FIRESTONE PLANTATIONS COMPANY and **THE BOARD OF GENERAL APPEALS**, Ministry of Labour, Petitioners/Appellees, v. **PRINCE A. WILSON**, Respondent/Appellant.

PETITION FOR RE-ARGUMENT

Heard: November 17, 1986. Decided: January 23, 1987.

1. A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to on the trial and relied upon for the appeal together with a statement of the basis for the exceptions.

2. An appellant must present to the trial judge within ten days after the rendition of judgment a bill of exceptions signed by him. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court within the time allowed by statute.

3. If a trial judge, after reading a bill of exceptions, approves it without any reservations, he has thereby indicated his agreement with the facts stated therein.

4. The supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute; and this limitation is mandatory where the statute in question specifies the only manner in which an act may be done.

5. The law does not give the authority either to add or take away from what the Legislature has commanded unless the said command breaches provisions of the Constitution; and in such a case, the constitutional issue must be raised squarely.

Petitioners/appellees filed a petition before the Supreme Court for re-argument in a labor case previously decided by the Court, alleging that the Court had inadvertently overlooked several issues raised in the appeal case previously decided by the Court. The Court, although noting that it had not over looked any issue raised in the previous appeal, determined to address two of the points raised by the petitioners.

As to the first point which stated that the Court had inadvertently overlooked petitioners arguments that the shorthand made in the trial court was not a part of the records of that court and therefore could not form a part of the bill of exceptions, the Court said that the issue was not overlooked but was in fact passed upon. The Court opined that where the trial court judge had read a part of his ruling which was recorded in shorthand pending the distribution of the full text to the parties, but made a different ruling the following day, these were stated in the bill of exceptions, the Supreme Court had the authority to consider that fact. That consideration, the Court said, did not constitute an omission or a ground for re-argument.

On the second issue raised in the petition, to the effect that the Court had extrapolated the legislative intent of section 9 of the Labor Law, the Court rejected the contention, noting that its calculation of the award to be paid the employee was within the range stipulated by the statute and therefore not an extrapolation of any legislative intent. This strict compliance with the statute, the Court said, did not constitute an act of omission or inadvertence overlooking of any issue for which re-argument could be entertained. The Court therefore *dismissed* the petition.

George E. Henries appeared for the petitioners/appellees. *Julius Adighibe* appeared for the respondent/appellant.

MR. CHIEF JUSTICE NAGBE delivered the opinion of the Court.

On July 31, 1986, this Court delivered its opinion in the case, Prince A. Wilson of the City of Monrovia, Liberia, appellant, versus the Board of General Appeals, Ministry of Labour, Monrovia, Liberia, and Firestone Plantations Company, appellees, in which judgment was rendered in favor of appellant, Prince A. Wilson. On the 3rd day of August, 1986, Counsellor George E. Henries, one of counsel for appellees, believing that the Supreme Court had inadvertently overlooked some points of fact or law in deciding then aforementioned case, filed a petition for re-argument.

Although all the points referred to in the six count petition were deliberated on and disposed of in the twenty-three page opinion of the Court, we shall refer to counts 2 and 6 which we consider important for the purpose of this opinion. The issues involved in the two counts were thoroughly dealt with in the opinion aforesaid, being vital to the determination of the case, and were never overlooked inadvertently. With respect to the issue referred to in count two of the petition, the Court's opinion, at page 15, dealt with that. The said count states as follows:

"2. That while it is true that this Court has held that there are no requirements as to the form of a bill of exceptions, and it is also true that the trial judge approved the bill of exceptions without reservations, this Court has continuously held that the bill of exceptions must be in conformity with the trial record or the record must support the exceptions; for, it is the certified record as transmitted to this Court which forms the basis for review by this Honourable Court. Hence the shorthand script as recorded by respondent is not a part of the lower court's record and should not have been given credence. Petitioners submit that Your Honours inadvertently overlooked the fact that the shorthand script is not a part of the records in the case and also the legal requirement that the bill of exceptions must conform to the records in the case."

According to the Civil Procedure Law, Rev. Code 1: 51.7:

"A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court."

Does a bill of exceptions not form part of the records brought before this Court so as to enable it to determine cases in the administration of justice?

Where the concluding portion of a final judgment is read in open court and a transcript thereof made in shorthand by a party in interest pending distribution of the full text by the trial judge the next day, and this fact is expressed by that transcript in a bill of exceptions as error because on the said next day, the trial judge rendered a second final judgment different from the other one. Should that part of the bill of exceptions stating this fact not be considered by the Supreme Court in the absence of any objections in the court below by the adverse party, given the trial judge's approval of the bill of exceptions without reservations?

The portion of the bill of exceptions referring to the shorthand transcript reads as follows:

"Petitioner avers that after the above entitled cause of action was 'CALLED FOR FINAL JUDGMENT' with all parties cited by regular notice of assignment served and returned served, and being present, Your Honour indicated that you forgot your reading glasses and therefore would not read the entire ruling but would read the concluding portion of the court's final judgment and later distribute same to the parties because the clerk had not made copies. Petitioner also avers that after borrowing an eye glasses from Counsellor David Dwanyen, Your Honour read the pertinent portion which petitioner, a shorthand secretary of considerable experience, took verbatim in shorthand and transcribed as follows:

`In view of the foregoing, the decision of the Board of General Appeals reducing the hearing officer's award of 24 months salary to 11 months is hereby set aside. And in its place, the court confirms and affirms the hearing officer's ruling awarding petitioner 24 months salary compensation at the rate of $965.00 per month totaling $23,100.00 plus other benefits awarded by the Board of General Appeals against which no appeal was taken by co-respondent, that is, unclaimed vacation pay of $887,00 and January, 1983 salary of $965.00, making a grand total of $25,012.00.

It is the order of this Court that respondent management company, Firestone Plantations Company, should immediately pay petitioner Prince Wilson a total sum of $25,012.00 as detailed above, Cost against co-respondent. AND IT IS SO ADJUDGED.'

A copy of the shorthand recorded in open court is attached, marked exhibit 'A' to form part of this bill of exceptions "

This issue therefore raised in count two of the petition concerning the shorthand transcript as to what happened regarding the rendition of two final judgments was passed upon in the opinion and was not overlooked. If a trial judge after reading a bill of exceptions, approved it without any reservations, he has thereby indicated his agreement with the facts stated therein. In 3 AM JUR, §§ 634 and 635, at 245, it is stated, and we quote:

"A bill of exceptions should be so certain and full in its statements that the errors complained of are made to appear from the allegations of the bill itself. It should state fully the errors complained of. Each bill must be considered as presenting distinct, substantive case."

A bill of exceptions as signed by the trial court is conclusive on appeal as to what occurred below. A statement of facts in a bill is conclusive in an appellate court unless it is excepted to and the exceptions are recorded in the bill when it is settled ..."

We now come to count 6 of the petition which states: "that the Court in its interpretation of the application of section 9(a), (i) (ii) of the Labor Practices Law, overlooked the fact that the Board of General Appeals did apply the relevant sections correctly since its calculation did not exceed an aggregate of two years' salary, but was within the limits of anything up to 24 months. The Board of General Appeals reduced the hearing officer's ruling or award for the stated reason that his ruling was erroneous, because it was based on dismissal to avoid payment of pension. Petitioners submit that the Court's holding on this issue would have the effect of extrapolating the intent of the Legislature, in that, hereafter rulings in illegal dismissal cases would hold that anyone who is illegally dismissed is entitled to nothing less than twenty-four (24) months' salary which is not the intent of the Legislature"

This Court, in determining the issues therein raised, did not extrapolate the legislative intent in interpreting section 9 of the Labor Practices Law. The relevant portion of that law reads:

"(11) 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 6 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 5 years salary or wages computed on the basis of the average rate or salary received 6 months immediately proceeding the dismissal;"

The wrongfully dismissed employee having rendered service for more than ten (10) years, the "first final judgment of January 31, 1985" awarding him the aggregate of two years' salary was neither an extrapolation of the legislative intent, nor was such award measured in terms of the amount payable to an employee in the case of attempt by the employer to avoid the

payment of pension, which is the aggregate of 5 years' salary or wages computed on the basis of the average rate of salary immediately preceding the dismissal.

In affirming the judgment which did not exceed 24 months, taking into account the length of service of the appellant, this Court cited, at page 22 of the opinion, the case *George v. Republic,* 14 LLR 158 (1960), wherein it was stated:

"This Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute; and this limitation is all the more mandatory where the statute in question specifies the only manner in which an act may be done. Our law does not give us authority either to add or take from what the Legislature has commanded unless the said command breaches provisions of the Constitution; and in such case the constitutional issue must be raised squarely."

The Court not having made any palpable mistakes by inadvertently overlooking any facts or points of law appertaining to the subject case decided on July 31, 1986, the petition for re-argument, ostensibly made in good faith, but apparently made intentionally to frustrate justice, is hereby denied.

The Clerk of this Court is hereby ordered to send a mandate to the court below to enforce the judgment rendered on July 31, 1986, with costs against the petitioners. And it is so ordered.

Petition for re-argument denied.