WILLIE JOHNSON and THE BOARD OF GENERAL APPEALS**,** Ministry of Labour, Appellants, v. **LAMCO J. V. OPERATING COMPANY,** Appellee.

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

Heard: January 23 & 24, 1984. Decided: February 9, 1984.

1. De novo trial is not applicable on judicial review of administrative decisions, but is applicable only from the judgment of courts not of record.

2. A reviewing court of administrative determination will not disturb the finding of facts by the agency because the finding and determination of questions of fact are conclusively within the province of the administrative agency and therefore such finding is final and binding except under certain situations.

3.An administrative agency's findings as to the facts which are supported by substantial evidence are binding and conclusive, and may not be disturbed or set aside by a court, in the absence of fraud or bias.

4. To contract an occupational disease and report being sick is not a serious breach of duty for which an employee may be dismissed without being entitled to severance pay.

Co-appellant Willie Johnson was employed by Appellee Lamco J. V. Operating Company in 1975 as a heavy-duty operator and sprained his back on September 13, 1980; in the process of changing a tire on a Volvo truck he was operating. As a result of the back injury, he was treated at the company's hospital for a period of five (5) months. He was then medically advised, by the company's doctors, to refrain from heavy-duty driving and to confine himself to light-duty driving. Coappellant was issued a medical certificate which indicated that as a result of the injury, his physical capacity had reduced by thirty (30%) percent.

Upon his return to work, co-appellant was assigned to a fuel tanker as its driver. On the 19 th day of February, 1982, coappellant slipped and felt on his back while he was checking the fuel in the fuel tanker. This aggravated his spinal injury he had 735 earlier sustained in September, 1980. He was again hospitalized and discharged after three (3) days. Two (2) months after the fall and treatment, that is to say, on April 17, 1982, Co-appellant Johnson's services were terminated. Consequently, he filed a complaint against the management of Lamco J. V. Operating Company, appellee herein, in the office of the labour commissioner for Grand Bassa County, alleging unfair labour practices, wrongful dismissal, and claim for workman's compensation.

The labour commissioner, having heard the case, ruled against management directing management to pay the dismissed employee, Co-appellant Johnson, Four Thousand Four Hundred and Fifty Dollars ($4,450.00) plus severance pay and other entitlements in the

amount of Five Thousand One Hundred Thirty Dollars and Sixty Cents ($5,130.60), making a total award of $9,580.60 (Nine Thousand Five Hundred Eighty Dollars and Sixty Cents). To this ruling, the management excepted and appealed to the Board of General Appeals at the Ministry of Labour for a review thereof. The Board confirmed the ruling of the labour commissioner and management again noted exception and announced an appeal to the Civil Law Court, Sixth Judicial Circuit, Montserrado County for judicial review. Following the review, the Civil Law Court reversed the decision of the Board and discharged the appellant company from liability. Coappellant Willie Johnson then excepted to the final judgment of the circuit court and announced an appeal to the Supreme Court.

The Supreme Court reversed the ruling of the lower court and affirmed the decision of the Board of General Appeals. The Court reasoned that the grounds presented by the appellee for review of the decision of the Board of general Appeals by the lower were basically matters of fact, in that the appellee had asked the court to reverse the Board's decision because it was dissatisfied with the findings of fact by the Board and that from the medicate certificate, the appellant was not entitled to compensation under the workmen's compensation scheme.

The Court noted that the review of the decision of an administrative agency by a court is limited to questions of law and not questions of fact. The lower court, it said, was therefore in error in overruling the findings of fact of the Board of General Appeals. The Court pointed out that the evidence clearly showed that the appellant did not have a previous spine illness and that all indications were that this must have been developed from his employment. Sickness growing out of a work condition, it said, was not a serious breach of duty. Hence, it could not be a basis for the dismissal of any employee. It therefore held that the dismissal of the employee was wrongful, that the judgment of the lower court be reversed, and that the decision of the Board of General Appeals be reinstated, confirmed and enforced.

Johnnie N Lewis appeared for the appellants. Alfred B. Curtis and John A. Dennis appeared for the appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

The records in this case revealed that Willie Johnson, coappellant herein, was employed by the appellee, LAMCO J. V. Operating Company, in 1975 as a heavy-duty operator. On September 13, 1980, that is, five years after his employment with the company, Co-Appellant Johnson sprained his back in the process of changing a tire on a Volvo truck he was operating, resulting into a back injury for which he took treatment at the company's hospital lasting five months. Upon his discharge, coappellant Johnson was recommended by the attending medical doctor to a lighter-duty driving rather than heavy duty. The medical doctor

noted in his certificate that by reason of the back injury the co-appellant's physical capacity had been reduced by thirty percent.

On the 19' day of February, 1982, while the co-appellant was checking fuel in the fuel tanker which he had been assigned to drive following doctor's advice, he slipped and fell on his back, thereby aggravating the spinal injury he had sustained in September, 1980, and was thereupon treated at the company's hospital and discharged after three days of hospitalization. On April 17, 1982, that is, about two months after the said fall and treatment, Co-appellant Johnson's services were terminated; consequently, he filed a complaint against the management of LAMCO J. V. Operating Company, appellee herein, in the office of the labour commissioner for Grand Bassa County for unfair labour practices, wrongful dismissal, and a claim for workmen's compensation. The commissioner heard the matter and ruled against management, awarding the complaining employee workmen's compensation for permanent partial disability based upon the percentage loss of his earning capacity determined by the medical doctor to be thirty percent. The commissioner calculated the amount to be $4,450.00 plus severance pay and other entitlements in the amount of $5,130.60, making a total award of $9,580.60.

From this ruling of the labour commissioner, the management excepted and appealed the case to the Board of General Appeals, Ministry of Labour, which after review confirmed the ruling of the labour commissioner. Management again excepted and announced an appeal from the Board's decision and petitioned the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for a judicial review of the administrative decision of the Board. Upon a review, the court reversed the decision of the Board and discharged the company.

For the benefit of this opinion, we quote the two-count petition for a judicial review; it reads thus:

"PETITIONER'S PETITION FOR JUDICIAL REVIEW

"The management of LAMCO J. V. Operating Company thru its legal counsel, respectfully prays this Honourable Court for a judicial review of the case de novo and submits the following reasons, to wit:

"1. That appellant herein being dissatisfied with the entire ruling of the Board of General Appeals excepted to and announced an appeal to the People's Civil Law Court, Sixth Judicial Circuit, for a review of the entire ruling and the records.

2. That the respondents are not entitled to any compensation for the following medical report of the doctor as can be fully seen on the attached copies and medical certificate to form a part of this petition for a review of the records.

"Wherefore and in view of the foregoing, petitioner prays that this Honourable Court review all of the records in this case de novo, to give a legal judgement as the law of the country requires."

Pleadings having rested with what the petitioner company termed "petitioner's reply", the judge sitting in chambers of the June Term of the Civil Law Court, 1982, heard the case and rendered Judgement, reversing the decision of the Board and discharging the company from the liability, basing his conclusion on the factual questions which had been decided by the Board of General Appeals in favor of the complaining employee in respect to the occupational injury he had sustained. The trial court held, in substance, that Co-appellant Willie Johnson was not entitled to the severance pay and the workmen's compensation award for the injury sustained because, under the medical certificate, he was to establish that his spine was in perfect condition before his employment with LAMCO, and that his not having proved that his spine was in perfect condition before his employment with LAMCO, he was not entitled to recover workmen's compensation for the back injury since the injury was not shown to be job-related.

Co-Appellant Willie Johnson excepted to the final judgement of the lower court and has brought this case up on a four-count bill of exceptions in which he substantially contended and argued in his brief that:

"1. The trial judge erred when he shifted the burden of proof on him, the employee, to establish that his spine was in good and perfect condition before his employment with the company since that factual issue was established before the hearing officer, and therefore, as a reviewing court, it was not within its preview to review the factual issue;

2. That the medical report in evidence having indicated that Co-appellant Johnson's earning capacity had been reduced by thirty percent as a result of the back injury, the disability was job related and these facts having been passed upon on the hearing officer level, and confirmed on appeal by the Board of General Appeals, it was not within the province of the reviewing court to set the compensation award aside on the factual issue which had been decided by the administrative agency;

3. That the judge's final judgement contravenes a well-settled principle of law which allows compensation where the employment accelerated the infirmity or joined with it to cause the disability; and

4. That the dismissal of the co-appellant's claim for severance pay which was neither contested by petitioner nor argued was erroneous."

One of the issues which counsel for appellants eloquently argued before us, and which counsel for appellee strongly resisted in eloquent terms and supported his argument by citing the Labour Practices Law of Liberia, with reference to that section which provides for a

judicial review, is that a judicial review of a decision of an administrative agency does not go to the factual questions as found and decided by the agency, but rather the reviewing court is limited to the determination of questions of law; and therefore, the reviewing court cannot base its conclusion on the factual issues found and decided by the administrative agency—i.e. the Board of General Appeals. This argument of appellants' counsel raises an important question which seemed not to have been raised in the past and decided by this Court.

The general concept of party litigants about appeals from the Board of General Appeals which is specifically constituted for final determination of matters of an industrial nature, has always been that the administrative board is a court of first instance and therefore the right of appeal as provided for in the Judiciary Law is applicable in every case to the administrative determination of the Board, whether on legal or factual questions. In this case, the petitioner company had asked the court in its petition for judicial review for a de novo trial. This general concept, we observe, has resulted in the overcrowding of the docket of the court with petitions for judicial review, and, in most cases, on the issues of fact which have been found and decided on the hearing officer level, reviewed and passed upon by the Board without any reference to the law which relates to the fact, thereby tending to involve the courts into reviewing administrative actions, factual questions and administrative policies, contrary to the doctrine of judicial review. It is therefore time that this Court goes on record as drawing a line between a judicial review and all that it entails as distinguished from a review of an appeal emanating from a lower court.

This Court would like to observe that in view of the complexity of social conditions and of the highly technical matters to which government policies pertain, administrative adjudication to settle controversies arising in the course of policy execution through the process requiring hearing, the giving of notice, the presentation of evidence and handing down of decisions concerning legal rights and duties are provided for by the law of our jurisdiction. The advantages of adjudication by administrative agencies rather than by the ordinary courts as recognized in our jurisdiction seem to include less delay, more informal procedure, freedom from highly technical and cumbersome rules of evidence, more thorough investigation, low costs, and settlement of disputes by officials who possess an expert knowledge on particular problems instead of by judges who are learned in the law but fail to qualify as specialists in various fields of government policy. If every such settlement of the ever increasing controversies arising in the course of policy execution had to await recourse to the ordinary courts, governmental operations could not be carried out effectively and with proper dispatch.

The occasions giving rise to administrative adjudication are many and they include the claims of workers against employers for unfair labour practices, claims under Workmen's Compensation Act, etc., the subject of this review.

By reason of the many complex and ever increasing industrial disputes and issues involving labour/management relations, and by virtue of the authority vested in the Legislature to establish administrative departments and agencies of government and to prescribe their operations and functions, the Ministry of Labour of the Republic of Liberia was created by the Legislature. One of the functions of this Ministry is the hearing of grievances and settlement of industrial disputes between employers and employees; between employers and employers as well as between employees and employees. For the effective execution of these important functions of the Ministry, a Board of General Appeals which is an ad hoc administrative tribunal was created in the Ministry to hear and determine appeals from determinations of a hearing officer.

For the benefit of this opinion, we quote here a relevant portion of the labor statute on the point: "Section 3. Summary Review on Appeal. The Board of General Appeals shall review the determination of the hearing officer upon the copies of the records and other evidence filed with it by the Ministry of Labour and the parties to the appeal may not produce additional evidence. If, however, the Board of General Appeals requires further evidence to enable it to make a decision or for any other substantial reason, or if, in the Board's opinion the aggrieved party was not afforded sufficient opportunity on the hearing to introduce relevant and material evidence, the Board of General Appeals may allow such evidence to be introduced either before the Board or before a hearing officer, as the Board may direct.

"Section 4. Disposition of Board of General Appeals. The Board of General Appeals may affirm, reverse or modify the determination made by the hearing officer in any matter upon appeal before it, or it may remand the matter to the Minister of Labour... for further proceeding and action by a hearing officer. Any decision disposing of the issues shall be made in writing within 30 days after the hearing of the appeal and shall be filed in the office of the Minister of Labour... The decision shall include a statement of the facts found and the reasons on which it is based. Immediately upon the filing of the decision of the Board, copies thereof shall be served on all parties to the proceedings.

"Section 5. Finality of Decision of the Board of General Appeals. The decision of the Board of General Appeals shall be final and conclusive upon the expiration of the tenth day after copies of its decision have been served on the parties to the proceeding. Unless prior to that day: "(a) The Board of General Appeals, on its own motion or on the motion of a party to the proceeding and afternotice to all parties, shall signify that it will reconsider its decision, or "(b) A party shall seek judicial review of the decision. The decision of the Appeals Board upon a reconsideration of the matter shall become final and conclusive as to all matters reconsidered upon expiration of the tenth day after copies of its decision have been served on the parties to the proceeding unless prior to that day a party shall seek judicial review of the decision.

"Section 7. Judicial Review of Decision of Board of General Appeals. A party aggrieved by a decision made by the Board of General Appeals may appeal from such decision or any part thereof to the circuit court or debt court in the county in which the Board held its proceeding by filing a petition to the Circuit Court or Debt Court within 10 days after receipt by the aggrieved party of a copy of the administrative decision. Copies of the petition shall be served promptly upon the Board of General Appeals which rendered the decision and upon all parties of record. Within ten days after service of the petition, or with further time allowed by the court, the Ministry of Labour shall file with the clerk of the circuit court a certified copy of the entire records of the proceeding under review, together with a copy of the administrative decision. It shall not be necessary to file exception to the ruling of the Board of General Appeals.

"Section 8. Conduct of Proceeding on Review. A proceeding under this chapter shall be conducted by the court without a jury and shall be confined to the record. All such proceeding shall be heard and determined within seven (7) days by the circuit court or debt court, and if an appeal is taken, to the Supreme Court as expeditiously as possible. The judgement or order of the circuit court or debt court shall be final subject only to review by the Supreme Court" (emphasis ours). See Labour Practices Law, 18-A: 4, 5, 6, 7, and 8.

Matters which are within the province of administrative determination such as those cognizable before the Ministry of Labour and reviewable by the Board of General Appeals from a determination of a hearing officer of the Ministry, are administrative in nature and not judicial matters cognizable before the courts, except upon petition in each case for a judicial review of the administrative decision on the question of law as it relates to the facts upon the records. In the labour statute quoted supra, when it is said that: "Proceeding under this chapter shall be conducted by the court without a jury and shall be confined to the record", it is meant, in our opinion, a determination of the legality or lawfulness of the action taken by the administrative agency based upon fact questions as found by the agency but not to be involved in the finding and determination questions of fact which are exclusively that of the administrative agency, except to match those fact questions to the applicable law controlling.

We quote the relevant legal authority in support of our holding:

"The courts frequently apply a restrictive standard for scope of review in some areas which involve other than pure fact questions, and this rule is variously stated as follows: The function of the court is limited to seeing that the statute was applied by the administrative agency in a just and reasoned manner; the determination must be accepted by the reviewing courts if it has any reasonable basis in law, or if it has a reasonable basis in the evidence and is not inconsistent with the law, or if it has warrant in the record and a reasonable basis in law; the function of the court is to determine whether there is warrant in the law and the

facts for what the administrative agency has done, that is, if the agency's action has support in the record and the applicable law, or to determine whether or not there is a rational and legal basis for the decision of the agency, and if there is factual and legal support for the conclusion of the administrative agency, the task of the court is at an end." 2 AM. JUR. 2d., Administrative Agency, § 619.

Quoting from the same authority on this point, in support of our holding, we have the following:

"The cases are legion which stress the fact that the function of the court, or judicial review of the action of administrative agencies, is limited to judicial questions, even though the statute provides for review on the law and the facts, or a trial de novo, or for a suit to test the validity of rules, regulations, or orders. The scope of review is not the same as upon review by an appellate court of a judgement of a lower court. The boundaries of judicial review, however, are stated in varying standards which themselves are subject to variation in particular situations.

Judicial review is ordinarily limited or confined to the record of the proceedings before the agency and to the consideration of questions of law or to questions of law and the sufficiency of the evidence, or to determining whether the action of the agency is legal or in accordance with the law or whether errors of law have been committed." 2 AM JUR. 2d, Administrative Agency, § 612.

The petition which brought this matter before the lower court for judicial review simply prayed for a de novo trial of the case by the court, because, according to the petition, the petitioner company was dissatisfied with the decision of the Board of General Appeals, and also because from the medical certificate in evidence the complaining employee was not entitled to compensation. And so there is no question of law presented for review by the courts, neither was any allegation of fraud nor an allegation of any arbitrary or capricious action on part of the Ministry of Labour which deprived the petitioner of due process of law. According to another legal authority, it is held and we quote:

"Questions of fact involved in a proceeding before an administrative agency are to be determined, at least primarily, by the agency, rather than by a court; and in the absence of fraud, lack of jurisdiction, or arbitrary or capricious action constituting a denial of the process of law, the agency's finding of fact, or decision of a question of fact, is to be accepted as final, binding, and conclusive, and may not be reviewed by a court except to the extent that a constitutional or statutory provision makes it reviewable..."73 C.J.S., Prohibition, § 216.

De novo trial is not applicable on judicial review of administrative decisions but applicable only on appeal from the judgment of a court not of record. For reliance, see Labour

Practices Law, quoted supra and Civil Procedure Law, Rev. Code 1: 52.5. A reviewing court of administrative determination will not disturb the finding of facts by the agency because the finding and determination of facts questions is conclusively within the province of the administrative agency and therefore such finding is final and binding except under certain situation. Here is the relevant legal authority in support:

"An administrative agency's findings as to the facts which are supported by substantial evidence are binding and conclusive on, and may not be disturbed or set aside by, a court, in the absence of fraud or bias, where a hearing complying with the requirements of due process of law was accorded, the agency acted within its jurisdiction and authority, and the findings were made in compliance with law and were the result of fair consideration. In such case, a court must accept the findings as final and true, and may not substitute its own judgement or finding of fact for that of the agency." 73 C. J. S. , Prohibition, § 223.

As to the medical certificate under which appellee contended that Co-appellant Johnson was not entitled to compensation, none of the two medical certificates which were accepted into evidence in this case at the hearing officer level deny that the coappellant was injured and treated while in the employ of the appellee company. The certificate of May 28, 1982 from the company's doctor gives the history of the incident of September 13, 1980, when Co-appellant Johnson's back gave way in the process of changing a tire of the truck he was assigned to operate, how he was treated, but that the back pains would continue. It also referred to the incident of February 20, 1982, when co-appellant fell and injured his back but stated, however, that at the time co-appellant sprained his back on September 13, 1980, there was already a pre-existing complaint in his lumbar spine, and that while it may be true that Co-appellant Johnson did sprain his back on September 13, 1980, and fell on February 20, 1982, and injured his back, the sprain could only be a contributing factor in the back pain rather than the sole cause of the patient's back pains.

In the second medical certificate of October 18, 1982, the medical doctor noted that he had seen the patient, Co-appellant Willie Johnson herein, in May 1982, and that he recommended that he be exempted from heavy duty assignments. He observed that from a thorough examination of the patient, all function-motions of the patient lumbar spine were reduced by half of the normal range which constituted a permanent partial disability of the worker which he assessed as being thirty percent of his physical earning capacity. The medical doctor, however, held that such spine deformities of the patient were the result of a long evolutionary disease of the spine which had occurred over a period of five years, and that unless Mr. Johnson, the coappellant, could prove that this spine was in perfect condition before his employment with the company, he could not claim compensation, the disease not being job-related.

It should be remembered that co-appellant Johnson was employed by appellee in 1975 as a heavy duty operator, which job he performed from that date until the September 13, 1980 incident, that is five years of continued service with the appellee company without any evidence of spine or other spine related complaint. During argument before us, counsel for appellee answered a question in the affirmative that it is a policy of the company that medical examination must precede employment and no one may be employed in the company who is not declared medically fit for employment, but contended that in the case of Co-appellant Johnson, he was already in the employ of a subcontracting company of the appellee and therefore he was employed without being subjected to medical examination, taking for granted that he was medically fit for employment.

From this argument of counsel for appellee, it must be assumed that Co-appellant Johnson was medically fit for employment and was in no way suffering from pre-existing spinal complaint at the time of his employment as advanced by the medical report. Neither could appellee claim that the coappellant had a pre-existing spine complaint before his employment for which he is not entitled to workman's compensation award, as the doctrine of waiver operates against the appellee company. Under the circumstances, it must be concluded that the disease is job-related or, in other words, a compensable occupational disease, and the Board of General Appeals, from the hearing officer level, had therefore correctly found in favour of the co-appellant based upon the facts presented at the hearing and not disputed.

Granting, but not conceding, that the sprain of appellant's back on September 13, 1980, and the subsequent fall he had on February 20, 1982, aggravated the pre-existing spinal complaint, legal authorities hold, and we quote:

"Death or disability due to the workman's previously weakened infirm, or diseased condition is compensable as arising out of the employment where the employment accelerated the infirmity or joined with it to cause the death or disability." 99 C.J.S., Workmen's Compensation, § 2121, previously weakened or diseased condition.

Our next and serious dismay came about when we discovered from the argument that Co-appellant Willie Johnson was dismissed by appellee for reason termed to be "medical grounds" and which counsel for appellee explained during argument to mean continued illness as a result of the back complaint. In our opinion, Co-appellant Johnson's dismissal was wrongful and the Board so correctly found. To contract an occupational disease and report sick is not a serious breach of duty for which an employee may be dismissed without being entitled to severance pay. We cannot find any parity of reason for the trial court to have granted the petition, reversed the decision of the Board and discharged the appellee from liability.

In view of the foregoing and the citation of legal authorities in support thereof, it is our considered opinion that the judgment of the trial court reversing the Administrative decision of the Board should be, and the same is hereby, reversed with costs against the appellee, and the decision of the Board of General Appeals is hereby confirmed and affirmed. The Clerk of this Court is hereby instructed to send a mandate to the Ministry of Labour commanding it to resume jurisdiction over this case and to give effect to this opinion. And it is hereby so ordered.

Judgment reversed