J. WILLARD KARTOE and **PHILIP G. WILLIAMS**, Hearing Officer, Ministry of Labour, Appellants, v. **INTER-CON SECURITY SYSTEM, INC.**, by and thru its Authorized Representative, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: May 29, 1997. Decided: July 22, 1997.

1. Where a contract is concluded between the employer and the employee for an indefinite period, the employer has the right to dismiss the employee on condition that he gives the employee two weeks written notice in the case of a non-salaried employee and four weeks written notice in the case of a salaried employee or make payment in lieu of such notice.

2. An employee who is not afforded or given the necessary two weeks notice is entitled to payment in lieu of such notice only on the date of dismissal or subsequently, and such compensation shall not be made under the wrongful dismissal provision.

3. An employee who is dismissed without being provided the required two weeks notice is entitled to one month's pay or remuneration in addition to the two weeks pay in lieu of notice since the period of notice begins to run on the first day of the period next following that in which the notice was served on the employee, and not to compensation for wrongful dismissal.

4. Courts are not at liberty to declare statutes invalid though they may be harsh, unfair, abused and misused, may afford an opportunity for abuse in the manner of application, may create hardships or inconveniences, may be oppressive or mischievous in their effects, burdensome on the people, and of doubtful propriety.

5. The courts are not the guardians of the rights of the people against oppressive legislation which does not violate the constitution; the protection against such burdensome laws is by appeal to the justice and patriotism of the people themselves or their legislative representatives..

6. Rules of law must be so interpreted, when applied to the facts of a given case, as to bring about practical justice, if possible; but the application must be made to the lawmaking power and not to the courts.

7. The courts have no legislative powers and in the interpretation and construction of statutes, their sole function is to determine, and within the constitutional limits of the legislative power, to give effect to the intention of the Legislature.

8. The courts cannot read into a statute something that is not within the manifest intention of the Legislature gathered from the statute itself, and any departure from the meaning expressed by the words of the statute is to alter the statute, to legislate and not to interpret.

9. The responsibility for the justice and wisdom of legislation rests with the Legislature and it is the province of the courts to only construe, and not to make the law.

10. An employee is not allowed to maintain a position inconsistent with the guidelines of the employment agreement and the position under which he accepted wages and benefits.

11. An employee who has received benefits under an agreement is estopped from rescinding the agreement in order to receive additional compensation after his services have been terminated.

12. A party will not be allowed to maintain a position inconsistent with the position under which he has accepted benefits.

Appellant whose services had been terminated by the appellee, filed suit with the Ministry of Labour claiming wrongful dismissal because of the appellee's failure to provide the two weeks required notice period or compensation in lieu of such notice at the time of the termination of appellant's services. The appellant further claimed that he had worked for thirty minutes each day as muster time for which he was not compensated, and he demanded that he be compensated for that period. The hearing officer at the Ministry of Labour awarded the appellant compensation of one month for each year of service as if he had been wrongfully dismissed, and for the muster time, among other things.

On petition to the National Labour Court filed by the appellee, the court reduced the award, firstly denying the appellant the right to muster pay and, secondly, denying compensation to the appellant under the provision of the wrongful dismissal statute. From this decision, the appellant appealed to the Supreme Court.

The Supreme Court affirmed the decision of the National Labour Court, with modification, holding that under the provisions of the agreement under which the appellant had been employed and had received benefits, he had agreed that he would not be entitled to compensation for the muster period, and hence he was estopped from now demanding compensation after his services had been terminated. The Court relied on the principle that a party is precluded from rescinding a contract which he had earlier affirmed by accepting the benefits thereunder.

With reference to the claim for wrongful dismissal, because the employer had terminated the services of the appellant without giving the required two weeks notice and without providing payment in lieu of such notice one month after the termination of appellant's services, the Court held that the award of the hearing officer was contrary to the provision of the statute and referred to the opinion in which the Court had recalled the decision relied upon by the hearing officer. The Court noted that under the relevant statute, the only compensation to which the appellant was entitled was one month plus two weeks since the notice was to commence as of the date of the last salary payment. The Court observed that courts were

only to interpret the law and not to make the law, and opined that courts were not the guardians of the rights of the people against oppressive legislation which does not violate the Constitution and, therefore, had no right to overturn any legislation no matter how oppressive, harsh, unfair, abused and misused, mischievous or burdensome it might be. As such, it determined to strictly follow the wording of the statute. The Court therefore *affirmed* the judgment of the National Labour Court, with modification.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Anthony Morgan of the Morgan Grimes and Harmon Law Firm for the appellant. *G. Wiefuah A. Sayeh* of the Kemp and Associates Legal Chambers, Inc. for the appellee.

As disclosed by the trial records certified to us in this case, the petition for judicial review was filed by Inter-Con Security Systems, Inc., appellant, against Hearing Officer Philip G. Williams of the Ministry of Labour, and J. Willard Kartoe, respondents. The petition grew out of the complaint filed by J. Willard Kartoe, of the city of Monrovia, Liberia, as complainant, against Inter-Con Security Systems, Inc. also of the City of Monrovia, Liberia, defendant, for wrongful dismissal.

J. Willard Kartoe, appellant, was employed on August 16, 1990, and served the Inter-Con Security Systems, Inc. faithfully and diligently, without any fault or previous warnings or wrong doings prior to January 25, 1995, when he was summarily dismissed without any justifiable reasons. After a careful investigation of the case at the Ministry of Labour, the hearing officer, Philip G. Williams, ruled on the 11thday of March, A. D. 1996, as follows, to wit:

"RULING

After carefully absorbing the relevant facts and circumstances, coupled with the testimonies of the witnesses, it is our candid and considered opinion that the defendant Inter-Con Security Systems, Inc., exercised its right under section 1508 as stipulated in our labour policy, except that management did not follow-up the criteria by fully compensating the complainant with the required benefits. Predicated upon the above, we must state here that in a dismissal case of this nature, the dismissed employee, as in this case, is qualified to be compensated a month's salary for each year he served his employer, that is Defendant Inter-Con, under the above holding of the Supreme Court of Liberia as pronounced in the case *BOA Management v. Mulbah,* decided on July 14, 1989, relying on 23LLR, page 66, syl. 5, text on page 80 - 81.

In consideration of the above, it is also our holding that complainant be compensated for his training covering the period November 3 - 17, 1990, which is equivalent to twenty four (24) hours as reflected on exhibit C-2 as well as those benefits provided by management as also reflected on exhibit D/M-14 which he has not received.

That in to say, in accordance the below tabulations:

1. 960 hours 5 (yrs salary)*0.80---------- US$768.00
2. 24 hours training * 0.80---------- 38.40
3. Accrued annual leave---------- 70.40
4. Two weeks pay in lieu of notice--------- 76.80
5. Current pending earning---------- 96.00
6. Balance quarterly training (20hrs.)*0.80--- 16.00
7. Muster: 3hrs per week x 4 weeks = 12hrs.

   Per month x 12-144hrs. x 4.5years = 648

   Hrs.x 020(time and a half)----------777.60

Total ----------US$1,843.20

(one thousand eight hundred forty three 20/100 dollars) And it is hereby so ordered.
Given under my hand and seal of this
Ministry in the City of Monrovia, on this
11th day of March, A. D. 1996.
SGD: Philip G. Williams
" Philip G. Williams
DIRECTOR FOR LABOUR STANDARDS
Hearing Officer .

It is important to note that after the rendition of the above quoted ruling, and subsequently upon proper motion made by Defendant Inter-Con Security Systems, Inc., the co-respondent hearing officer, on the 28t h day of August, A. D. 1996, modified his ruling of March 11, 1996, to read as follows, to wit: "Wherefore, and in view of the foregoing, we are left with no other alternative but to uphold that portion of the Honourable Supreme Court's ruling in the *Beyan* case, being the contention of movant. It is therefore our holding that our previous ruling of March 11, 1996 is hereby modified to read as follows: That respondent/plaintiff be reinstated and accorded all legal benefits as to say that he was never dismissed. On the contrary, he should be compensated the following entitlements in lieu of reinstatement, as required by the Labour Practices Law of Liberia. That is to say, in accordance with the below tabulations:

1. Compensation for training Nov. 3-17, 1990 at US$0.80 at rate US$38.40

3. Accrued annual leave "70.40

4. Two weeks pay in lieu of notice 76.80

5. Current pending earnings ‘96.00

6. Balance quarterly training (20 hrs.) x 0 80." 16.00

7. Muster: 3 hrs. per week x 4 weeks = 12hrs.

per month x 12 - 144 hrs. x 4.5 years = 648

hrs. x. 020 (time and a half) 777.60

Total: US$1,075.20

(One Thousand, Seventy-Five 20/100 U.S. Dollars)

And it is hereby so ordered.
Given under my hand and seal of this
Ministry in the City of Monrovia, on this
28th day of August, A. D. 1996.
SGD: Philip G. Williams
" Philip G. Williams
DIRECTOR OF LABOUR STANDARDS/
HEARING OFFICER

It was from this modified ruling of the hearing officer, dated the 28thday of August, A. D. 1996, which was subsequently reviewed by His Honour Varnie D. Cooper, Assigned National Labour Court Judge, and who, on the 3rd day of December, A. D. 1996, ruled sustaining the awards under columns 2, 3, 4 and 5 of the hearing officer's modified ruling of August 28, 1996, as being legitimate and legal and denying awards under columns 1 and 6 of said ruling.

It is from the ruling of the National Labour Court of the 3rdof December, A. D. 1996, that the appellant has appealed to this Honourable Court for judicial review. The appellants have accordingly filed a seven (7) count bill of exceptions against the ruling of the trial judge. However, this Court deems it necessary to only pass upon counts 1, 2, 3, and 7 of the bill of exceptions which it considers to be salient or germane to the legal disposition of this case. These counts are stated as follows, to wit:

"1. Because even though the precondition for dismissal of a non salaried employee in the giving of two weeks written notice or payment in lieu thereof, and the records in this case

show that complainant Kartoe was never served any written notice, and has not been paid in lieu of notice, Your Honour ruled that complainants/appellant's dismissal was not wrongful, to which judgment respondent/ appellant there and then excepted.

2. And also because even though appellee, intending to dismiss Respondent/Appellee Kartoe under section 15083 of the Labour Laws of Liberia, failed to comply with the provisions of said law by giving respondent/appellant the required two weeks written notice or to pay him in lieu thereof, and that such failure thereby rendered the dismissal wrongful, Your Honour failed to award respondent/appellee compensation for wrongful dismissal as provided for under chapter 1, section 9 of the Labour Laws of Liberia, and as prayed for by Respondent/ Appellant Kartoe in his complaint and in count 6 of his returns to the petition for judicial review. To which ruling respondent/ appellant there and then excepted.

3. And also because even though it was proved that Respondent/Appellant Kartoe was required to and did serve the appellee 30 minutes daily at muster, which is a priority duty of appellee, in addition to the other duties assigned daily, and that he was not paid for said 30 minutes muster duties, and even though under the Labour Laws of Liberia (chapter 16, sec. 1508) "an employee must be paid for every day he presents himself ready and willing to work, whether or not the employer provides work for him to do", Your Honour overruled the hearing officer's ruling awarding Respondent Kartoe the sum of US$777.60 for the 30 minutes daily muster he served the appellee for more than four years, for which muster he has not been paid. To which judgment, respondent/ appellant then and there excepted. . . .

7. And also because Your Honour erred by failing to award Respondent/Appellant Kartoe the twenty-four (24) hours training (Nov. 3-17, 1990), training fees compensation amounting to US$38.40, which was proven at the hearing to have been earned by Respondent/Appellant Kartoe and not yet paid by Inter-Con Security Systems as ruled in the first column of the hearing officer's ruling dated August 28, 1996."

The complainant contended throughout the trial that as he was dismissed without written notice or paid in lieu of such notice, his termination was wrongful; that during his employment he was required to report on each working shift for 30 minutes muster period to the commencement of his assigned duty; and that he underwent and successfully completed the basic security course prescribed by the appellee prior to his employment for these respective periods, for which he now demanded compensation.

According to the evidence adduced at the trial, the law controlling and applied by the judge of the court below in the disposition of the various contentions raised by the parties in the case under judicial review, this Honourable Court considers the points hereunder stated as the salient issues for the consideration of this case in the interest of transparent justice to the party litigants:

1. Whether or not the dismissal of an employee under chapter 16, section 1508(3) by an employer, without the issuance of a prior written notice but the payment in lieu of such notice subsequently, renders the dismissal wrongful or illegal?

2. Whether or not an employee is entitled to muster period payment at his termination despite the fact that he had prior knowledge that said period was not considered as part of the official work time, before his employment? and

3. Whether or not an employee can be allowed to maintain a position inconsistent with his prior accepted conditions of employment upon termination of his services?

In his ruling of the 3rd day of December, A. D. 1996, His Honour Varnie D. Cooper, Sr., assigned judge, National Labour Court, stated that: "From a careful scrutiny of the facts and circumstances surrounding this case, taking into consideration the applicable law, section 1508(3) of the Labour Law of Liberia and the *BAO Management* case, the court is of the opinion that the dismissal of Complainant/Respondent Kartoe under the law, quoted *supra,* cannot be wrongful dismissal. Hence, the court says that the dismissed employee cannot be awarded one month salary for each year he served his employer as stated by the hearing officer on page 7, paragraph 1 of his ruling. Consequently, the court finds no basis to award him additional compensation of US$768.00 for five years, as calculated by the hearing officer.

Chapter 16, section 1508(3) of the Labour Practices Law, Lib. Code 18-A, provides that: "Where the contract is concluded between the employer and the employee for an indefinite period, the employer shall have the right to dismiss the employee on condition that he gives him two weeks written notice in the case of non salaried employee and four weeks written notice in the case of salaried employee or payment in lieu of such notice."

The appellant in this case contended that under the law, quoted *supra,* the judge has ignored the fact that section 1508(3) of the Labour Law had not been properly applied, that is to say, the required written notice was not given nor was payment made in lieu of such written notice at the time of the dismissal as required by law. The appellant further argued that his services were terminated on January 25, 1995, but that the payment in lieu of notice was made on February 25, 1995. Therefore, he said, his dismissal was wrongful and the final ruling of the National Labour Court judge was erroneous, unfair, and prejudicial to his interest.

The evidence adduced at the trial clearly revealed that appellant, a non salaried employee, and the appellee concluded an employment contract of indefinite duration; and that the appellant's services were terminated without written notice or payment in lieu of such notice, even though payment offered was not received on the exact date of his dismissal. Hence, the appellant alleged that his termination was wrongful and that this entitled him to

compensation under the wrongful dismissal law instead of the two weeks notice pay as prescribed under chapter 16, section 1508(3) of the Labour Laws of Liberia.

Our interpretation and construction of chapter 16, section 1508(3) of the Labour Laws of Liberia, as it relates to the dismissal of a salaried employee, is that if the employee is not afforded or provided the necessary two weeks written notice, he shall be entitled to payment in lieu of such notice only on the date of dismissal or subsequently, as in the case at bar. As such, we hold that compensation shall not be made under the wrongful dismissal provision of the law as alleged by the appellant.

The records in this case further revealed that the appellant was terminated by the appellee on the 25th day of January, A. D. 1995, without written notice as prescribed by law; rather, the payment in lieu of notice was offered to the appellant on the 25th day of February, A. D. 1995, exactly one (1) month from the date of the said dismissal. Therefore, we hold that the appellant is entitled to one month's pay or remuneration, in addition to the two (2) weeks pay in lieu of notice, because the period of notice in the instant case began to run on the first day of the period next following that in which the notice was served on the appellant. For reliance, see Labour Practices Law, Lib. Code 18-A: 1508(4).

Courts are not at liberty to declare statutes invalid though they may be harsh, unfair, abused and misused, may afford an opportunity for abuse in the manner of application, may create hardships or inconvenience, may be oppressive or mischievous in their effects, burdensome on the people, and of doubtful propriety.

The courts are not the guardians of the rights of the people against oppressive legislation which does not violate the provisions of the Constitution. The protection against such burdensome laws is by an appeal to the justice and patriotism of the people themselves or their legislative representatives. *The Liberia Water and Sewer Corporation v. Kollie and Kpanan et al.,* 37 LLR 193 (1993); 11 AM. JUR, *Constitutional Law,* § 136, pp. 802-03.

The rules of law must be so interpreted, when applied to the facts of a given case, as in the instant case, to bring about practical justice, if possible. The application must be made to the lawmaking power and not to the courts. 14 AM. JUR., *Courts,* § 44, p. 275.

Mr. Justice Tubman, speaking for the Court in 1942, in the case *Roberts v. Roberts,* said: "The courts have no legislative powers and in the interpretation and construction of statutes, their sole function is to determine, and within the constitutional limits of the legislative power, to give effect to the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. If the true construction will be followed with harsh consequences, it cannot influence the courts in administering the law. The responsibility for the justice or wisdom of

legislation rests with the Legislature and it is the province of the courts to construe, not to make the law." *Roberts and Roberts v. Roberts,* 7 LLR 358 (1942).

Quite recently, that is, in 1989, this Court interpreted the identical statute in an opinion delivered by Mr. Justice Kpomakpor, in which he said:

"The reliance placed upon Berry is misplaced, to say the least, as there was not statutory authority for the Court's position in 1982 and definitely there is none today. As a consequence of this fact, we hereby overrule the position of the *Berry* opinion in so far as it prescribed, in violation of section 1508(3), that as a prerequisite to dismissing an employee, the employer must assign a cause or causes. In 1982, when the *Berry* case was heard, the relevant statute found in the Labour Practices Law of Liberia was section 1508(3). Today, the statute words are still the same; it has not been repealed or even amended. Although the facts and circumstances in the *Berry* case and those in the case at bar are clearly distinguishable, we must overrule the former because we wish that trial judges and others will guide against reliance being placed upon it in the future." *The Management of BAO v. Mulbah and Sikeley,* 36 LLR 404 (1989), decided July 14, 1989.

Sub-section 3 of section 1508 being very clear, unambiguous and unequivocal, we are in complete agreement with the Court's holding in *The Management of BAO* case as well as the applicability of section 1508(3), and further sustain the ruling of the National Labour Court as it relates to payment of two weeks pay is lieu of notice to the appellant, as prescribed by section 1508(3), instead of wrongful dismissal compensation an contended by him under chapter 1, Title 18-A of the Labour Practices Law, section 9(a)(ii).

Traversing the issues with respect to the appellant's claims for entitlement to pay for muster period, even though he had given his prior written consent that said period was not considered as part and parcel of the official work time before his employment, and whether or not the appellant shall be legally allowed to maintain a position inconsistent with his prior accepted condition of employment upon termination, the certified records in this case revealed that the appellant, prior to his employment with the appellee duly signed documents (in bulk) entitled Inter-Con Security Systems, Inc., Conditions of Employment and Standards of Conduct and Performance Agreement With Respect to Hours of Work and Muster Period. For the benefit of this opinion, we herewith quote the relevant portions of said documents as they relate to hours of works muster period as opposed to the appellant's claim:

"Inter-Con Security Systems, Inc. Conditions of Employment and of Standards of Conduct and Performance Agreement

I hereby certify that I have read and understand the Inter-Con Security Systems, Inc. conditions of employment and standard of conduct and performance. I agree to comply

with the standard of conduct and performance and conditions of employment and I understand and agree that each item stated therein is a condition upon which my employment is based. I further understand and agree that if I should violate any item contained in the conditions of employment or standard of conduct and performance, I will have violated a condition of my employment and I will be subject to termination or other discipline.

SGD: Jackson Willard Kartoe
"Jackson Willard Kartoe

_____

SIGNATURE
August 15, 1990

Inter-Con Security System Inc.

_____

SIGNATURE
August 15, 1990

2. Hours of work conditions

c) Inter-Con Security Systems, Inc., being a professional company engaged in providing security services, all employees are required to report on each scheduled working shift for muster prior to the commencement of their assigned duty."

The second and third issues are whether or not the appellant is entitled to muster period compensation at his termination despite the fact that he had given his prior written consent that said period was not considered as part of the official work time before his employment, and whether or not the appellant shall be allowed to maintain a position inconsistent with his prior accepted conditions of employment?

In count three of the bill of exceptions, the appellant contended that he was required to serve and did serve the appellee 30 minutes daily at muster, which is a priority duty of appellee, in addition to the other duties assigned daily, and that he was not paid for said 30 minutes muster duties even though under the Labour Laws of Liberia, chapter 16, section 1511, an employee must be paid for every day he presents himself ready and willing to work, whether or not the employer provides work for him to do. Appellant argued that notwithstanding the provisions of the law, the National Labour Court judge overruled the hearing officer's ruling awarding him US$777.60 for the 30 minutes daily muster he served the appellee.

The appellee contended, on the other hand, that appellant having served the appellee, Inter-Con Security Systems, Inc., for approximately four years, he received all wages and fringe benefits legally due him in keeping with paragraph 4, section 1511 of the Labour Laws of Liberia. Therefore, appellee says, he cannot now make claims for 30 minutes muster pay and other benefits contrary to the guidelines of the appellee company which the appellant signed prior to his employment on August 15, 1990, indicating, among other things, that the muster period was not compensable.

We observed that the conditions of employment and standards of conduct and performance agreement was duly signed by the appellant on August 15, 1990 and witnessed by an Inter-Con Security personnel indicating to this Court that the appellee had performed the contract and that the appellant had waived his right to receive compensation for said muster period. In addition to the above, and as further culled from the records of the case, we see that the appellant had performed services for the appellee for approximately four years. These indicate that he had made no contention for compensation for said muster period prior to the termination of his services. This Court notes that the appellant cannot legally be allowed to maintain a position inconsistent with the guidelines of the employment agreement and the position under which he accepted wages and benefits. Appellant is hereby prevented under the law from demanding compensation for muster period at the termination of his services under the doctrine of estoppel which now operates against him. For reliance, see *Acolatse v. Dennis,* 22 LLR 147 (1973), wherein the Supreme Court, speaking through Mr. Justice Wardsworth, said: "A party cannot rescind a contract when he affirms it by accepting benefits under it." Furthermore, this Court has also held that " a party will not be allowed to maintain a position inconsistent with the position under which he had accepted benefits." See *King v. Wiechmann,* 2 LLR 231 (1915); *Francis v. Liberian French Timber Corporation,* 22 LLR 168 (1973).

Further to the above, we observed from the records certified to us that, without exceptions, all employees of the Inter-Con Security Systems, Inc., are required to sign these guidelines prior to their employment.

In accordance with the evidence adduced at the trial, the conditions and circumstances narrated above, and the laws quoted *supra,* this Court sustains the ruling of the judge of the National Labour Court denying compensation to appellant for muster period. We therefore affirm the said ruling of the National Labour Court, presided over by His Honour Varney D. Cooper, dated the 3rd day of December, A. D. 1996, denying appellant additional pay on column 6. The Court further confirms and sustains the award under columns 2, 3, 4, and 5 of the labour judge's ruling as being legal and legitimate and modifies column 1 of the above stated ruling by granting compensation to the appellant for the training period as ruled by the hearing officer.

Wherefore, and in view of the foregoing, it is the considered opinion of the Court that the judgment and award of the judge of the National Labour Court and the ruling of the hearing officer, not inconsistent with this opinion, should be and the same are hereby confirmed with the modification stated herein. Costs are disallowed. And it is hereby so ordered.

Judgment affirmed with modification.