STEVEN KOVAH et al. and THE BOARD OF GENERAL APPEALS, Ministry of Labour, Appellants/Respondents, v. **THE MANAGEMENT OF BONG MINING COMPANY**, by and thru its General Manager, Appellee/Petitioner.

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

Heard: June 25, 1986. Decided: July 31, 1986.

1 At common law, an interlocutory judgment is one which lacks finality. It is judgment which "speaks between", that is, it does not speak the last word which the court may be required to speak in the case.

2 An interlocutory judgment is a judgment rendered in the middle of a cause upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the suit.

3 A judgment is also interlocutory when it is made before a final decision, for the purpose of ascertaining a matter of law or fact preparatory to a final judgment, or which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the process of the case, but does not adjudicate the ultimate rights of the parties or finally put the case out of court.

4 A judgment on the merits defining and settling the rights of the parties is not rendered interlocutory by the fact that further orders may be necessary to carry into effect the rights settled by the judgment.

5 At common law, a judgment is said to be a final judgment which determines and disposes of the whole merits of the cause before the court by declaring that the plaintiff is, or is not, entitled to recovery by the remedy chosen, or completely and finally disposes of a branch of a cause which is separate and distinct from other parts thereof.

6 At common law, a final judgment may be further explained to mean a judgment which determines a question in such a manner as to terminate or end the matter so completely as to preclude all future inquiry concerning the truth itself.

7 For purposes of appeal, a final judgment is one which terminates the litigation between the parties on the merits and leaves nothing to be done but to enforce by execution what has been determined.

8 A judgment rendered by a higher court or tribunal which remands the matter to a lower court or tribunal for such proceedings as will further enable the higher court or tribunal to finally determine the rights of the parties, is an interlocutory and not a final judgment.

9 Within 30 days after the notice of appeal has been filed, the hearing officer shall file with the Board of General Appeals the decision, testimony, minutes, all documents and physical evidence offered before the hearing officer, whether or not they were admitted in evidence or used in the proceeding, as well as the determination made by the hearing officer.

10 The Board of General Appeals shall review the determination of the hearing officer upon the copies of the record and other evidence filed with it by the Minister of Labour and Youth, 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 given sufficient opportunity during 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.

Appellants, employees of the appellee, were arrested and charged with property theft, as a result of which the appellee suspended them from duty pending their being cleared of the criminal charges. Appellee, however, subsequently dismissed the

appellants for lack of confidence and breach of the rules of the establishment. Thereafter, appellants were issued a certificate by the magistrate clearing them ofthe charges. Notwithstanding, the appellee refused to reinstate them. The appellants then file a joint complaint with the Ministry of Labour. The hearing officer ruled in their favor, awarding them an amount of $14,570.40. Upon appeal by the appellee to the Board of General Appeals, the hearing officer's ruling was modified, increasing the award to $25,769.43. The appellee appealed the ruling of the Board to the Sixth Judicial Circuit, alleging among other things, that the evidence used by the Board to arrive at the amount of the increased award was obtained from documents submitted by the appellants, documents which the Board itselfhad earlier rejected. The trial judge sustained the contention of the appellee, and ruled that the case be remanded to the hearing officer in order to allow proper procedure to be used in admitting the evidence.

Being dissatisfied with the ruling of the trial judge, the appellants appealed to the Supreme Court. The Supreme Court *denied* the appeal and affirmed the ruling of the trial court, holding firstly that it was in full agreement with the ruling of the trial judge and that it was satisfied that he had not erred, and secondly, that the ruling of the trial court from which the appeal was taken was interlocutory and therefore not appealable.

Boima K Morris and *Julius Adighibe* appeared for appellant.

J. D. Gordon and *S. Edward Carlor* of the Carlor, Gordon, Hne and Teewia Law Offices appeared for Appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

Appellants, Steven Korvah, John Kollie and Roosevelt Ben had served the Bong Mining Company (B.M.C.) as security officers for nine (9), six (6), and three (3) years, respectively, until February, 1982. On February 6, 1982, they were arrested by the Liberia National Police and charged with property theft, whereupon, the B.M.C.

wrote them jointly on February 13, 1982, suspending them from duty until they were cleared of the criminal charges levied against them. However, on February 19, 1982 the said B.M.C. wrote the appellants again, this time effectively dismissing them from work for lack of confidence and for breach of the rules of the establishment. On April 24, 1982, the Bong Mines Magisterial Court issued a certificate of clearance to the dismissed employees, absolving them from the charges against them. Subsequently, appellants presented the clearance to a reluctant management that refused to honor it.

Apparently irate, appellants proceeded to file a joint complaint with the Ministry of Labour on May 17, 1982 against the B.M.C. for wrongful dismissal. After the usual due process, the hearing officer ruled on April 25, 1984, holding for the dismissed employees. The B. M.C. thereupon appealed to the Board of General Appeals of the said Ministry of Labour and, surprisingly, appellants also appealed to the Board against the hearing officer. Hence the Board was confronted with two appeals. At the conclusion of its joint hearing, the Board on June 14, 1984, eliminated from the record certain documents that had appeared in the record which had not first reached the hearing officer. Unfortunately, when it rendered a final ruling on August 14, 1984, the Board upheld the hearing officer to the effect that appellants were wrongfully dismissed, but modified the award of the hearing officer in favor of appellants by increasing it from the $14,570.40 awarded to the sum of $25,769.43. This higher award by the Board was due to the fact that it had turned around and, in its calculation of awards for appellants, used the very documents presented by appellants which the Board had earlier rejected and put aside on June 14, 1984, as being dehors the record of the case from the hearing officer.

Dissatisfied, appellee petitioned the Civil Law Court of the Sixth Judicial Circuit seeking judicial review for the fact that the Board had acted illegally by using documents it had earlier rejected as dehors the records of the trial before the hearing officer in order to make its award to appellants. Arguments were heard on January 29, 1985, and on February 8, 1985, the trial judge sustained the petitioner's position that the Board ought not to have used the evidence on which it based its calculations. The

judge further maintained that the Board has at its disposal the power of contempt for disobedience to its precepts, and therefore the refusal of the appellee company to furnish it needed employee documents was indeed no justification for the use of extrinsic evidence, especially evidence which the Board itself had previously rejected. The judge therefore ruled that the case be remanded to begin at the hearing officer level for the second time in order to allow proper procedure to be used to obtain evidence that would allow a correct calculation of awards to be made to appellants.

It is that decision which precipitated this appeal, in which appellants substantially claim that the trial judge's ruling should be reversed and the Board of General Appeals' upheld, based on a justification of the position taken by said Board in using the subject document in controversy. Appellants complain that where management had refused to furnish the Board employment documents, the latter has right to use the documents furnished by the said appellants in order to facilitate calculation of its awards. Appellants maintain that even though the Board had earlier put aside the documents, it had not completely removed it from the case file and, consequently, it had right of resource to the said record where a party refused to furnish the Board with documents in its possession.

Neither party has questioned the ruling of wrong ful dismissal held for appellants. Therefore, it is apparent that the parties are merely in disagreement on the award given, and the fact that the decision was based on information obtained from a document in controversy. Appellee, however, says this appeal should be dismissed because the ruling appealed from is interlocutory and not final and, consequently, not appealable. Appellee company maintains that the Board of General Appeals had used evidence wrongly obtained to arrive at its awards to appellants, based on documents that were never before the hearing officer, and consequently the trial judge should be upheld for remanding this case to recommence at the level of the hearing officer, in order to effect a just settlement of the calculation. The issues on this appeal are to our minds the following:

1 Whether or not a ruling remanding a matter below for further proceedings to

facilitate a just and proper determination of some issue is a final ruling which is appealable, or an interlocutory ruling which is not appealable.

2 How does the Board of General Appeals obtain evidence to enable it arrive at its decisions? and

3 Whether or not the trial court erred when it ruled that the Board had obtained evidence wrongly and therefore the matter should be remanded for proper legal procedure in the premises?

The question of differences between a final and interlocutory ruling or judgment has been much troublesome for several of our legal practitioners, and we will therefore take this opportunity to give an exhaustive explanation of the differences between the two types of judgment.

At common law an interlocutory judgment is one which lacks finality. It is judgment which "speaks between", that is it does not speak the last word which the court may be required to speak in the case. " A judgment rendered in the middle of a cause upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the suit. A judgment is further interlocutory when it is made before a final decision, for the purpose of ascertaining a matter of law or fact preparatory to a final judgment, or which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the process of the case, but does not adjudicate the ultimate rights of the parties or finally put the case out of court. A judgment on the merits defining and settling the rights of the parties is not rendered interlocutory by the fact that further orders may be necessary to carry into effect the rights settled by the judgment." BALLENTINE'S LAW DICTIONARY 658 (3' ed.)

On the other hand, "at common law a judgment is said to be a final judgment which determines and disposes of the whole merits of the cause before the court by declaring that the plaintiff is or is not entitled to recovery by the remedy chosen, or

completely and finally disposes of a branch of a cause which is separate and distinct from parts thereof." *Ibid.,* at p.473.

"At common law a final judgment may be further explained to mean a judgment which determines a question in such a manner as to terminate or end the matter so completely as to preclude all future inquiry concerning the truth itself. For purposes of appeal, a final judgment is one which terminates the litigation between the parties on the merits and leaves nothing to be done but to enforce by execution what has been determined."
Ibid

Liberian case law is not entirely silent on the issue of differences between an interlocutory and a final judgment. The case of *Halaby v. Farhart,* citing 23 CYC, *Judgments,* § 9 (1906), distinguishes between the two judgments thus:

"A final judgment is one which disposes of the case, either by dismissing it before a hearing is had upon its merits, or after trial, by rendering judgment either in favor of plaintiff or defendant. An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of a cause, but does not adjudicate the ultimate rights of the parties." *Halaby at v. Farhat* 7 LLR, 124 (1940).

From the foregoing distinctions between the two judgments, we are of the opinion that a judgment rendered by a higher court or tribunal which remands the matter to a lower court or tribunal for such proceedings as will further enable the higher court or tribunal to finally determine the rights of the parties is an interlocutory and not a final judgment. The judgment rendered below by the trial judge in this case is interlocutory because it failed to make a final determination of the rights of the parties as to awards. Instead the trial judge remanded the matter to the hearing officer at the Ministry of Labour to effect such a determination that would facilitate a final determination of the matter.

We next inquire as to whether an interlocutory judgment is appealable in this jurisdiction. We hold that it is not appealable, and there is a long line of cases decided by this Court to that effect. The rationale given by our predecessors is that the appellate court will not review cases in piecemeal. *Cooper v. McGill et al.,* 1 LLR 93 (1878): *Williams v. McGill et al., 1* LLR 96 (1878); *Tuning v. Morel,* 1 LLR 235 (1891); *Ketter and Gurley et. al. v. Dennis,* 12 LLR 353 (1956).

It is therefore the opinion of this Court that this case being one from an interlocutory judgment, is not appealable. Even the Civil Procedure Statute lay down that only final judgments are appealable at all. Civil Procedure Law, Rev. Code 1: 51.2.

We consider at this stage how the Board of General Appeals is empowered to obtain evidence. In this regard our lone resort is to the statute which lays down as follows:

"Section 2. *Filing the record with Board of General Appeals.* Within 30 days after the notice of appeal has been filed, the hearing officer shall file with the Board of General Appeals the decision, testimony, minutes, all documents and physical evidence offered before the hearing officer whether or not they were admitted in evidence or used in the proceeding, as well as the determination made by the hearing officer."

Section 3. *Summary on Appeal.* The Board of General Appeals shall review the determination of the hearing officer upon the copies of the record and other evidence filed with it by the Minister of Labour and Youth, and the parties to the appeal may not produce additional evidence. (emphasis ours). 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 given 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." Labour Law, Lib. Code 19-A:2 and 3.

According to the law cited above, the Board may not require additional evidence

from the parties and may have to rely entirely on evidence certified to it by the hearing officer. However, in the exceptional cases where the Board would require evidence dehors the said certified record in the case, it will direct that such additional evidence be produced before a hearing officer or before the Board itself, as it may desire.

In the case before us, however, the evidence in dispute was never before the hearing officers, but the appellants produced it before the Board. However, upon objection duly levied by appellee, the said evidence was undisputedly put aside as being improper. The irony of the situation is that in the absence of appellee, the Board admitted said evidence from appellants and subsequently used it to arrive at 'a larger award far above the previous determination made by the hearing officer.

It was this procedure that the circuit judge reviewed and dismissed as improper, and ruled that the matter should be remanded to the hearing officer in order to enable such evidence to be adduced by either party as would have allowed for a just determination of the matter. We are in complete agreement with the trial judge and do hereby rule that the Board had acted improperly when it rather clandestinely obtained from appellants evidence it had earlier rejected and used it in order to make its final determination.

The reason given was that the Board had made repeated demands to the appellee company to furnish it certain relevant evidence of employee records and that the said appellee company had consistently ignored the Board, and therefore the latter was constrained to use evidence that it had earlier set aside in order to make a final determination. This is a tacit acknowledgment by the Board of its ignorance of the power vested in it to compel compliance with its process through the appropriate circuit courts. Labour Law, Lib. Code 19-A:5.

Finally, we consider whether the trial judge was in error as would require disturbing his ruling. From all the foregoing detailed discussions and our resolution of the prior two issues presented for our determination on this appeal, it is equally easy to further

determine that the trial judge was not in error and therefore we are entirely in agreement with his ruling and do hereby affirm same. The said ruling was not appealable since it was merely interlocutory and not final. Accordingly, the so-called appeal is dismissible. The judgment below is therefore hereby affirmed and confirmed.

The Clerk of this Court is hereby ordered to send a mandate to the hearing officer at the Ministry of Labour to resume jurisdiction in this matter, and to carry out the judgment of the circuit judge in order to facilitate proper calculation of the awards in this case. Costs to abide final determination. And it is so ordered.

Judgment affirmed.