

FIRESTONE PLANTATIONS COMPANY, by and thru its President/General Manager, Appellant, *v.* **AUGUSTINE S. COLE, KOCKER T. KALLOH** and **THE BOARD OF GENERAL APPEALS, MINISTRY OF LABOUR**, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Heard: December 3, 1985. Decided: December 18, 1985.

1. A party aggrieved by a decision of the Board of General Appeals may appeal such decision or any part thereof to the circuit court or debt court in the county in which the Board held its proceedings, by filing a petition to the circuit court or debt court within ten days after receipt of a copy of the administrative decision. Copies of the petition shall be served promptly upon the Board and all parties of record. However, it is not necessary to file exceptions to the ruling of the Board.
2. Within ten days after service of the petition on it, the Ministry of Labour shall file with the clerk of the court to which the petition is filed, a certified copy of the entire records of the proceedings, together with a copy of the administrative decision.
3. Parties desiring to prosecute appeals must superintend same to completion.
4. Although it is the duty of the clerk of the court from which the appeal is taken to issue the notice of the completion of the appeal and to place same in the hands of the ministerial officer for service, yet it is the duty of the party so appealing or his representative to surround himself with the safeguards of the law by personally seeing to it that all the necessary jurisdictional steps are completed within the time specified by law, so that there is no ground for dismissal.
5. Where a party fails to superintend his appeal and this renders the appeal incomplete, the appeal is subject to dismissal upon a motion properly made.

The appellees, employees of the appellant, were suspended from their job by the appellant, charged, arrested and released on bail by the Special Theft Court, in connection with their alleged involvement in the theft of \$95,000.00. When the appellant, private prosecutor in the theft case, failed to proceed with the case, the appellees' counsel filed a motion to dismiss. The motion was granted and the theft case was dismissed. Thereafter, counsel for the appellees demanded compensation from appellant for wrongful dismissal of the appellees, but same was rejected by appellant. Appellees then filed a complaint with the Ministry of Labour, charging wrongful dismissal.

The hearing officer held for the appellees and ordered the appellant to compensate the appellees in the amount of \$17,570.05 and \$10,894.08 respectively. The appellant then appealed to the Board of General Appeals which confirmed the decision of the hearing

officer with the modification that the appellees be paid \$4,560.00 and \$2,500.00 respectively. The Board held that the appellant was not responsible to compensate the appellees for the period they were suspended, charged and acquitted of the alleged theft. On appeal by both parties to the Circuit Court for the Sixth Judicial Circuit, the court dismissed the petition for judicial review filed by the appellant and entertained only the petition filed by the appellees, giving as reason therefor that the appellant had failed to serve copies of the petition on the appellees. After hearing arguments on the appellees' petition for judicial review, the trial judge reversed the decision of the Board and reinstated that of the hearing officer. From this judgment, the appellant took a further Appeal to the Supreme Court.

The Supreme Court reviewed only the issue of whether the trial court's had erred in dismissing the appellant's petition for judicial review. The Court held that the trial judge had not erred in the dismissal of the petition, reasoning that the appellant had failed in its duty to superintend the service of the petition on the appellees within the time allowed by law, and that the lack of such service on the appellees was a proper basis for the dismissal of the petition. The Court rejected the appellant's contention that once it had filed the petition with the clerk of court, it became the sole responsibility of the clerk to see that the petition and summons were served on the appellees. The Court opined that it is the duty of an appealing party to ensure that all the necessary jurisdictional steps are completed within the time allowed by law, and that a failure to exert such duty which results in the appeal being incomplete, subjects the appeal to dismissal upon a motion duly made.

The Court therefore *affirmed* the judgment of the trial court with the modification, however, that the appellant not pay to the appellees any compensation for the rice subsidy which they were receiving while in the employ of the appellant.

James D. Gordon of the Carlor, Gordon, Hne and Teewia Law Offices appeared for the appellant. *Johnnie N. Lewis* of the Lewis and Lewis Law Firm appeared for the appellees.

MR. JUSTICE JANGABA delivered the opinion of the Court.

Augustine S. Cole and Kocker T. Kalloh, the appellees, were employed by the Firestone Plantations Company in April, 1974 and in September, 1977 respectively, and thereafter served the appellant up to and including January 7, 1982, when each of them received a letter suspending them for their involvement in a \$95,000.00 theft case. After interrogation by the CID, it be-came clear that a crime had been committed by the appellees. In this light, the case was forwarded to the Special Theft Court, where the appellees were arrested and placed under bond. Counsel for appellees filed a motion to dismiss the case for failure on the part of the appellant, as private prosecutor, to proceed. On August 16, 1984, the motion was granted by the Theft Court and the case was accordingly dismissed.

Counsel for the appellees then communicated with the appel-lant company to

compensate his clients for wrongful dismissal based on the dismissal of the theft of property case. When the demand was not accepted by the appellant management, the appellees, being dissatisfied with their dismissal, filed a complaint for wrongful dismissal with the Ministry of Labour. The hearing officer who investigated the complaint at the Ministry of Labour ruled that the appellees were wrongfully dismissed. He therefore ruled that they be compensated for wrongful dismissal and for the period of their suspension, in the total amount of \$17,570.05 for co-appellee Cole and \$10,896.08 for co-appellee Kalloh. In making the award, the hearing officer relied on section 1 of the Labor Practices Law governing wrongful dismissal.

Appellant appealed to the Board of General Appeals which confirmed the ruling of the hearing officer with the following modifications:

"That the appellant reinstate appellee Augustine S. Cole or in lieu of reinstatement pay him the sum of \$4,560.00 representing one year of his last month salary.

That the appellant reinstate appellee Kocker T. Kalloh or in lieu thereof pay him the sum of \$2,500.00 representing ten (10) months of his monthly salary.

That the appellant is not liable to pay the appellees for period charged, suspended and acquitted and also not liable to pay for any rice subsidy.

And it is hereby so ordered.

Sylvester Kpaka - Chairman

Abraham Fully - Member"

From this ruling, both the appellant and the appellees appealed to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for a judicial review. It should be noted that both the appellant and the appellees, in their respective petitions filed with the Sixth Judicial Circuit, prayed for the reversal of the decision of the Board of General Appeals.

The appellant prayed the court to reverse and dismiss the ruling of the Board of General Appeals with cost against respondents (appellees), while appellees prayed that the ruling of the Board of General Appeals, being contrary to the law and facts adduced at the hearing, should be reversed and the petitioners also be awarded compensation of salaries and fringe benefits for the period covering their suspension. After hearing arguments from both sides, the judge ruled as follows:

"The hearing officer, having heard the case, ruled that petitioners have been wrongfully dismissed by management and that they were entitled to compensation by management for their wrongful dismissal, the suspension period served by the petitioners and their rice subsidy withheld by management during their suspension.

To which ruling of the hearing officer, management excepted and appealed to the Board of General Appeals for its review of the proceedings and/or hearing had by the hearing officer.

The Board having reviewed the evidence, modified the ruling of the hearing officer by disallowing the awards of rice subsidy and compensation for petitioners' suspension,

and only upheld that portion of the ruling which held management liable for wrongfully dismissing petitioners. Consequently, the Board ordered management to pay the amounts of \$4,500.00 to co-petitioner Augustine S. Cole and \$2,500.00 to co-petitioner Kocker T. Kalloh.

It is from the decision of the Board that petitioners excepted and have therefore petitioned this Court for a Judicial review of the case. With respect to the petition filed by Messrs A. S. Cole and K. T. Kalloh, there is one main contention raised in the three counts petition; that is, that their claim before the hearing officer was not only for compensation for their wrongful dismissal but included compensation for their wrongful dismissal and the suspension period served by them including compensation for their rice subsidy, all of which were upheld by the hearing officer; that the Board committed a reversible error when it disallowed two claims: namely, their claim for rice subsidy and compensation for their suspension, and only ordered management to compensate them for their wrong-ful dismissal by management.

1. Law Citation

2. Holding

Section 9 of the Labor Law provides that where a wrongful dismissal is alleged, the Board of General Appeals shall have power to order reinstatement, or 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 rights of election to reinstate or pay such compensation. In assessing the amount of such compensation, the Board shall have regard to:

(I) Reasonable expectation 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 that the aggregate of the two years' salary or wages of the employee, computed on the basis of the average rate of salary received six months proceeding the dismissal. . . .

In the light of section nine (9) of the Labor statute quoted above the court is of the opinion that the hearing officer did not err when he ordered management to pay to petitioners, in addition to their compensation for wrongful dismissal, compensation for the period during which they were suspended and acquitted by the Special Theft Court,

Wherefore and in view of the foregoing, the petition of Messrs Augustine S. Cole and K. T. Kalloh, being supported by the Labor Law of Liberia, is hereby granted. The decision of the Board of General Appeals is hereby reversed. The management is hereby ordered to pay in favor of co-petitioner Augustine S. Cole as compensation for the wrongful dismissal, period charged, suspended and acquitted and rice subsidy in the amount of \$17,570.05. The management is also ordered to pay in favor of co-petitioner K. T. Kalloh as compensation for the wrongful dismissal, rice subsidy, period charged, suspended and acquitted by the Special Theft Court the total sum of \$10,894.08. The

respondent is ruled to all costs in these proceedings. And it is so ordered.

Given under my hand and seal of court in open court this 12th day of
August, A.D. 1985

J. Kennedy Belleh

ASSIGNED CIRCUIT JUDGE PRESIDING”

The appellant, still not being satisfied with the ruling of the judge, has appealed to this Court of last resort. Hence, this case is here for final determination.

We shall only direct our review of the case on count 3 of appellants’ bill of exceptions:

"And also because your Honour committed a reversible error when you set aside the appellant's petition because, according to Your Honour, the petition was not served on Messrs A. S. Cole and K. T. Kalloh, when [the failure to serve] the appellee . . . with appellant's petition was not attributable to it, since indeed the appellant is not a court officer to serve precept. Consequently, this is purely an act of court which should not prejudice the interest of the appellant as Your Honour has done in the instant case. Appellant submits that according to the records made by Your Honour in the disposition of appellant's petition for judicial review the returns of the sheriff shows that ‘on the 10th day of June, 1985, Courts bailiff Alfred Boima served this writ of summons on the Board of General Appeals, Ministry of Labour and that copy of the writ of summons attached to other documents pertaining to this case was placed into their hands, The bailiff reported to this office that he made diligent search for the other respondents Augustine S. Cole and K. T. Kalloh but they could not be found. I now make this as my official returns to the office of the clerk of court of the Civil Law Court this 12th day of June, A. D. 1985. Samuel M. Johnson, acting sheriff Montserrado County, R. L.’ As can be seen from this record as found on sheet six, Monday, August 7, A. D. 1985, this was purely the act of court for which appellant should not be prejudiced as Your Honour has done in your ruling in the disposition of appellants petition for judicial review, which prejudicial act of Your Honour warrants a reversal of Your Honour’s final judgment."

This is the relevant labor statute controlling the transmission of records from the Board of General Appeals to the circuit or Debt Court after an appeal is taken from the ruling of the Board of General Appeals: JUDICIAL REVIEW OF DECISION OF BOARD OF GENERAL APPEALS: "A party aggrieved by a decision made by the Board of General Appeals may appeal from such decision or any part thereof to the circuit court or debt court in the county in which the Board held its proceeding by filing a petition to the circuit court or debt court within 10 days after receipt by the aggrieved party of a copy of the administrative decision. Copies of the petition shall be served promptly upon the Board of General Appeals which rendered the decision, and upon all parties of record. Within 10 days after service of the petition, or within further time allowed by the court, the Ministry of Labour shall file with the clerk of the circuit court or debt court a certified copy of the entire record of the proceeding under review, together with a copy of the administrative decision. It shall not be necessary to file exceptions to the rulings of the Board of General Appeals." (The Liberian Labor Law, 2nd ed. 1978, by Tuan Wreh).

At this point, one wonders whether counsel for appellant is saying that from June 10, 1985 to June 12, 1985, he had not gone back to the clerk's office to check as to whether his petition, had been duly served or, that because he had filed it with the clerk of court, it was therefore the clerk's sole responsibility to serve copies of the writ of summons on the respondents, which made it impossible for him to superintend and see to it that his writ of summons (or his appeal) was served. "*Ever and anon*, this Court has emphasized that parties desiring to prosecute appeal must *superintend* same to completion. Although it is the duty of the clerk of the court from which the appeal is taken to issue the notice of the completion of the appeal and to place same in the hands of the ministerial officer for service, yet it is the duty of the party so appealing or his representative to surround himself with the safeguards of the law by personally seeing to it that all the necessary jurisdictional steps are completed within the time specified by law so that there be no ground for dismissal; and a party's failure to do so renders the appeal incomplete and subject to dismissal upon motion properly made," *Yengbe v. Porte*, 15 LLR 539, 540 (1964).

In this light, count 3 of appellant's bill of exceptions is hereby overruled.

Wherefore, and in view of all the facts and circumstances surrounding this case, it is our holding that the judgment appealed from should be and the same is hereby confirmed with the modification that appellees should not be compensated for rice subsidy during the period of suspension. Costs against appellant. And it is hereby so ordered.

Judgment affirmed.