As a result, when the case was again assigned on the minutes of court for 21' of October, 1993, Counsellor Matthias Omejia, Jr. again wrote saying that he was unable to attend because he had a hearing in the case *Benson v. Inter-Con* scheduled for Thursday, October 21, 1993, at the hour of 10:00 a.m. before another hearing officer. However, when the case *Benson v. Inter Con* was called, the hearing officer made the following ruling after representation:

"Investigation: Representation noted. In keeping with the directive from the Acting Minister of Labour, the *case Benson v. Inter-Con Management* which was scheduled to be held today, Thursday, October 21, 1993, in keeping with our previous assignment cannot be held. I have been directed by the Actg. Minister of Labour not to continue with the hearing since Counsellor. Matthias has to appear before Assist. Minister Rudolphus Brown in another case involving INTER-CON. The case is suspended pending the issuance of a new notice of assignment. And it is hereby so ordered."

Yet, it would appear that Counsellor Matthias Omejia, Jr. never attended the hearing of the *case Biago Bormesahn et. al. v. INTER -CON Security System,* Inc. even though he was excused to go and attend that trial as quoted above. Having failed to appear again this time the complainants request for a default judgment which was granted.

According to the appellant's brief there are three issues involved in the determination of this case and they are:

"1. Whether Assistant Minister Rudolphus Brown had jurisdiction to hear and determine this case?

"2. Whether a judgment by default would lie after both parties had appeared and testified?

"3. Whether the award of the hearing office and Judge Kpanan is justifiable and supported by evidence and law?"

Appellant contends that default judgment cannot be rendered against a party when that party has taken the stand and produced witnesses who testified on his/her behalf as in the instant case. Hence, default judgment could not have been rendered against him.

We quoted INA DECREE # 21, Art. 1, §8 as relied upon by appellant's counsel:

"Default Judgment: If a defendant in a labour case has failed to appear, plead or proceed to trial, or if the hearing officer or the Board of General Appeals orders a default for any other failure to proceed the complainant may seek a default judgment against the defendant. On an application for a default judgment the applicant shall file proof of service of the summons and complaint and give proof of the facts constituting the claim, the default and the amount due.

Our understanding of the law as quoted by the appellant is that, if a defendant fails to appear, plead or proceed to trial upon an assignment duly issued and served on him and without good cause, he is considered as abandoning his cause and at which time, the opposing party may seek default judgment.

This Court has held that:

"If a defendant fails to appear at a trial or fails to proceed, the court is empowered to enter judgment by default upon application of the plaintiff." *Wilson v. Dennis et al.* 23 LLR 263 (1974).

Also:

"Failure of parties to appear either in person or by counsel is an abandonment of cause." *Franco-Liberian Transport Company v. Bettie,* 13 LLR 318, 324 (1958).

Therefore, the question of whether the party against whom the default judgment is rendered has taken the stand and produced witnesses does not prevent a default judgment. Once the case has not been completed, he is bound to honour all assignments duly issued and served on him until the case is finally decided. Otherwise, he maybe presumed to have abandoned his cause. We strongly believe that it was incumbent upon Counsellor Matthias Omejia, Jr. to have attended the trial on October 21, 1993 with his witnesses if he had not intended to abandon the trial.

With regard to the jurisdiction of the Assistant Minister Rudolphus Brown to hear and determine this case, the court says that the Minister or Acting Minister of Labour has the legal duty to appoint some of his officers to act as hearing officers to decide labour matters as in the instant case.

We also quote the law cited by appellant's counsel: "Hearing officers: The head of every Ministry or other autonomous agency of the Executive Branch of the Government shall designate as many qualified officers employed by the agency as may be necessary to hold hearings required by law; but the head of a ministry or other autonomous agency is not required to designate hearing officers as to the matters for which the agency is itself designated by statute. Officers designated to hold hearings either by statute or by the head of an agency shall perform no duties inconsistent with their duties and responsibilities as hearing officers. Executive Law, Rev. Code, 12 :82.2, Administrative Procedure Act.

From the above quotation, it is our understanding that the acting Minister of Labour has authority to designate some of his officers as hearing officers to determine labour matters as in the instant case. Hearing officers are appointed by the head of the Ministry of Labour. Therefore, Mr. Rudolphus Brown had jurisdiction as hearing officer to hear and determine this case assigned to him by the Acting Minister.

With regard to the amount awarded, the Labour Practices Law provides thus:

"SECTION 9, WRONGFUL DISMISSAL. Where wrongful dismissal is alleged, the Board of General Appeals shall have power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement. The party against whom the order is made shall have the right of election to reinstate or pay such compensation. In assessing the amount of such compensation, the Board shall have regard to:

(a)(i) Reasonable expectations in the case of dismissal in a contract of indefinite duration;

(ii) Length of service; but in no case shall the amount awarded be more than the aggregate of two years salary or wages of the employee computed on the basis of the average rate of salary received six months immediately proceeding the dismissal; however, if there are reasonable grounds to effect a determination that the dismissal is to avoid the payment of pension, then the Board may award compensation of up to but not exceeding the aggregate of five years salary or wages computed on the basis of the average rate or salary received six months immediately preceding the dismissal.

(b) The Board of General Appeals may assess and order payment of all arrears or remuneration payable in any case referred to it." Labour Practices Law, Rev. Code 18 A :9.

This is an action of unfair labour practice; and wrongful dismissal falls under unfair labour practice. This court held in: *National Iron Ore, Ltd v. Board of General Appeals and , Arthur Kumorteh,* 26 LLR 429(1978) that:

"A person employed under a contract of indefinite duration who is wrongfully dismissed may be awarded under the applicable statute an amount of up to two years' wages."

Besides, counsel for petitioner conceded this point when he said in count 7 of its bill of exceptions that:

"……The most that the respondent/appellee could have done was to move for abandonment and the Hearing Officer perhaps rule accordingly...."

Considering the above laws cited, it is our opinion and we so hold that the ruling of the Judge of the National Labour Court is affirmed and confirmed with the modification that each of the parties be awarded 12 months salary in addition to the amounts awarded them for in-service training and illegal deduction and demotion without cause.

The Clerk of this Court is hereby instructed to send a mandate to the court below ordering the Judge presiding therein to resume jurisdiction and enforce this judgment. Costs are ruled against appellant. And it is hereby so ordered.
Judgement affirmed with modification.