NATHANIEL BRIGGS et al., Appellants, v. INTER-CON SECURITY SYSTEMS and CHARLES C. TARN, Hearing Officer, Ministry of Labour, Appellees.

Briggs et al v Inter-Con Security et al [2000] LRSC 33; 40 LLR 316 (2000)

APPEAL FROM THE JUDGMENT OF THE NATIONAL LABOUR COURT FOR MONTSERRADO COUNTY.

Heard: November 30, 2000. Decided: December 21, 2000.

Where a contract is concluded between the employer and the employee for an indefinite period the employer shall have the right to dismiss the employee on condition that he gives him two weeks written notice in the case of non-salaried employees and four weeks written notice in the case of salaried employees or payment in lieu of such notice.

The judge of the National Labour Court, in exercising appellate jurisdiction in labour disputes emanating from the Ministry of Labour, must confine himself or herself to the records transcribed and forwarded to the court.

A trial judge reviewing a labor matter on appeal from the Ministry of Labour commits reversible error in admitting into evidence letters which did not form a part of the records from or proceedings held at the Ministry of Labour.

The absence of an employee for more than ten consecutive days or for more than twenty days over a period of six months without good cause shall be deemed a termination by the employee of his contract of employment with the employer, and shall constitute a ground for his dismissal.

Except in the case of vis majeure, an employee who absents himself from work for more than ten consecutive days or more than twenty days over a period of six months shall notify the employer or the employer's agent of the reason for his absence.

The appellants, twelve in number, filed a complaint with the Ministry of Labour alleging that their employer, Co-appellee Inter-Con Security Systems, had wrongfully dismissed them. The appellants alleged that three of them had been dis-missed verbally by the co-appellee's officer and that no letter of such termination of their services had been served on them. The complaint also alleged that the other nine co-appellants had been dismissed for allegedly absenting themselves from work for more than ten consecutive days without providing any excuse to the employer.

The hearing officer at the Ministry of Labour ruled in favour of the employer, stating that the employer had the right, under section 1508(3) to dismiss an employee without cause and that the co-appellee had effected the dismissal of three employees pursuant to the grant by the statute. The hearing officer also decided that as to the other nine dismissed employees, they had absented themselves from work for more than ten consecutive days without providing an excuse to the employer, and that as such they had terminated their employ-ment with the co-appellee, consistent with the provisions of sections 1508(2)(d) of the Labour Practices law of Liberia.

On appeal to the National Labour Court, the ruling of the hearing officer was affirmed. However, on a further appeal to the Supreme Court, the ruling was reversed and the aco-appellee was ordered to compensate the dismissed employees as provided by law. The Supreme Court noted that the co-appellee had failed to present evidence at the trial before the hearing officer that the three appellants who were dismissed under section 1508(3) had been served with letters of termi-nation. The Court observed that in appeal matters from the Ministry of Labour, the National Labour Court was confined to the records forwarded to it and hence could not accept new evidence in reviewing the matters on appeal. The Court opined that in the light of the failure by the co-appellee to present the letters of termination of the employment of the appellants as required by section 1508(3) of the Labour Practices law at the hearing officer level, the dismissal was wrongful. The Court concluded that it was error for the National Labour Court judge to admit into evidence at that level letters showing that employees had been served with written termination notices as required by law.

With regard to the other nine dismissed employees, the Court held that the records showed that the employees were allegedly dismissed for misconduct rather than absence from work for more than ten consecutive days. The Court noted that there were no indications in the records that the dismissed employees had ever been charged or investigated for misconduct. In the absence of such showing, the Court said, the dismissal of the employees was wrongful. Hence, the Supreme Court reversed the ruling of the Labour Court Judge.

Cooper Kruah of the Henries Law Firm appeared for the appellants. Joseph N. Nagbe of Freeman Legal Consultancy, in association with the Kemp & Associates Law Firm, appeared for the appellee.

MR. JUSTICE SACKOR delivered the opinion of the Court.

The history of this case presents the following facts, culled from the records transmitted to this Court. The appellants, Nathaniel Briggs et al., were employed between 1990 and 1991 as security guards by Appellee Inter-Con Security Systems. They had been working regularly without any complaints, from the time of their employment with the co-appellee management up until November 17 and 20, 1997, when the co-appellee verbally declared them dismissed. The records revealed that Appellants John Miah, Nelson Dennis and Nathaniel Briggs were called into the office of the project manger on the 17th day of November, A. D. 1997, and were told verbally that they should consider themselves dismissed. The appellants alleged that they were given no letters of dismissal. The records further revealed that the employees reported to work subsequent to their verbal dismissal but that the management of the co-appellee company prevented them from entering the co-appellee's premises. In addition, the records showed that 9 other employees were dismissed by the appellee management for abandonment of their jobs.

As a consequence of the co-appellee management action, the appellants filed a complaint with the Ministry of Labour alleging that they were wrongfully dismissed by Appellee Inter-Con Security Systems, Inc. The hearing officer, Charles Tarn, heard the case and adjudged the co-appellee not liable for wrongful dismissal. The hearing officer stated that three of the appellants, Nathaniel Briggs, John Miah and Nelson Dennis were dismissed by Co-appellee Inter-Con Security Systems pursuant to section 1508 (3) of the Labour Practices Law of Liberia. He also held that the other 9 employees were dismissed by the co-appellee because of their failure to report to work within ten consecutive days, their action, he said, being

tantamount to an abandonment by the employees of their jobs. He noted that as to these latter employees, they were not entitled to any benefits.

On the 29th day of May, A. D. 2000, Her Honour Comfort S. Natt, Judge of the National Labour Court for Montserrado County, rendered a final judgment confirming the decision of the hearing officer at the Ministry of Labour. She held that Co-appellants John D. Miah, Nathaniel Briggs and Nelson Dennis were dismissed by management on November 17, 1997 in the office of the deputy project manager in accordance with the provisions of section 1508(3) of the Labour Laws, noting that it was the appellants that had refused to accept and signed for their letters, such actions being reflected in the appellants own testimonies. Hence, the judge said, the employees should be paid US$990.00 each in conformity with the decision of the hearing officer.

With regard to the other 9 employees, the National Labour Court judge ruled that the dismissed employees had abandoned their jobs in solidarity with their colleagues, notwithstanding the warning letters sent to them by their employer to return to work within 10 days. In that regard, the judge further ruled that the refusal of the 9 employees to return to work was ground for their dismissal and a waiver by them of their rights under the law to recover benefits from the co-appellee management. The appellants excepted to the court's ruling and announced an appeal to this Court, filing thereafter a nine-count bill of exceptions.

In counts three and four of the bill of exceptions, the appellants alleged that the trial judge committed a reversible error when she ruled that Co-appellants Miah, Briggs, and Dennis had received their letters of dismissal in spite of their testimonies indicating that they were verbally dismissed without letters being served on them terminating their services.

In counts seven and eight of the bill of exceptions the appellants alleged that the judge committed a reversible error when she concluded that 9 of the appellants had abandoned their jobs and that warning letters had been given to them to return to work within 10 days, since no such warning letters or documents were ever submitted into evidence during the hearing at the Ministry of Labour. In addition, the appellants contended in count 8 of their bill of exceptions that the ruling of the trial judge was not supported by the testimonies adduced during the trial, in that the appellants had established during the trial that they were prevented from working after they were told verbally about their dismissal.

The appellees raised and argued three points before this Court. The first was that employees who are dismissed under section 1508(3) cannot recover for wrongful dismissal. Hence, they said, Appellants John D. Miah, Nathaniel Briggs, and Nelson Dennis were not entitled to recover under a claim of wrongful dismissal, since they were dismissed as prescribed by section 1508(3) of the Labour Practices Law.

The second point raised by the appellees was that an employee who stays away from his or her job for more than ten (10) consecutive days without excuse cannot claim any benefits for wrongful dismissal under section 1508 (2)(d). In that regard, they strongly contended that the other 9 co-appellants who refused to report to work had abandoned their jobs and could therefore not recover under any claim for wrongful dismissal.

The third and final contention of the appellees was that the ruling and judgment of the hearing officer and the judge of the National Labour Court were in harmony with law and should therefore be confirmed and affirmed since the appellants were dismissed pursuant to

and in conformity with sections 1508(3) and 1508 (2d) of the Labour Practices Law of Liberia.

The decisive issue for the determination of this case is whether or not the employees were dismissed in accordance with the provisions of sections 1508(3) and 1508(2)(d) of the Labour Practices Law of Liberia. Section 1508(3) states that "where the contract is concluded between the employer and the employee for an indefinite period, the employer shall have the right to dismiss the employee on condition that he gives him two weeks written notice in the case of non-salaried employees and four weeks written notice in the case of salaried employees or payment in lieu of such notice." Appellee Inter-Con Security Systems argued before this Court that three employees were dismissed under section 1508(3) and that the other 9 employees were dismissed under section 1508(2)(d) of the said law because of their refusal to report to work for 10 consecutive days. The testimonies of the appellants are corroborated to the effect that they were dismissed without receiving any letters from Inter-Con Security Systems terminating their services with the said company.

There is no evidence in the records in the case indicating that Appellants Miah, Briggs, and Dennis were given letters terminating their services, and that they had refused to receive and sign for said letters. The alleged letters were never offered by the co-appellee or admitted into evidence during the hearing of the matter before the hearing officer at the Ministry of Labour to substantiate management's contention that the employees were dismissed as prescribed by section 1508(3).

This Court reiterates that the National Labour Court for Montserrado County has appellate jurisdiction over labour matters emanating from hearing officers in Montserrado County. It follows that the trial judge in exercising her appellate jurisdiction in labour dispute from the Ministry of Labour should have confined herself to the records transcribed and forwarded to the court. She therefore committed a reversible error when she admitted into evidence the alleged letters of dismissal over the objection of the petitioners.

The co-appellee management also argued that the other 9 employees were dismissed for abandonment of their job since, in spite of warning letters given to them to return to work within 10 consecutive days, they had failed or refused to do so. They cited section 1508 (2)(d) of the Labour Practices Law of Liberia which provides as grounds for the dismissal of an employee that ...."absence of an employee for more than ten (10) consecutive days (or more than twenty (20) over a period of six months) without good cause, in which case the employee shall be deemed to have terminated his contract. Save in the case of vis majeure, an employee shall be required to notify the employer or his agent of the reason for his absence." The appellants, on the other hand, contended that they were wrong-fully dismissed by the co-appellee management and were prevented from entering the premises of the company.

We observed from the ruling of the hearing officer that the employees were dismissed for misconduct. However, there is no evidence from the records before us indicating that the co-appellee management ever charged or investigated the dis-missed employees for any acts of misconduct.

Wherefore, and in view of the foregoing, it is the candid opinion of this Honourable Court that the judgment of the trial court denying appellants' petition for judicial review is hereby reversed. We hold further that the employees are entitled to their legal benefits in the amount claimed by them for their wrongful dismissal. The Clerk of this Court is hereby ordered to

send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. Costs are assessed against the appellee. And it is hereby so ordered.

Judgment reversed.