INTER-CON SECURITY SYSTEM, INC., by and thru its Manager, COL. HORACIO M. HERNADEZ, Appellant, v. **SAM NUAHN** and The Hearing Officer, **PHILIP G. WILLIAMS**, Ministry of Labour, Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: June 21.1999. Decided: July 2 1999.

1. The inability or failure of an employee to score a specified grade on an in-service training test is not a "gross breach of duty" as contemplated by the Labor Practices Law of Liberia.

2. A contract is an agreement between two or more persons which creates an obligation to do or not to do a particular thing.

3. Meeting of the minds, which is essential to the formation of a contract, is not determined by the secret intentions of the parties, but by their express intentions, which may be wholly at variance with the former.

Appellees filed a complaint of wrongful dismissal at the Ministry of Labour against appellant for terminating their services because of failure to score 80% on an in-service training test, and for reducing the salary of one of the appellees, Sam Nuahn .

The hearing of the complaint commenced but was interrupted by the April 6, 1996 hostilities in Monrovia. Following the cessation of hostilities, the hearing resumed. Appellant then filed a motion to dismiss the complaint, contending that 120 days had elapsed since hostilities ceased and appellees had not obtained a notice of assignment for the hearing of the case. The motion was denied by the hearing officer, and appellant not being satisfied with the ruling, instituted summary proceedings against the hearing officer in the National Labor Court, Montserrado County.

The National Labour Court ruled upholding the decision of the Hearing Officer and remanded the case to the Ministry of Labor for resumption of the trial. Subsequently, the hearing officer rendered final judgment holding appellant liable for wrongfully dismissing the appellees. The hearing officer stressed that the failure to obtain a grade point of 80% on an in-service training test does not constitute a serious breach of duty within the contemplation of the Labor Practices Law of Liberia. Not satisfied with this ruling, appellant appealed to the National Labour Court for a judicial review. The National Labour Court heard appellant's petition and affirmed the final judgment of the hearing officer, from which appellant appealed to the Supreme Court.

The Supreme Court *affirmed* the ruling of the National Labour Court holding that the summary dismissals of appellees for the failure to obtain a passing grade of 80% on an in-service training test was illegal and wrongful, and that the reduction in the salary of co-appellee was also illegal and void.

Joseph N. Nagbe of Freeman's Legal Consultancy appeared for appellant. *Cooper Kruah* of the Henries Law Firm appeared for appellees.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

The appellees herein were employed by appellant in 1990 and during their respective periods of probation they underwent Inter-Con basic security training and national police training. Thereafter, they also took periodic in-service training and received certificates, as evidence of their participation and successful completion of the in-service training. In the first quarter of 1999 appellees participated in another of such in-service training programs. After this training, appellants served appellees letters of dismissals for what appellants termed gross breach of duty due to appellee's failure to score a grade point of 80% on this current in service training.

Appellees filed a complaint of wrongful dismissals at the Ministry of Labour against appellant. Also included in this complaint is the averment that appellant in 1991 reduced appellee, Sam Nauhn's monthly salary from US$312.00 to US$192.00. The hearing of this complaint commenced in mid 1995 and was interrupted by the April 6,1996 hostilities, that engulfed Monrovia. The hearing resumed in November 1996 and at this time, appellants had filed a motion to dismiss the complaint on grounds that 120 days had lapsed since the cessation of the April 6 hostilities and appellees had not obtained a notice of assignment for the continuation of a hearing. This motion was denied by the hearing officer. Appellants appealed this decision by way of summary proceedings against the hearing officer to the Labour Court.

The Labour Court ruled on February 7, 1997 denying this petition on the ground that the decision on the motion to dismiss was interlocutory, hence not appealable.

On April 30, 1997 the hearing officer rendered the final judgment holding that the appellants had committed wrongful dismissals against the appellee. The hearing officer maintained that the failure to obtain a grade point of 80% on an in-service training test is not tantamount to nor can it be considered a serious breach of duty within the contemplation of the Labor Law of the Republic of Liberia.

The hearing officer also ruled that appellants had violated section 1511 of the Labour Practices Laws of Liberia when the monthly salary of appellee Sam Nuahn was reduced without cause from US$312.00 to US $192.00 over a period of 42 months. The hearing officer ordered that appellant pay appellee a total of US$14,958.68, which amount also included the difference in the monthly salary of appellee Sam Nuahn for a period of 42 months. The award of the Hearing Officer Philip G. Williams is as follow:

1.Sam Nuahn:		
(a) Fourteen (14) months' salary x US$312.86.	US$ 4,380.00	
(b) Four (4) weeks (4 yr. 9 months.) Annual leave	US$ 312.80	
(c) One (1) month's salary (May 1995)	US$ 312.80	
(d) Refundable amount of US$120.86 x 42 months		US$ 5,076.10
		US$10,081.17
Albert Bennington:		
(a)Fourteen (14) months' salary x 153.60	US$ 2,150.40	
(b) Four weeks (4yr. 9mths.) annual leave	US$ 153.60	
(c) One (1) month's salary for May 1995		US$ 153.60
		US$ 2,457.60
John A. Dean:		
(a) Fourteen (14) months' salary x US$153.60	US$ 2,150.40	
(b) Three (3) weeks annual leave		US$ 115.20
(c) One (1) Month's salary for May 1995		US$ 153.60
		US$ 2,419.20
Grand Total.		US$14,958.68

(Fourteen thousand, nine hundred fifty eight 68/100)
(United States Dollars Only.)

Appellants herein announced an appeal to the Labour Court for a judicial review of the hearing officer's decision. The appeal was granted.

The judge of the National Labour Court heard appellants petition for judicial review and held that the inability or failure of appellees to score 80% on an in-service training test is not a gross breach of duty. The judge of the National Labour Court concluded by affirming and confirming the award and final judgement of the hearing officer. Appellants took exceptions to this decision and announced an appeal to this court.

The first simple, but decisive, issue this Court must now decide is whether or not the failure to successfully score a passing grade on in-service training test is a gross breach of duty within the contemplation of section 1508 6(c) of the Labor Practices Law of Liberia?

During arguments before this Court, appellant's counsel argued that appellees failure to score a grade point of 80% on the in-service training test is a violation of appellees standards of conduct performance requirements and condition of employment. The records contain appellant's argument that the standard of conditions were approved by the Ministry of Labour and became a form of contract between appellees and appellant. Appellant's counsel, further argued that whenever appellees achieved the required grades on previous tests they were prorated and received increased salaries commensurate with their new positions.

These arguments are in support of counts 3 & 6 of appellant/ petitioner's petition for judicial review as follows:

"Count (3). That petitioner submits that besides co-respondent John H. Dean who did not sign the conditions of employment and standard of conduct performance agreement, Co-respondents S. Nuahn and Albert Bennington did sign and moreover, the standard of conduct and performance agreement, marked "D/N-1", was one of the subjects taught at the training. Your Honour is respectfully requested to take judicial notice of the records in these proceedings..."

"Count (6). Further... petitioner submits that co-respondents sat similar tests and passed same as evidenced by the results..., hence they cannot complain now. Petitioners say and contend that a party who makes an illegal contract will not be allowed to take advantage of ones own wrongs by showing the illegality of the same, nor can he seek relief at law or equity, either to enforce or annul his illegal act; the doctrine of estoppel will not allow that which respondents Sam Nuahn, John Dean and Albert Bennington are attempting to do, after signing an agreement and accepting the terms and conditions of petitioner's standards of conduct performance requirements and conditions of employment.

The arguments also are in support of Counts 2 & 3 of appellant's bill of exceptions which we find are decisive of appellant's appeal, as follow:

"COUNT 2: That in said judgement your Honour erred when you ruled that the failure to make an average of 80% cannot be construed under the Labour Laws of Liberia as gross breach of duty even though the standard of conduct and condition of employment regulation falls squarely within the Labour Laws of Liberia as found in section 1508 6 (c).

"COUNT 3: That your Honour erred when you ruled and personalized precedent and policy matter that the standard of conduct and condition of employment regulations not in harmony with the Labour Practices Laws of Liberia.

To decide this issue we need to examine section 1508 6(c) of the Labour Practices Law which provides as follows:

a) Any unprovoked assault by an employee upon the employer or his agent in the course of or arising out of employment.

b) Persistent disregard by an employee of the technical measures for safety of the staff of the undertaking, provided that the said measures have been embodied in rules posted as required by law and the employer or his agent have ordered the employee in writing to comply with the said rules.

c) Disclosure by an employee of the working secrets of the employer's undertakings; and

d) Absence of an employee for more than ten consecutive days (or more than 20 days over a period of six months) without good cause, in which case the employee would have been deemed to have terminated his contract. Save in the case of *vis major,* an employee or his agent may give reasons for his absence. Labor Practices Law, Rev. Code 18A: 1508 (1), (2), and (6).

Our examination of the above quoted provision of the Labour Practice Law reveals the following:

(1) (a) The topic of subsection (a) is unprovoked attack by the employee upon the employer in the course of his employment.

(2) Subsection (b) deals with persistent and continuous disregard for established and published rules in keeping with law and which persistent and continuous disregard jeopardized the health and safety of the rest of the employees and staff:

(3) Sub-section (c) deals with the disclosure of the employer's working secrets by employee.

(4) The topic of subsection (d) is the un-excused absence of the employee from work or employment."

The forgoing scrutiny has failed to reveal to this court that the failure to score a grade point of 80% on an in-service training test falls within the contemplation of section 1508 (6)(c).

To further rule also on the argument of appellant, contained herein, which is the heart of appellant's case, we decided to scrutinize the species of evidence which appellant presented to support their argument.

Did appellees enter into a contract with appellant? An inspection of appellant's exhibit "D/N-4" shows the following:

INTER-CON SECURITY SYSTEMS, INC. CONDITIONS OF EMPLOYMENT STANDARDS OF CONDUCT AND PERFORMANCE AGREEMENT

I hereby certify that I have read and understood the Inter-Con Security Systems, Inc. Conditions of Employment and Standards of Conduct and Performance. I agree to comply with the Standards of Conduct and Performance and Conditions of Employment and I understand and agree that each item stated therein is a condition upon which my employment is based. I further understand and agree that if I should violate any item contained in the conditions of employment or standards of conduct and performance, I will have violated a condition of my employment and I will be subject to termination or other discipline.

INTER-CON SECURITY SYSTEMS, INC

_____

PRINT NAME OF PROSPECTIVE EMPLOYEE.

_____ _____

SIGNATURE WITNESS

_____ _____

DATE DATE

ALBERT BENNINGTON (SIGNED)

This Court notes that the lines/spaces provided for "print name of prospective employee" signature, date, Inter-con Security Systems, Inc., witness and date are empty or vacant. Then name of Albert Bennington appears at the bottom of D/N-4 with the word signed in parentheses. We searched the file and failed to find the alleged contracts signed by co-appellee Sam Nuahn. Hence we will only comment on D/N-4. This Court fails to see how D/N-4 can be construed as a contract. Black's Law Dictionary has defined contract as:

"An agreement between two or more persons which creates obligation to do or not to do a particular thing. As defined in Restatement Second, Contracts 3: "A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." A legal relationship consisting the rights and duties of the contracting parties; a promise or a set of promises constituting an agreement between the parties that gives each a legal duty to the other and also a right to seek a remedy in the breach of those duties. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement and mutuality of obligation....The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation." BLACK'S LAW DICTIONARY 6TH ed.)

It is clear from D/N-4 that appellant perhaps intended to have appellee Albert Bennington enter into an express contract with open and declared terms signed by the said appellee and appellant with a witness thereto and dates. This species of evidence, though having spaces provided for signatures, dates and witness, is devoid of the signatures of the parties thereto and witnesses. Even if this Court were to take note of the signature of Albert Bennington on the page, we wonder why appellant did not write his name and affix his signature in the spaces provided therefor. From our scrutiny of D/N-4, we are of the view that though appellant intended to enter into a contract no contract was entered into. D/N-4 does not present any evidence that an agreement exists between appellant and appellee.

This Court has held that "meeting of the minds, which is essential to the formation of a contract, is not determined by the secret intentions of the parties, but by their expressed intentions, which may be wholly at variance with the former. The question whether a contract has been made must be determined from a consideration of the expressed intention of the parties, that is from a consideration of their words and *acts. Bestman v. Acolatse,* 24 LLR 126 (1975). *CFAO (Liberia) Limited v. Cooper et al.,* 39 LLR 511 (1999)."

With this holding we are unable to proceed to the next point to determine whether the contract was legal or illegal. This determination would have enabled us to consider appellants argument of the doctrine of *estoppel.*

Notwithstanding there is a need for this Court to determine whether the condition of employment and standards of conduct and performance are enforceable.

To counter the arguments of appellant that appellees summary dismissals were legal in keeping with section 1508 (6)(c) of the Liberian Labour Practices Law and the conditions of Employment and Standards of Conduct and Performance Agreement, appellees contend that besides the point that their summary dismissals did not fall within the contemplation of 1508, the conditions of employment and standards of conduct and performance were not approved and authorized by the Ministry of Labour as required by law.

To support its argument of appellant that the conditions of employment requirement and standards of conduct and performance was approved and authorized by the Ministry of Labour, appellant presented into evidence D/M-5, quoted verbatim hereunder:

MEMORANDUM

TO: Prof Cyraniuis N. Forh
Minister of Labour

FROM: Counsellor James C.R. Flomo

SUBJ.: Review of Inter-Con's Rules & Regulations"

DATE: June 24, 1993.

Following a review of the rules and regulations of Inter-con Security System of Liberia, a conference was held on June 23,1993, at the hour of 2:00 p.m., between representatives of Inter-con Management and those of the Ministry of Labour. During the conference, the following facts were established:

(1) That the rules and regulations were elaborated on by the legal counsel of Inter-con in order to point out the real intent of management by these rules.

(2) It was requested by representatives of the Labour Ministry that labor personnel should be included on the training staff of Inter-Con so that lectures in the Labour Practices Law of Liberia can be given to trainees before taking employment.

(3) That the project coordinator was in total agreement with this request and also pointed out that he also is not interested in summary dismissals of employees on trivial grounds.

(4) Consequently, he informed the conference that reprimand or suspensions on the files of employees from January 1St to December 31' 1992 have automatically been discarded and that every employee has begun afresh with a new file as of January 1, 1993.

(5) Touching on unofficial visits, the Coordinator explained that these visits do not include son, daughter, wife or any other member who comes in to report a case of emergency to the employee. The actual intent of that rule is to discourage unnecessary visits that may detract the attention of the employee from his assignment.

(6) It was revealed that most employees request for sick leave without pay on their own. In such a case, the leave is not paid for; but where an employee falls sick on the job and produces a doctor's certificate after having been sent to the hospital by management, he/she is paid for the time covered by the medical certificate.

(7) As it relates to the reporting of illness or excuse within four (4) hours, management made it clear that it only refers to anticipated excuses (i.e., illness or excuse) by which the employee is already aware that he will be unable to report to work. This is necessary to afford management the opportunity of engaging the services of a "stand-by" or replacement for the duration of time that the employee stays off. But unforseen illnesses or excuses are an exception.

(8) Further explanation by the Coordinator and the legal counsel for Inter-Con revealed that it is the employees themselves who have decided against the purchase of a group insurance, as they do not want any deduction to be made from their salaries for the premium payment of said insurance. Instead, they prefer to be cove d by the social security scheme which is being paid for by management.

(9) It is only Americans that live on the Embassy compound and they themselves escort vendors; hence, responsibility for theft or any other dishonest act by such vendor will be not be attributed to security personnel of Inter-con. This is intended to clear security of such liability.

(10) According to management, equipment are replaced by management when damaged, at no cost to employee since the Liberia Labour Laws do not encourage the fining of employees on the job.

(11) Training opportunities are offered and Liberians are made a part of counseling program.

(12) In considering reasons for reprimands, suspension and termination of personnel, employee has the right to appeal but/the presence of a legal counsel is not entertained before suspension actions are taken.

Considering the explanation of management which falls in line with the Labour Law of Liberia and the statute controlling, it is our opinion that all of the rules and regulations of the management of Inter-Con should be undisturbed.

Our inspection of the foregoing document reveal that:

(1)D/M-5, captioned MEMORANDUM
TO: Prof. Cyrenius Forh Minister of Labour
FROM: Counsellor James C. R. Flomo
Legal Counsel, Ministry of Labour is clearly an inter-office memorandum.

(2) The subject of D/M-5 is "Review of Inter-Con's rules and regulations" we wonder whether Inter-Con's rules and regulation is the same as conditions of employment requirements and standard of conduct and performance? We think not. The body of D/M-5 discusses the rules and regulations of Inter-Con Security Systems in Liberia and rules and regulations, interchangeably are written in capital letters. Clearly Inter-Con's rules and regulations were the subject of review as contained in the memorandum marked D/M-5 and not conditions of employment requirements and standard of conduct and performance subject of this controversy. For if this were the case, the subject of D/M-5 would have been captioned Review of Conditions of Employment Requirements and Standards of Conduct and Performance. But let us set this aside, for under the statute laws of this jurisdiction misnomer is not a decisive factor or element.

The decisive issue is whether D/M-5 contain therein an approval by the Ministry of Labour of appellant's condition of employment requirements and standards of conduct and performance?

This brings us to the third point. (3) The preamble of this inter-office memorandum market D/M-5 reveal that the purpose of the facts established during a conference held on June 23, 1993.... between representatives of Inter-Con, appellant herein, and the Ministry of Labour.

(4) The inter-office memorandum marked D/M-5 signed by one Counsellor C. R. Flomo concludes with the "opinion that all the rules and regulations of the Management of Inter-Con should be undisturbed."

(5) The date of D/M-5 is June 23, 1993 and appellee was employed by appellant between August to December 1990. If appellant's argument that D/M-5 is evidence of the Ministry of Labour's approval of its condition of employment requirements and standards of conduct and performance, was this approval retroactive to August 1990?

Clearly from the foregoing we hold that D/M-5 is an interoffice memorandum from the legal counsel of the Ministry of Labour to the Minister of Labour, containing the opinion or recommendation that the rules and regulations of appellant should not be disturbed. There is no evidence that this recommendation was approved by the Minister of Labour who has the statutory authority to grant or deny such approval and that subsequently this decision of approval was communicated to appellant. Succinctly put, there is no evidence that the Ministry of Labour approved appellant's conditions of employment requirements and standard of conduct and performance. D/M-5 is evidence that discussions were held concerning the rules and regulations of appellant and a recommendation made thereon to the Minister of Labour. This Inter-office memorandum is evidence that the Minister of Labour is the appropriate authority to approve or not to approve rules and regulations to govern conditions and standards of employment. It is clear that appellants needed to go one step further; that is to secure and obtain the approval of the Minister of Labour of the conditions of employment requirements and conduct of performance. D/M5 is evidence that a recommendation was made to the Minister of Labour, and nothing more.

The failure to pursue the final step and obtain the approval of the Minister of Labour renders the conditions of employment requirement and conduct of performance unenforceable against appellees herein.

The lawmakers must have had a reason to require that rules and regulations made by employers to govern the conditions of employment of employees must be approved

by the Ministry of Labour. The rationale for this is to ensure conformity not only with the letter, but also the spirit and intent of the Labour Practices Laws of Liberia. The second rationale is that the fear of loss of employment by employees is so great that discussions of rules and regulations cannot be left solely between employer and employee. This Court upholds and reaffirms the employer's right to hire, set conditions, rules, standards, and regulations of employment, promote, not to promote, retire, dismiss, etc., with the provision that all such acts of an employer must be within the spirit and intent of the Constitution and relevant statute laws of this Republic.

This brings us to a final point raised by Co-appellee Sam Nuahn. Co-appellee Nuahn claims that in January 1991 his salary was reduced from US$312.00 to US$192.00 and which reduced amount he received up to his dismissal on May 2, 1995.

The National Labour Court judge in his ruling held that "the deduction of Sam Nuahn's salary from US$312.00 to US$192.00 was illegal in keeping with section 1511-8(a), (b) and (c) of the Labor Practices Law of Liberia.

Appellant in its bill of exceptions contend

"COUNT 4. That your honour erred when you ruled that the reduction of co-respondent Sam Nuahn's salary/wages was illegal and without referring to the records and the evidence in the said case which led to the reduction of corespondent's salary wages."

The records certified to this Court reveal that Co-appellee Sam Nuahn was employed on August 16, 1990 and promoted to watch commander on January 1, 1991, with a salary of US$312.00;demoted to Senior Guard on October 10, 1991 with his salary reduced to US$192.00; and summarily dismissed on May 2, 1995.

The Labour Practices Law of Liberia provides that no employer shall: "Deduct from any wages due to the employee any Amount whatsoever, save the following permitted deductions;

(i) Deductions in repayment of advances on account of which was made in accordance with the provisions of this Act

(ii) Deductions authorized by other laws of the Republic of Liberia. *Ibid.,* 18A:1511. 8(c)

The Labour Practices Law provides a penalty for employers who violate the foregoing provision of law:

"Any employer who:

(a) enters into any contract of employment or agreement or gives any remuneration for employment contrary to the provisions of this chapter; or

(b) makes any deduction from the wages of any employee or receives any payment from any employee or contrary to the provisions of this article, shall be liable on convict-ion to a fine of $500.00 or for a second or subsequent offence, to a fine of $1,000.00. *Ibid.,* 18A: 1511 (15)

Appellant in count four of her bill of exceptions quoted *" supra,* contended that the reduction of the monthly salary/wages of Co-appellee Sam Nuahn is justified. Appellant's justification is that Co-appellee Sam Nuahn failed to successfully make a passing grade on a previous in-service test. Further, appellant argued that if appellees could receive and enjoy the benefit of promotion and increase pay whenever they were successful in their in-service training then conversely, they must suffer a consequence of either demotion and salary deduction or summary dismissal whenever they were unsuccessful in the in-service training tests.

This Court cannot uphold the foregoing argument of appellant. Sections 1511(8)(c) and 1511 (15) are clear and unambiguous. The intention of the lawmakers is to protect the wages of employee and to penalize any employer who makes any deduction in an employees salary. These provisions of the Labour Practices Law, as far as the facts of this case are concerned, need no interpretation. Clearly, pursuant to Sections 1511 (8c) and 1511(15) of the Labour Practices Law, the reduction in the salary of co-appellee Sam Nuahn is illegal and *void ab initio.*

Before concluding, this Court holds and confirms the principles of good management to motivate and improve the skill and output of its employees and the organization. We reiterate that we confirm and affirm the right of the employer to hire, fire, transfer, promote and take other administrative actions as long as the action(s) is within the pale of the law.

Wherefore and in view of the foregoing. it is the opinion of this Court that the summary dismissals of appellees for the failure to obtain a passing grade of 80% on

an in-service training test is illegal and wrongful. Further the reduction in the salary of Co-appellee Sam Nuahn from US$312.00 to US$192.00 is illegal and void. Therefore the judgement of the National Labour Court judge is hereby ordered affirmed and confirmed and the award of US$14,958.68 (Fourteen Thousand Nine Hundred Fifty-Eight United States Dollars and Sixty Eight Cents) as per the award of the hearing officer and confirmed by the National Labor Court judge is ordered paid to appellees. The Clerk is hereby ordered to send a mandate to the Labour Court ordering the judge therein to resume jurisdiction and give effect to this ruling. Costs against appellant. And it is hereby so ordered.

Judgment affirmed.