

THE INTERNATIONAL TRUST COMPANY OF LIBERIA (ITC), Appellant, v.
ROBERT DOUMOYAH et al., represented by the Labour Consultant, PAUL B.
NYAIN, and **JOSEPH F. KPUKOUYU**, Hearing Officer, Ministry of Labour, Appellees.
APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: June 1 & 5. 1989. Decided: July 14. 1989.

1. Any employee who works for more than five hours a day shall have a period of not less than one-half hour rest in the course of the day's work. The rest period of any employee in the course of the working day shall be reckoned in the hours of work, except those periods which exceed one-half hour duration.
2. Every employer shall post a notice showing the hours at which work begins and ends and the daily rest periods, either collectively or, if the hours differ for different group of individuals, then a roster listing such groups or individuals.
3. No employer shall cause or require an employee to work longer than eight hours in any one day or forty-eight hours in any one week except to the extent that hours worked in excess thereof shall be paid for in accordance with law.
4. The one-half hour rest period for an employee engaged for more than five hours a day may be given at any time during the eight hours or less period of work, including the end of the work period if the aggregate of actual work and rest period is eight hours or less.
5. In interpreting statutes, courts are treading on delicate ground because courts must be careful in construing the acts of the Legislature to avoid even the appearance of attempting to legislate. The courts, therefore, must adhere to the legal principles or canons of construction.
6. It is not the province of the Supreme Court to add or subtract from legislation where the meaning is plain.

Certain former employees of The International Trust Company of Liberia (ITC) demanded compensation for periods which they claim they should have had their rest as provided for by statute, but which they were never given by their employer. Consequently, Robert Doumuyah and six other former employees of ITC, on October 3, 1985, filed an action of unfair labor practice against ITC with the Ministry of Labor. The basic contention of the complainants was that they had been required to work for ITC from 8:00 a.m. to 2:00 p.m., a period of six hours, without giving them their lunch break, which break, they believe they were entitled to immediately after the fifth hour of work. They contended that although they went home at 2:00 p.m. following six hours of work, they never got their statutory lunch break of thirty minutes.

Appellant ITC contended that although the statute provided for an eight-hour work day (8:00 a.m. to 4:00 p.m.), it agreed with the employees that they should work from 8:00 a.m. to 2:00 p.m. and at 2:00 p.m. take their statutory rest period and thereafter go home.

While the complainants did not deny the fact of this arrangement between them and their former employer, they contended that they should have had their lunch period immediately following the fifth hour of work. Secondly, they contended that the fact that they were permitted to go home at 2:00 p.m. after six hours of work meant that they operated on a six-hour work day and they could not, therefore, be given their lunch period after they had performed and completed their day's work.

This contention of the appellees was sustained by the hearing officer, who awarded the complainants \$13,046.00 as compensation for the rest period. Appellant, being dissatisfied, petitioned the National Labour Court for judicial review of the said ruling. Following a hearing, the National Labour Court confirmed and affirmed the ruling of the hearing officer. From the said affirmation, appellant appealed to the Supreme Court for a final review and determination.

In reversing the ruling of the National Labour Court, the Supreme Court relied upon and gave strict construction and interpretation to section 704 of the Labor Practices Law regarding lunch break or rest period. The judgment of the trial court was reversed and costs disallowed.

Philip A. Z Banks, 11J, and *Seward M. Cooper* appeared for appellant. *J. Laveli Supinwood* appeared for appellees.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

The Labor Practices Law provide at Section 704 as follows:

"Any employee working more than five hours a day shall have a period of not less than one-half hour's rest in the course of the day's work. The rest period of any employee in the course of the working day shall be reckoned in the hours of work except those periods which exceed one-half hour's duration.

The essence of the case before us is the interpretation to be given to the foregoing provision, and this case grows out of the demand of certain former employees of The International Trust Company of Liberia for compensation for periods which they claim they should have had their rest periods as provided for by the statute but which they assert were never given to them.

The facts of the case, as culled from the records transmitted to us are the following: On October 3, 1985, Robert Doumuyah and six other former employees of The International Trust Company of Liberia (ITC) filed in the Ministry of Labour an action of unfair labour

practice against ITC. In their complaint, the employees, appellees herein, claimed that from the date of their employment with ITC and spanning a period from November 1972 to March 1, 1982, they were never accorded their thirty minutes' rest period or lunch break as provided for by section 704 of the Labor Practices Law of Liberia. The factual basis for the claim asserted by the complainants, appellees herein, was that they had been made to work by the appellant from 8 o'clock a.m. to 2 o'clock p.m. - a period of six hours without giving them their lunch break, which they believe themselves to be entitled to immediately after the fifth hour of work. The employees asserted that as they went home at two o'clock p.m, they never got the statutory lunch break. They therefore demanded that they be paid for the thirty minutes period, at the rate of one and one-half times the regular rate, since the period in question involved time when they should not have been working. The period, they reasoned, must therefore be treated on the same basis as if they were doing overtime work.

At the Ministry of Labour where evidence was taken, Appellant ITC contended that although the statute provided for an eight hour work day and the normal hours of work was from 8 o'clock to 4 o'clock p.m., it agreed with the employees that the latter should work from 8 o'clock a.m. to 2 o'clock p.m. after which they could have their statutory rest period and thereafter go home.

As we understand it, the appellees raised two basic contentions in regard to the foregoing assertions of the appellant. Firstly, they asserted that they were entitled to have their lunch period immediately following the fifth hour of work, and not after the sixth hour of work. Secondly, they said, the fact that they were permitted to go home after they had worked up to 2 o'clock p.m.- a period which embodied six hours means they operated on a six-hour work day and they could therefore not be given lunch after they had performed the day's work. Thus the issue revolved around the interpretation to be given to section 704 of the Labour Practices Law of Liberia.

In addition, however, the appellant raised an ancillary issue. It contended that as the appellees had not asserted their alleged claims or a portion thereof within the statutory period prescribed by INA Decree No. 21, and the Ministry of Labour Regulation No. 4, they were barred by law under the statute of limitations from now raising the said claims or the portions thereof falling beyond the seven-year period prior to the date of commencement of the action. This assertion was resisted by the appellees, whose arguments seemed to have been more persuasive to the hearing officer. Thus, the hearing officer overruled the statute of limitations contention raised by the appellant. He held further that the issue surrounding the interpretation of section 704 was a strictly legal issue and, as viewed by him, required the employer to give lunch break to the employees following the fifth hour. He concluded that the appellant had violated the provisions of section 704 and therefore ordered it to pay to the complainants, appellees herein, \$13,046.00 as compensation for the rest period.

The appellant, not being satisfied with the ruling of the hearing officer, announced an appeal therefrom and as required by INA Decree No. 21 and other provisions of the Labor Practices Law, filed a petition for judicial review with the National Labour Court. Arguments were had before the court on the two issues raised by the appellant, and on October 27, 1987, the court handed down its judgment in the matter, confirming and affirming the ruling of the hearing officer and the award made by him. The appellant, still not being satisfied by the decision of the hearing officer and the judgment of the National Labour Court, decided to appeal the matter to this Honourable Court for our review and determination.

The parties have agreed that the only two issues presented are as follows:

1. Does section 704 of the Labour Practices Law of Liberia require that a lunch break or rest period be accorded an employee immediately following the fifth hour of work or is it discretionary with the employer to determine at what time within an eight hour work day the employee shall have his lunch break.

2. Is the appellees' claims or any part thereof barred by the statute of limitations?

Section 704 of the Labour Practices Law, which we have referred to before, provides:

"Any employee working more than five hours a day, shall have a period of not less than one-half hour's rest in the course of the day's work. The rest periods of any employee *in the course of the working day* shall be reckoned in the hours of work except those periods which exceed one-half hour's duration." (Emphasis ours). Labor Practices Law, Lib. Code 18-A: 704.

The obligation which arises out of the foregoing provision of the statute and which devolves upon the employer is that at any time the employee works for a period of more than five hours, he must be granted a rest period of at least thirty minutes. The appellees contend that this rest period must occur immediately following the fifth hour, and not after the sixth or seventh hour, as asserted by the appellant.

We do not agree with the contention of the appellees for if such was the case, the Legislature would not have included Section 705 in the Labour Practices Law. The provisions of that section clearly recognizes that the lunch break may be staggered. The section states that every employer shall post a notice "showing the hours at which work begins and ends and the daily rest periods, either collectively or, if the hours differ for different groups or individuals, then a roster listing such groups or individuals." One readily sees that the statute itself contemplates rest periods at different times in the course of the day's work. Logically so, it enables an employer to maintain continuity in the course of the day's work; or otherwise an employer's activities could be grounded to a complete halt if all of its employees were given lunch break at the same time, which is immediately following the fifth hour of work.

More importantly, the statute itself uses the words "... in the course of the days work" rather than the words "immediately following the fifth hour of work." This clearly shows the legislative intent to give flexibility to the system in order to ensure continuity of business activities during any work day.

We are of the opinion therefore that an employer may give lunch break to its employees after the fourth hour of work (as is now customary) or even after the sixth hour of work, depending upon the kind of business in which the employer is engaged, as long as the rest period conforms to the law requiring at least thirty minutes in the course of the day's work where the employee works a total period of more than five hours a day.

The matter of statutory interpretation is not new in this jurisdiction. In the case *Shannon v. Liberia Trading Corporation*, 23 LLR 66 (1974), the Court said, at page 80:

"[In interpreting statutes, courts] are treading on delicate ground, because courts must be careful in construing the acts of the Legislature, to avoid even the appearance of attempting to legislate. The courts, therefore, must adhere to the legal principles or canons of construction. But, however careful we may desire to be, we cannot avoid the duty of construing legislative enactments."

The Court then proceeded to quote from the text of *Section 219 of 50 American Jurisprudence*, under the subject entitled *Statutes*, as follows:

"The judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of the government. Although it is true under proper circumstances that some aid may be derived from executive or legislative construction of statutes, it is ultimately the court's province and duty to construe, in good faith, laws enacted by the legislature. In this respect, it has been said: 'To declare what the law is, or has been, is a judicial power; to declare what the law shall be is legislative.' It is the duty of the courts to construe statutes for the purpose of determining whether a particular act done or omitted falls within the intended inhibition or commandment of such statutes, and, in general, for the purpose of enabling the enforcement of the statutes with reasonable certainty."

This Court went further to state: "The cardinal principle in construction of statutes is to ascertain the intent of the Legislature, and this is mainly done by first giving as literal an interpretation of the meaning of the words used in the statute as possible . . . Although the intention of the Legislature is to be ascertained by the courts primarily from the language used in the statute, the duty devolves upon the court to ascertain the true meaning where the language of the statute is of doubtful meaning, or where adherence to the strict letter leads to injustice, absurdity or to contradictory provisions, since an ambiguity calling for construction may arise when the consequence of a literal interpretation of the language is an unjust,

absurd, unreasonable or mischievous result, or one at variance with the policy of the legislation as a whole.

In addition to ascertaining the intent of the Legislature, it is generally held that consideration should be given to the spirit or intention of a statute rather than merely to the words." Moreover, this Court has held that it is not the province of this Court to add or subtract from legislation where the meaning is plain. *Multinational Gas and Petrochemical Company v. Crystal Steamship Corporation, S.A. et al.*, 27 LLR 198 (1978). In the instant case, the appellant asserted that it had an eight hour work day, from 8 o'clock a.m. to 4 o'clock p.m. but that because of the nature of the business, it required the appellees to work for a period of six hours from 8 o'clock a.m. to 2 o'clock p.m. and thereafter it allowed them the statutory lunch break. At the discretion of the appellant, the appellees were permitted to go home after the lunch period. The appellant asserted that this was to the benefit of the employees and that the appellant ought not to be penalized for permitting the employees to leave for home one and one-half hours prior to the close of the official working day of appellant.

We are in agreement with the appellant, both as to the interpretation of the statute and with regard to the normal working hours required by the statute. Section 701 of the Labour Practices Laws provides, as follows:

"Subject to the provisions of this chapter, no employer shall cause or require any employee to work longer than eight hours in any one day or forty-eight hours in any one work, except to the extent that any hours worked in excess thereof shall be paid in accordance with the provisions of Section 703." Labor Practices Law, Lib. Code 18-A:701.

The appellant further asserted that although the statute required a forty-eight-hour work week of the employees and its schedule conformed thereto by an eight hour work day for each employee, under its program, and because of the nature of its business, each of the appellees actually worked only thirty-four hours a week (on Saturday they worked only four hours) plus thirty minutes each day as rest period. The appellees have not disputed this assertion, as they presented no rebutting evidence to the testimonies of appellant's witnesses Joseph Acquah and Comfort Mitchell to the effect that the appellees worked for six hours and were then granted a thirty minute rest period followed by the appellant's permission for them to go home. Indeed, the appellees' lone witness agreed basically with this claim, except that he insisted that they received no lunch break, presumably they did not get the lunch break immediately following the fifth hour of work.

We have already said that the statute does not require that the employer should grant lunch break to the employee immediately following the fifth hour. Consistent with that interpretation we hold that there is no merit to the contention of the appellees either to the effect that they should have had their lunch break at one o'clock or that because they were permitted to go home immediately following their two o'clock lunch break they cannot be

considered as having had their lunch break. The appellees are therefore not entitled to any additional compensation on the theory expounded by them.

At a time when there is hope for greater benefits to be accorded workers by employers, to sustain the position advocated by appellees would serve as a disincentive to employers who might be desirous of granting to employees more benefits than those provided for under the Labor Practices Law. The fact that other employees before appellees and who were similarly situated were permitted to successfully claim against the appellant cannot be a basis upon which the appellees herein can recover, for in the previous case this Court did not reach the merits and therefore did not have the opportunity to either interpret the statute or to review the factual merits of the case. In the prior instance, ITC had failed to file an approved appeal bond within the sixty day period prescribed by statute. This Court had therefore determined that it had no jurisdiction to hear the case; and consistent with that determination, it had dismissed the appeal. In the instant case, all the jurisdictional steps were met by the appellant and the determination which we herein make is made on the merits of the case, not on any procedural points. And we hold, both as to the facts presented and as a matter of law, that the appellees are not entitled to recover against the appellant for the claimed rest period or lunch break.

In light of the foregoing, we do not believe that it is necessary to address the issue of the statute of limitations. Suffice us to say only that the statute may be staggered and that where the claim is found to be legitimate only those portions which do not fall outside of the statutory period will be considered by the Court.

In view of the foregoing, the judgment of the trial court is hereby reversed. Costs disallowed. And it is hereby so ordered.

Judgment reversed.