aaINTER-CON SECURITY SYSTEMS, Appellant, *v.*
RACHEL R. MIAH & MAMMIE YARKPARWOLO,
Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT,
MONTSERRADO COUNTY.

Heard: December 2, 1997. Decided: January 23, 1998.

1. The Rules of court provide that no lawyer can demand as a matter of right to be heard in argument during the hearing of a case; rather, the court may enter a ruling on the issues with or without argument, as in its discretion it deems fit.
2. The rules of court have the force of law unless they conflict with the statute on the same subject.
3. A judge does not err in not entertaining oral arguments, and is at liberty not to entertain oral arguments of matters contained in the records before ruling thereon; and his refusal to permit counsel to argue is not an abuse of his discretion.
4. Decisions of a trial judge upon matters clearly within his discretion are not reviewable in a court on appeal.
5. A judge must pass upon all of the issues of law raised in the pleadings.
6. Issues which were not raised at the trial court level cannot be raised or passed upon before an appellate forum.
7. A petition for judicial review of the ruling of the Ministry of Labour to the National Labour Court does not constitute a trial *de novo* but is a form of appeal, and the review proceedings are therefore restricted to the records transcribed and certified to the appellate forum.
8. A claim based on the Workmen Compensation Act, and

growing out of the death of an employee, is properly cognizable before the Ministry of Labour.

9. In the absence of contest from a party, a judge does not err in awarding an amount claimed by a complainant.
10. Averments in a pleading to which a responsive pleading is required are deemed admitted when not denied in the responsive pleading.
11. All admissions made by a party or his authorized agent are admissible.
12. A party who wishes to dismiss a claim against him must move the court at the time of the service of his responsive pleading and not thereafter. Thus, a motion to dismiss must be made at the time of responding to the complaint and once it is denied it may not be brought back.
13. All of the defenses raised in a second motion should have been included in the first motion and a failure to do so constitutes a waiver of such defenses. Therefore, a ruling granting such motion is illegal and unenforceable.
14. The dismissal of an action by a hearing officer, which had earlier been allowed by a predecessor hearing officer is illegal, as one hearing officer, holding concurrent jurisdiction with his predecessor, cannot review and set aside the ruling or action of another hearing officer.
15. Every employer shall pay or provide compensation or secure compensation to each employee or his dependents for the disability or death of such employee, caused by injury arising out of and in the course of his employment, and without regard to fault as a cause of the injury or death.
16. There shall be no liability on the part of the employer for compensation of the employee when the injury or death of the employee is occasioned by inexcusable

misconduct by the injured employee, or by the wilful or intentional act of the injured employee to bring about the injury, or death of himself or of another.

17. An accident or death under the Labour Law shall be deemed to have arisen out of or in the course of the employee's employment, notwithstanding that the employee was, at the time of the accident happened, acting in contravention of the statutory or other rule applicable to his employer if such act was done by the employee for the purposes of or in connection with the employer's trade or business.
18. A party cannot be permitted to repudiate his own act for which he received benefits, as in the case where the employer has benefitted from the services provided by the employee.
19. The failure to dispute a claim amounts to an admission.

Appellees filed an action in the Ministry of Labour against the appellant, asserting the right to workmen compensation growing out of the death of their husbands who, while in the employ of the appellant, were killed by the leader of one of the combating forces in Liberia, while they were presumably on patrol of areas being guarded by the appellant. Responding to the claim, the appellant challenged the capacity of the appellees to sue since they had failed to produce evidence that they were the widows of the decedents or that they held letters of administration from a competent probate court. A motion spread on the records setting forth the said challenge was denied by the hearing officer. However, thereafter, upon filing of a new motion containing the same challenge and other issues, including the assertions that the acts of the decedents, in going into another area not within the areas of assignment,

constituted inexcusable misconduct, a second hearing officer entertained and granted the motion, thus dismissing appellees action. The hearing officer gave, as a basis for his ruling, that the decedents were acting without the scope of their employ-ment at the time of their death since the place where they were killed was removed from the place they had been entrusted to guard or patrol, and that they were therefore on their own business in the area where they were killed.

On appeal to the National Labour Court, Montserrado County, the ruling of the hearing officer was reversed, and a ruling made in favour of the appellees, awarding them US$25,440.00 as workmen's compensation for the death of their deceased husbands, the said amount being based on allegations as to the monthly earnings of the deceased. In his ruling, the judge noted that the decedents were acting within the scope of their employment at the time of their death, and that therefore their deaths fell within the province of occu-pational death, as prescribed by the Workmen's Compensation Act. The appellant, not being satisfied with the decision of the National Labour Court judge, appealed to the Supreme Court for review.

Following the requested review, the Supreme Court affirmed the ruling of the National Labour Court judge, holding (a) that the second hearing officer had erred in granting the motion to dismiss the complainants' claim since he was with-out authority to review and reversed the ruling denying the motion to dismiss made by his predecessor hearing officer of concurrent jurisdiction; (b) that the decedents were acting within the scope of their employment since their assignments mandated that they patrol the entire area to protect the area to which guard service had been entrusted to the appellant, notwithstanding that the area where they were killed was

without the immediate confines of the premises under protection by the appellant; (c) that there was no negligence or assumption of risk by the deceased employees, and that even had that been the case, this was within the province of their employment, and that the appellant could not deny the purpose for which it had engaged the services of the employee and at the same time enjoy the benefits from such services; and (d) that the procedural issues raised by the appellant were without merits because (i) they had not been raised in the Ministry of Labour and therefore could not be raised in the National Labour Court, (ii) the trial judge did not err in ruling on such issues as he did, or (iii) it had not contested the findings of the judge, especially as to the amount of the award. Accordingly, the Supreme Court affirmed the decision of the National Labour Court and ordered that compensation be made as determined by the said court.

G. Wiefueh A. Sayeh appeared for appellant. *Wynston O. Henries* appeared for appellees.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This case grows out of the death of two guard personnel who, prior to their death, were in the employ of the appellant, Inter-Con Security Systems. The deceased were said to have been killed by Mr. Prince Johnson on a night during the period of hostilities in Liberia. The deceased, Peter Miah and Peter Yarkparwolo, who were to patrol the places guarded by the appellant, had been picked up on the day of their death and transported to the place of their assignment. During the course of the night, while they were moving about the area, which the appellant says was half a

mile from their area of assignment, they were confronted by Mr. Prince Johnson and killed. Their widows demanded compensation under the Workmen Com-pensation Act, growing out of the death of their husbands, claiming that the deaths had occurred while the deceased were in the employ of the appellant and in the course of the said deceased performing services for the appellant.

Following the rejection of the claim for death benefits under the Workmen Compensation Act, the widows filed a complaint with the Ministry of Labour. When the case was called for hearing, appellant spread on the records a motion to dismiss the case, contending that the complainants did not have the capacity to sue as the complainants had failed to exhibit any evidence that they were the wives of the decedents or that they held letters of administration. The hearing officer, Nathaniel S. Dickerson, on July 19, 1994, denied the motion and gave the complainants seven days to obtain and produce evidence to show their standing. The matter was then suspended and reassigned to another date for hearing.

During the intervening period, the hearing officer, Mr. Nathaniel S. Dickerson, was transferred to Grand Bassa County on a new assignment and the case was assigned to the director for workmen compensation, Mr. George D. Smart. The case was then assigned for hearing on September 5, 1994. By letter dated August 29, 1994, addressed to Mr. George D. Smart, the appellant management filed a second motion to dismiss the case. In this second motion to dismiss, the appellant included the same contentions contained the first motion, previously passed upon and denied by the first hearing officer, in addition to new issues. The second motion is hereunder revisited as follows:

In count one of the second motion, the appellant

contended that the complainants were allowed seven days to enable them to obtain the relevant documents to grant them legal capacity to sue, but that appellees had failed to obtain or produce said documents within the time allowed.

In counts two and four of the motion, appellant contended that the two deceased employees were murdered by unknown persons on August 25, 1990, which time was during the heat of the civil war, and therefore, that the said death was the result of "force majeure" and not occupational disease or industrial accident. An employer, it said, is not responsible to pay any death compensation for death resulting from acts under "force majeure".

In counts three, five and six of the motion, appellant con-tended that the deceased employees were assigned at River View Compound in Virginia, Montserrado County, Liberia, but had unauthorizedly left the fenced place or premises of assignment during regular working hours and, without any excuse or permission, had strolled near the Brewerville - Monrovia Highway, a distance of more than half a mile, where they were murdered by Field Marshal Prince Johnson; that as the decedents were without prior permission to leave the area of assignment during regular working hours, and that this being in another area, it constituted an excusable misconduct and a violation of section 3550 (2) (b) of the Labor Practices Law, as well as paragraph 21 of Inter-Con Standards of Conduct and Performances, for which there could be no compensation. The appellant charged that it was the decedents' own negligent and willful misconduct that caused their death.

The prayer contained in appellant's motion is hereunder quoted verbatim:

> "Wherefore and in view of the foregoing, movant, the Management of Inter-Con, most respectfully prays that in keeping with the facts, merits and law cited above,

> your office, thru the investigation, should dismiss the above entitled cause because Peter Miah and Peter Yarkparwolo were murdered during the heat of the Liberian civil war and accordingly they negligently caused themselves to be murdered, which movant is not liable to pay any death compensation for, as in keeping with international stan-dards and the Liberian Workmen Compensation Law, referred to above."

On September 5, 1994, appellees filed their resistance to appellant's second motion. We also herewith revisit the said resistance as follows:

In count one of the resistance, appellees contended that even though the first hearing officer allowed appellees seven days to obtain and produce documents or other evidence of their legal capacity to sue, yet, there was never any schedule for the hearing of the case within the time indicated. Further, that it was appellees own efforts to have the case resumed when appellees filed copies of their letters of administration with the hearing officer and served copies on appellant several days before the assignment of the case on August 29, 1994. Hence, it was strange for appellant to raise such issue, in that the documents were submitted before the call of the case after the July 6th ruling.

In count two of the resistance, complainants contended there was no element of *force majeure* which occasioned the death of the two employees; rather, that management was fully responsible because management had taken them to their places of assignment, in their respective capacity as inspectors charged with the responsibility of ensuring that guards under their supervision were in fact on duty. Appellees contended that as inspectors, the deceased employees had to walk up and down in the areas to the different guard posts and that this is what they were doing when they were murdered. Appellees contended that the

deceased were not living anywhere in the vicinity of River View or Mobil Compound, but were there only on account of and in the interest of Inter-Con. Appellees relied on Section 3550(1)(3) in support of their position.

In count three of the resistance, appellees contended that it was Inter-Con who took the deceased to work in full uniform, with Inter-Con communication, in the Hotel Africa area, where they were murdered, and that therefore, they were there in the regular course of their employment and the interest of the em-ployer. Hence, their beneficiaries and dependents are entitled to compensation for their death, as there was no inexcusable misconduct, since they had no other reason for being in that area.

The case was thereafter assigned for hearing on September 13, 1994. However, before the date of hearing, the case was again re-assigned to another hearing officer, this time to Mr. Reginald W. Doe, because Mr. Smart had written a letter of excuse on the date of the assignment stating that he was bereaved - i.e. that a close relative had just died.

When the case was called for hearing on September 13, 1994, defendant management objected to Mr. Reginald W. Doe hearing the case on the ground that the transfer of the case from Mr. Smart to Mr. Doe was unceremonious, as none of the parties had requested a change of venue, and also because Mr. Doe did not work in the Workmen Compensation Division but in the Labor Standards Division, and the case was one for workmen compensation. In resisting appellant's objection, the appellees argued, first, that the reassignment of the case from one hearing officer to another is administrative, and can be given to any person within the Labour Ministry by the Minister; secondly, that the transfer of Mr. Dickerson to Bassa, as well as the bereavement of Mr. Smart, necessitated the assignment of

the case to another person; and thirdly, that defendant was employing all kinds of measures to delay the hearing and determination of the case, especially since they had not denied and could not deny that the two deceased inspectors were indeed their employees. The hearing officer, Reginald Doe, overruled defendant management's objection and ruled that he would hear the case.

Again, at management's request, the hearing was suspended for that day (September 13th) and re-scheduled for September 20, 1994. As per assignment, the case was heard, starting with the arguments on defendant management's second motion to dismiss. Thereafter, ruling was reserved for September 29, 1994. On that date, the hearing officer ruled granting management's motion and dismissing the case. The relevant portion of the ruling is quoted hereunder verbatim.

"The investigation observed the following:

1. That the deceased Peter Miah and Peter Yarkparwolo were murdered on the job in their post of assignment during the war as alleged by complainants.
2. That their brutal death was an act of negligence on their part, also alleged by defendant management.
3. That whether or not such death is compensable in keeping with our statutes.

We shall attempt to answer the above observation in our candid opinion. The investigation has observed that the late Peter Miah and Peter Yarkparwolo were taken to work in 1990, when they were murdered outside of the post of assignment. Their bodies were found near the Brewerville-Monrovia Highway, a distance from their said place of assignment, more than half a mile away. This contention was never denied or rebutted by com-plainants that the decease did not die in the respective fenced compound of their

assignment. But complainants said that the deceased were found in the vicinity of defendant management."

Defendant contended that the deceased employees negligently caused their own death because they strolled near the Brewerville-Monrovia Highway during the regular working hours of the day without any excuse or permission, which constituted inexcusable misconduct and a contravention of Section 3550 Subsection (2) (b), which says "there shall be no liability on the part of an employer for compensation under this chapter when the injury or death of its employee has been occasioned by the inexcusable misconduct of the injured employee.

The investigation also observed that defendant did not deny the existence of its former employees or their death on the date they were killed outside of its compound which has been considered as a contravention of the Workmen Compensation Act and the Standards of Conduct and Performance of defendant, count 16.

RULING:

Wherefore, based upon these facts, circumstances and prevailing conditions, it is the candid opinion of this investigation that defendant/movant is not liable in keeping with relevant legal citation adduced by movant in the entire episode and therefore movant's motion to dismiss this cause of action is sustained. AND BE IT SO ORDERED.

Signed: John D. Morris, II
Recording Clerk
Approved: Reginald W. Doe
Hearing Officer"

To this September 29, 1994 ruling of Hearing Officer Reginald W. Doe, appellees excepted and announced an

appeal to the National Labour Court, which appeal was granted as a matter of right. The appeal was perfected with the filing of a twenty-count petition for judicial review, filed on October 5, 1994.

In their petition, complainants narrated the various developments in the case at the Labour Ministry, commencing with the facts, and then the claim for compensation in the amount of US$24,000.00, at the rate of US$250.00 per employee per month for 48 months. There were also legal contentions raised by petitioners. Firstly, in counts 13 and 15 they contended that the third hearing officer, Mr. Reginald W. Doe, disregarded the ruling of his predecessors, Nathaniel S. Dickerson, made on July 19, 1994, denying management's first motion to dismiss the case due to the lack of capacity to sue by complainants. Instead, Mr. Reginald W. Doe heard and granted management's second motion to dismiss, on the grounds that the deceased were guilty of negligence by leaving their area of assignment which led to their deaths. Hence, he said, manage-ment was not liable to pay any compensation.

Further, in count 15, appellees contended that the Labour Ministry, being a fact finding forum, should have heard the case on its merits instead of dismissing same. In count 16, appellees contended that negligence is an issue of fact which required proof by witnesses and other evidence, and they won-dered how the hearing officer could have granted the motion on mere allegations and not on established facts. Appellees therefore prayed the National Labour Court to reverse the ruling of Hearing Officer Reginald W. Doe, and to go into the merits of the case, award appellees 48 months compensation, plus 6% interest, being a total amount of US$25,440.00 with costs against the appellant management.

The appellant filed its answer to the petition on October

15, 1994, raising several legal issues and ultimately praying the dismissal of the petition. The specific issues are reviewed and discussed in detail later in the opinion.

In its legal memorandum of October 21, 1994, in support of its answer, appellant stressed the legal doctrines of contributory negligence and assumption of risk, asserting that the decedents knowingly went into a war zone which consequently precluded any liability on the part of appellant.

The National Labour Court Judge Samuel Kpanan enter-tained oral arguments on October 21, 1994 from both parties, in support of and opposition to the petition and answer, respectively, and he reserved ruling subject to assignment. During the pendency of this ruling, Judge Kpanan left the court and Relieving Circuit Judge Francis Nyepan Topor was assigned to the Labour Court. Judge Topor assigned the case on April 10, 1995 for ruling on April 12, 1995. Pursuant to the assignment, the parties appeared on April 12, 1995, but appel-lant insisted that Judge Topor should entertain oral arguments before making a ruling because, although oral arguments had earlier been had before Judge Kpanan, the latter did not rule thereon. Appellees resisted appellant's objection and argued that the National Labour Court, being a court of record and all the records being on the file before the court, the judge could rule, with or without argument, as argument was for the court and was not mandatory but discretionary.

The judge sustained the position of appellees, overruled appellant's submission, and held that he would rule based on the records in the file. The judge then ruled, reversing the hearing officer's ruling which dismissed the case, and awarding the petitioners the death compensation claimed. The judge held that the decedents were within the scope of their employment at the time of their deaths and that

therefore their deaths fell within the province of occupational death during the course of their employment. As such, he said, death compen-sation benefits were payable. The judge further held that the appellant did not deny that the decedents were indeed its employees and that they were in fact discharging the assigned duties of Inter-Con during the period of the war, 1990, which required them, as inspectors, to take care of and supervise all installations of Inter-Con within the Hotel Africa area, including the Monrovia-Brewerville Highway. Consequently, he said, the death resulting therefrom was within the meaning of the death compensation law.

The judge also held that appellant, in its answer, did not disprove, by document or otherwise, the award claimed by appellees for their deceased husbands in view of the letters of administration empowering them to collect any claim due the decedents. Finally, the judge held that the petitioners' suit was not statute-barred because the Supreme Court was reactivated in March 1992, and therefore, the appellees had three years thereafter to institute their suit. Hence, he said, the action was commenced within the time allowed by statute.

Appellant excepted to the judge's ruling of April 12, 1995, and appealed therefrom to this Court. The National Labour Court judge approved the appellant's bill of exceptions on April 21, 1995, which contained three counts. The appellant completed all the jurisdictional steps for the appeal to be cognizable before this Court; hence this review. The issues raised in the three counts of the bill of exceptions are the basis for the ruling in this opinion.

In count one of the bill of exceptions, respondent/appellant contended that the judge ruled on the case without entertaining oral arguments, even though a call was earlier made therefor by appellant, which the judge

ignored and did not pass on, but entered his ruling.

In count two of the bill of exceptions, appellant contended that the judge failed to pass upon the issues of law raised in its answer to the petition. The legal issues alleged to have been overlooked by the judge are as follows:

a. that appellees brought the wrong form of action;
b. that the suit was statute-barred;
c. that the deaths of the decedents were not due to occupational related disease;
d. that the decedents were murdered by unknown person(s) without specifying if these murderers were robbers or intruders into the property of appellant.
e. that the appellees lacked capacity to sue as wives of the decedents;
f. that since the decedents were killed by Mr. Prince Johnson, the dismissal by the hearing officer was justified;
g. that the petition was subject to evidence;
h. that the petitioners' complaint to the Labour Ministry did not state that the decedents were killed in the course of their duty.

Finally, in count three of the bill of exceptions, appellant contended that the award of the sum of US$25,440.00 was made without any evidence being taken, either at the Labour Ministry or at the National Labour Court, and thus it is reversible.

Both parties filed their briefs in this Court to support their respective positions. The appellant prayed this Court to reverse and set aside Judge Topor's ruling and uphold the ruling of the hearing officer, while the appellees prayed this Court to affirm Judge Topor's ruling and confirm the award of US$25,440.00, made in favour of appellees as death benefits.

When the case was argued before us, counsel for appellant strenuously contended that it was reversible error

for Judge Topor to have entered a ruling without first having heard oral arguments from the parties, and it insisted that this was mandatory. On the other hand, appellees' counsel argued that it was the judge's discretion to hear or not to hear oral arguments.

In the Rules of the Circuit Court, it is provided that no lawyer shall demand, as a matter of right, to be heard in argu-ments during the hearing of a case and that the court may enter a ruling on the issues, with or without argument, *in the court's discretion. Rule 19, Revised Rules of Circuit Court (1972).* (Our emphasis). The Supreme Court has held that the Rules of Court have the full force of law unless they are in conflict with a statute on the same subject . *Acolatse v. Dennis*, 22 LLR 147 (1973), text at 150; *Cooper v. CFAO*, 20 LLR 397 (1971), text at 400. It is therefore our holding that the judge did not have to hear oral arguments to enable him make his ruling, and that his refusal to permit counsels to argue was no abuse of his discretion. Moreover, this Court has held that decisions upon matters clearly within the discretion of a lower court are not reviewable by a court of appeal. *Sherman v. Reeves*, 23 LLR 227 (1974).

Appellant's counsel appears to confuse two separate situations. He asserted that one judge cannot hear argument and another judge rule on said argument. This is different from the situation where one judge conducts a trial, *hears evidence*, and fails to rule and the succeeding judge, without taking of evidence, enters a ruling thereon. In courts of record, the judge is at liberty to enter a ruling without hearing oral arguments of matters contained in the record. Therefore, count one of the bill of exceptions is not sustained.

In count two of the bill of exceptions, appellant contended that the judge failed to pass upon the issues of law raised in its answer to the petition. The Supreme Court

has held over and again that a judge must pass on all law issues raised in the pleadings. *Morris v. Johnson*, 26 LR 73 (1977), text at 76. The questions remain, what were the pleadings before the National Labour Court, what legal issues were raised therein which were not passed upon by the judge, and at what stage can they be, or should have been, raised?

When Hearing Officer Reginald W. Doe ruled on Septem-ber 29, 1994 dismissing appellees' suit, they announced an appeal therefrom and filed, On October 5, 1994, a twenty-count petition for judicial review in the National Labour Court. The appellant, in response thereto, filed its answer on October 15, 1994, containing ten counts.

The Court observes that the issues contained in the appellant's answer before the National Labour Court were not earlier raised in appellant's second motion to dismiss before the Labour Ministry, which motion formed the basis of the ruling of Hearing Officer Reginald W. Doe which dismissed the suit, and from which a petition was filed for a judicial review on appeal in the National Labour Court.

In the six-count motion before the hearing officer, the respondent raised the issues of petitioner's capacity to sue, (count one), force majeure (counts two and four), and negligence and inexcusable misconduct (counts three, five and six); whereas in the answer at the National Labour Court, appellant raised the issue of wrong form of action (count one), statute of limitations (count two), uncompensable death and non-liability (count three, four, five and six), lack of capacity (count seven), and assumption of risk and contributory negli-gence (counts eight, nine and ten).

This Court has held in several of its opinions that issues which were not raised at the trial level cannot be passed upon before an appellate forum. *Freeman v. Kini*. 23 LLR

413 (1974); *Gaiguae v. Jallah,* 20 LLR 163 (1971), text at 164. Therefore, if the issues raised in appellant's answer before the National Labour Court were not passed upon by the judge of said court, then it was not error since said issues had not earlier been raised before the hearing officer. Therefore, count two of the appellant's bill of exceptions is not sustained. Further, it is to be noted that the case traveled to the National Labour Court by way of a petition for judicial review, which is not a trial *de novo* but is a form of appeal whereby the review proceeding is restricted to the records transcribed and certified to the appellate forum. BLACK'S LAW DICTIONARY 849 (6th ed.1990); *Freeman v. Kini, supra*; *Benson v. Johnson*, 23 LLR 290 (1974).

Having thus ruled, however, let us take recourse to the respondent's answer and the ruling of the National Labour Court judge. In count one of the answer, appellant contended that the suit was the wrong form of action, in that it should have been brought in a circuit court of general jurisdiction and under the Private Wrongs Law in an action for wrongful death, and not in the Labour Ministry under the Workmen Compen-sation Act for death compensation. In its ruling, the National Labour Court held that the suit, as brought, was properly cognizable before the Labour Ministry (and the National Labour Court), based on chapter 36, part 6, sub-chapter B, section 3551, of the Labor Practices Law, and not in a circuit court. *See Ruling, at page 2, paragraphs 1 and 2.*

In count two of the answer, appellant contended that the suit was statute-barred, in that it should have been brought within two years of the death of the decedents, and that since the deaths occurred on August 25, 1990 and the courts were reactivated in March 1992, but the suit was not filed until March 1994, the suit was barred by statute. The judge in his ruling held that the appellees' suit was not

statute-barred because the Supreme Court was reactivated in March 1992, and that under section 2.20 of the Civil Procedure Law, Rev. Code 1, it is stated that "all actions for which no other period of limitation is specifically provided shall be commenced within three years of the time the right to relief accrued". The appellees' case was brought within the time allowed by law. *See Ruling, page penultimate paragraph.*

In count three of the answer, appellant contended that the Labor Practices Law on compensation for wrongful death relates to compensation for occupational disease and said compensation should be paid accordingly and not otherwise. The judge, in his ruling, found that the nature of the assign-ment of the two decedents required mobility from one place to another to ensure the smooth operation of Inter-Con guards at various posts, and that therefore their deaths were within the province of their employment, for which death compensation was payable. *See Ruling, page 2, second paragraph.*

In count four of the answer, the appellant contended that the decedents were murdered by unknown persons without stating that the murderers were robbers or were attempting to interfere with the security operation of decedents or Inter-Con's pro-perty. Again, as stated above, the judge ruled that the decedent inspectors, having been charged with general supervision of the area, were attacked in the course of their inspection of all areas of the respondent's property to which they were assigned. *See page two of the court's Ruling.*

In count five of the answer, appellant denied liability because the decedents were killed by General Prince Johnson, outside the compound where they were assigned, and that as such, was without the course of their employment. Thus, they said, no death compensation could

be paid. Here again, the judge ruled that the decedents were within the province of their employment because their jobs required them to take care of and supervise all of the installations within the Hotel Africa area, including the Monrovia-Brewerville Highway, where they were killed. *See last two paragraphs, page 2 of the Ruling.*

In count six of the answer, appellant generally denied liability, but the judge held that the appellant was liable to pay death benefits. *See page two of the court's Ruling.*

In count seven of the answer, appellant said that petitioners did not produce evidence to show their capacity to sue. The judge, in his ruling, held that the petitioners were correct to claim the award of their late husbands " in view of letters of administration empowering them to collect any claim due the decedents." (Emphasis ours). Certainly the judge acknow-ledged and took into account the letters of administration issued petitioners by the probate court. *See Ruling, page three, first paragraph, second sentence.*

In count eight of the answer, appellant contended that even though it was true that negligence requires proof, yet there was nothing before the hearing officer to warrant investigation because the decedents were killed by the INPFL of Prince Johnson, considering the notorious killing reputation of the INPFL. Therefore, in count ten of the answer, appellant denied that the decedents were killed in the course of their occupation, and hence, the complaint was properly dismissed. The judge ruled that the decedents were in fact killed it the course of their employment since they were required to inspect all the installations where Inter-Con had guards posted in the Hotel Africa area, and along the Monrovia-Brewerville Highway, and that as such death benefit compensation would lie. *See Ruling, page 2.*

Finally, in count ten of the answer, appellant contended

that the decedents assumed the risk and that they contributed to their deaths by exposing themselves to danger, in that they made themselves vulnerable to INPFL fighters in the war zone. The judge, in his ruling, held that appellant did not annex any documentary evidence to its answer indicating the duties and scope, as well as the locality of the job of an inspector of appellant, and also that pursuant to their assignment as inspect-ors, the decedents had responsibility of general supervision to ensure the smooth operation of Inter-Con, and to further ensure that guards were on duty at the various guard posts. Therefore, he said, their deaths, occurring while they were on such inspection duty, imposes liability on appellant to pay death compensation. *See Ruling, page three, first paragraph first sentence page two.*

Having thoroughly revisited the appellant's answer in conjunction with the judge's ruling, this Court is compelled to overrule the whole of count two of appellant's bill of exceptions, as we have found that the judge did in fact address each and every issue in appellant's answer before the National Labour Court.

Count three of the appellant's bill of exceptions charged the National Labour Court judge with reversible error in awarding the amount of US$25,440.00 as compensation, without any evidence having been taken in the National Labour Court itself or at the Labour Ministry to support such award.

This Court observed that the claim of appellees was submitted to the hearing officer in their letter of August 5, 1994, at the same time with their letters of administration. The appellant filed its second motion to dismiss the case before the hearing officer, on August 29, 1994, in which appellant attacked appellees' capacity to sue, raised the defense of *force majeure,* which took the deaths out of the

realm of occupa-tional disease or industrial accident, and disclaimed liability due to the decedents' inexcusable misconduct and negligence in leaving the area of assignment. There was no mention of attack on, or reference or response to, the claim for the amount of US$25,440.00. In other words, appellant denied being liable, but did not dispute the amount of monthly salaries. When ap-pellees filed the petition for judicial review on October 5, 1994, they stated that their late husbands were earning US$250.00 each per month which, for 48 months, under Sec-tion 3550(1)(3) and Section 3551(2) aggregates US$24,000.00, which they were claiming, thereby again resubmitting their claim. See counts 4 and 5 of the petition.

The respondent/appellant filed its answer on October 15, 1994, in response to the petition aforesaid, and at no time and in no count of the answer, did appellant dispute or even comment on the amount claimed as monthly salaries or the aggregate thereof. Even in its supporting Legal Memorandum filed on October 21, 1994, appellee also failed to attack the amount claimed. It was only after the judge ruled on April 12, 1995, granting the award, as claimed by petitioners that appellant, in its bill of exceptions, commented for the first time on the amount claimed and awarded.

In the absence of any contest from appellant, it was therefore no error for the judge to have awarded the amount claimed. Our law states that averments in a pleading to which a responsive pleading is required are deemed admitted when not denied in the responsive pleading. Civil Procedure Law, Rev. Code 1: 9.8, *Defenses and objections*; and all admissions made by a party or his authorized agent are admissible. *Id.* at 25.8(1), *Admission*. In furtherance of this rule of law, this Court has similarly spoken. *Liberian Oil Refinery Company v. Mahmoud,* 21 LLR

201 (1972), text at 212. In addition to the above, this Court has held that if a party wishes to dismiss a claim against him, he must so move at the time of service of his responsive pleading *and not thereafter*" (Emphasis Ours). *Mourad v. O.A.C.*, 23 LLR 183 (1974), text at 186. Therefore, the judge was justified in awarding the amount claimed as a matter of law, and therefore, count three of the appellant's bill of exceptions is likewise overruled and dismissed.

Having dismissed and overruled all the counts contained in the appellant's bill of exceptions, thereby effectively denying the appeal, we would, however, like to comment on a few other issues and make several other observations.

First, it is to be noted that the appellant had asked this Court to reverse and set aside Judge Topor's ruling and uphold the hearing officer's ruling dismissing the complaint for lack of capacity to sue. Recourse to the hearing officer's ruling re-vealed that no where in said ruling was there reference to, or mention of, the issue of capacity to sue; rather, the suit was dismissed on the ground that the decedents were guilty of negligence and inexcusable misconduct for having left their area of assignment when they met their untimely death. The hearing officer held that the appellant was therefore not liable for any compensation.

In its answer to the petition in the National Labour Court, the appellant conceded that negligence was a matter required to be proved (see count 8) and that this was never done; further in its brief, appellant argued that the hearing officer dismissed the complaint without going into the merits, which would have required the production of evidence. Yet, at the same time, appellant prayed this Court to affirm and uphold the hearing officer's ruling. How can appellant contend that a ruling which determined an issue of negligence and non-liability without any proof thereof

should be upheld, but yet see fit to denounce a similar ruling which reversed it and found it to be contrary to law?

Appellant seeks to take advantage of a legal error which appellant knew about and did nothing to correct, and hoped that it would have been upheld in the National Labour Court, but because it was reversed appellant now seeks to have this Court assist in correcting. *Dagber v. Molly*, 26 LLR 422 (1978), text at 426-427; *Acolatse v. Dennis*, 22LLR (1973), text at 151. If appellant had been acting in good faith, it would have prevailed on the Labour Court judge to simply correct the error from below and remand the case for trial with instructions. Instead, it prayed the National Labour Court to uphold the hearing officer's ruling, which the National Labour Court did not do. Therefore, appellant is bound thereby. See also *Wilson v. Dennis*, 23 LLR 263 (1976).

The other question is whether or not the second motion to dismiss, filed by appellant, was legally cognizable to form the basis of the ruling of Hearing Officer Reginald Doe. Alter-natively, the question is whether the ruling of Mr. Doe is legally valid and enforceable. The records show that on July 6, 1994 when the case was first called for hearing, appellant appeared and spread on the minutes its motion to dismiss the case on the ground that appellees did not have the capacity to sue as there was no evidence that they were the wives of the two decedents. The then hearing officer, Nathaniel S. Dickerson, on July 19, 1994, denied the motion and suspended the trial to permit complainant seven days to obtain and produce such evidence. When the case was next called for hearing on September 20, 1994 the complainants had already obtained their Letters of Administration on July 22, 1994, and had submitted same on August 5, 1994, prior to appellant's second motion to dismiss being filed on August 29, 1994, before the new

hearing officer.

Under the practice in this jurisdiction, a motion to dismiss must be made at the time of responding to the complaint, and once that motion is denied, it may not be brought back. After the denial of a motion to dismiss, the next stage of the proceeding is trial. All of the defenses in the second motion should have been included in th first motion, and failing to do so constituted a waiver of such defenses. See Civil Procedure Law, Rev. Code 1: 11.2(6); *Mourad v. O.A.C.*, *supra.* Therefore, any ruling on such second motion was illega1 and unenforceable.

Moreover, it was error for Hearing Officer Reginald W. Doe to have allowed such motion when his predecessor had previously passed on some of the very issues raised therein. In fact, a dismissal of the same action by one hearing officer, which had earlier been allowed by a predecessor hearing officer when he denied the first motion to dismiss was illegal, as one with concurrent jurisdiction, cannot review or set aside a ruling or action of another. *Sherman v. Reeves*, supra, Syl. 3. Accordingly, the judge correctly overruled and reversed the hearing officer's ruling.

The next questions are under what conditions is an employer required to pay death compensation to the beneficiaries or dependents of its deceased employees, and whether or not those conditions obtained in the instant case? The Labor Practices Law of Liberia provides, at section 3550, as follows:

Liability for Compensation

1. Every employer shall pay or provide compensation or secure compensation to each employee (or to his dependents) for the disability or death of such employee, caused by an injury arising out of and in the course of his employment, such compensation to be paid, provided, or secured without regard to fault as a cause of

the injury..."

2.There shall be no liability on the part of an employer for compensation when the injury or death of his employee has been occasioned, except

(b)By the inexcusable misconduct of the injured employee;

(c)By the willful intention of the injured employee to bring about the injury or death of himself or of another"

3.For the purpose of this chapter, an accident resulting in incapacity or death of an employee shall be deemed to arise out of and in the course of his employment, not-withstanding that the employee was at the time when the accident happened acting in contravention of a statutory or other rule applicable to his employer, if such act was done by the employee for the purposes of and in connect-ion with his employer's trade or business.

Section 3551. Compensation for death

1.When an employee dies as the consequence of a compensable occupational injury, compensation shall be paid as set forth in the section.

2. If the deceased employee leaves any dependents wholly dependent upon his earnings, the amount of compensation shall be a sum equal to 48 months earning." Labor Practices Law, Lib. Code, § 3551.

Applying the law to the facts in the instant case, it is not disputed that the deceased employees were taken (transported) to work by their employer on the day in question, in uniform, to patrol and inspect Inter-Con guarded sites in the general area where they were killed. The only point of disagreement is that appellant contends that the decedents had left the area of assignment, thereby exposing themselves to danger, and that they had assumed the risk by entering a war zone, knowing fully well the

ruthlessness of the INPFL fighters. On the other hand, appellees contend that the two decedents were in the regular course of their employment at the time they were killed on the premises of their assigned area (i.e. areas guarded by appellant's men).

The judge found that appellant did not attach any evidence or documents to its answer to show the duties, scope, and the locality of the job of inspectors of appellant. Therefore, it was reasonable to conclude that the decedents were indeed in their regular occupation inspecting and guarding Inter-Con protected American installations; and that therefore, their deaths come within the pale of occupational injury, as set for in Sections 3550 (1)(3) and 3551 (1) (2), *supra*. We hold similarly.

One point to ponder is that appellant accused the decedents of having assumed the risk of going into a war zone, where such brutality and gruesome atrocities were being carried out by rebellious forces of the INPFL, and that for the contributory negligence of the decedents, appellant bore no liability to provide compensation.

But according to appellees, their deceased husbands were enlisted in the local guard service/force at the U.S. Embassy between 1983 and 1985, and were transferred to the Inter-Con Security System, a U.S. owned security service, in 1990; and that on August 25,1990, they were taken to work by Inter-Con to inspect and supervise guards placed at different locations and establishments, including the River View and Mobile Compound in Virginia.

How can appellant set up such defense of disclaiming liability when it was the management who transported the deceased to work as inspectors, whose assignment required them to walk up and down in the whole area to the different guard posts? It must be noted that the deceased did not live anywhere in the vicinity of the areas of their

assignment where they were killed; they had no other reason to have been in that locality other than in the interest of appellant. How can appellant set up the defense of assumption of risk and contributory negligence, and say the decedents knew of the war and exposed themselves to danger? Did appellant also not know of the war in that area when it transported the decedents to work in said area? Appellant cannot be permitted to repudiate its own act for which it did receive benefits from the decedents, in terms of their services to appellant, even at the peril and expense of their very lives. *Dagber v. Molley,* 26 LLR 422 (1978); *Wilson v. Dennis,* 23 LLR 263 (1974). Appellant has adopted and assumed an ungrateful, indifferent, imper-sonal and inhumane posture toward the deaths of two of its employees, even though it did not deny that the decedents were indeed its employees, whom it transported to work on the day of the fateful event. Appellant must therefore be held liable to compensate appellees for the untimely deaths of their husbands.

The Court therefore rules that the judge of the National Labour Court did not commit error when he awarded the amount of US$25,440.00 as compensation for the occupational death of the decedents, in keeping with the Labor Practices Law of Liberia, sections3350 and 3551, since indeed appellant made no attempt before the hearing officer or the National Labour Court to controvert the claim for the said amount. At both fora, appellees asserted their claim (in their letter of August 5, 1994 and the petition for judicial review, counts 3 and 4), to which written responses were filed by appellant. The failure to dispute the said claim amounted to an admission. Civil Procedure Law, Rev. Code 1: 9.8 (3).

In view of the foregoing facts and circumstances, and with all that has been said, it is our considered opinion that appellant is liable and should pay to appellees the amount awarded, as there was no negligence on part of the decedents, and as they were killed in the regular course of their employment. Further, that the judge of the National Labour Court did not commit any error for which his judgment should be disturbed. The said judgment is therefore hereby affirmed and the appeal denied, with costs against the appellant. The Clerk of this Court is hereby ordered to send a mandate to the National Labour Court ordering the judge presiding therein to resume jurisdiction over the case and enforce its judgment. And it is hereby so ordered.

Judgment affirmed.