THE MANAGEMENT OF LIBERIA AGRICULTURAL COMPANY (LAC), by and thru its General Manager, and THE BOARD OF GENERAL APPEALS**,** Ministry of Labour, Respondents/Appellants, v. **ERNEST J. FORKPAH**, Petitioner/Appellee.

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

Heard: January 9, 1984. Decided: February 9, 1984.

1.The failure of an employee to carry out the legitimate instructions or orders of his employer when such instructions are within the power of the employer and are legal and reasonable, is disrespect on the part of the employee to the employer for which the employee may be dismissed.

2. The fact that an employee holds a position of authority over others, involving the exercise of executory and supervisory powers, does not relieve him from the duty of obedience to the orders of his superior.

Petitioner/appellee worked for co-respondent/appellant, Liberia Agricultural Company (LAC), from May 22, 1981, to May 3, 1982, as chief of the appellant's plant protection department. His services were terminated on May 3, 1982, for what Co-appellant LAC referred to as irresponsible conduct, especially for his refusal to carry out management's instructions. The dismissed employee filed a complaint for illegal dismissal against his employer with the Ministry of Labour.

The hearing officer ruled that the appellee's refusal to carry out co-appellant's instructions was without bad intention and that he should therefore be paid for the months of April and May, 1982, plus one month's salary in lieu of notice. Management appealed to the Board of General Appeals, which reversed the ruling of the hearing officer, holding that the appellee was guilty of serious breach of duty when he disobeyed the instructions of the co-appellant through its administrative manager. Appellee then appealed from the decision of the Board of General Appeals to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for a judicial review of the Board's decision.

The Civil Law Court reversed the decision of the Board of General Appeals and ruled that the employee be reinstated or paid two years' (or 24 months) salaries at the rate of four hundred fifty ($450.00) dollars per month, which the last salary was earned by appellee. Co-appellant then appealed from the ruling of the Civil Law Court to the Supreme Court, filing pursuant to the appeal an eight-count bill of exceptions for review by the Supreme Court.

The Supreme Court reversed the judgment of the Civil Law Court and affirmed the ruling of the Board of General Appeals, with modification. The Court noted that the instructions of the co-appellant to the employee not to dismiss another employee until the matter had been looked into by the co-appellant and the appellee’s action in proceeding to dismiss the

employee notwithstanding the co-appellant's instructions constituted gross disobedience which under the Labor Practices Law was a serious breach of duty for which the employee could be dismissed by the employer without the latter incurring any liability. The Court observed that the matter took on an even greater dimension by the appellee's refusal to reinstate the employee after the co appellant had instructed that he should reinstate the employee. The Court opined that sufficient basis was therefore presented for the dismissal of the appellee. The Court noted, however, that as the co-appellant in its letter of dismissal to the appellee had offered to compensate appellee in certain respects, that it should honour the offer and make said compensation to the appellee.

Victor D. Hne and John T. Teewia of Carlor, Gordon, Hne & Teewia Law Offices appeared for the appellant. Joseph P. H. Findley appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellee, Ernest J. Forkpah, was employed by the co- appellant company on May 22, 1981 as chief of the coappellant's plant protection department and his services were terminated on May 3, 1982 for what co-appellant termed as irresponsible conduct and especially his refusal to carry out management's instructions. The hearing officer who heard the case ruled that the appellee's refusal to carry out co-appellant's instructions was not done with bad intention and, therefore, he should be paid his salaries for the months of April and May, 1982, plus one month salary in lieu of notice. Co-appellant appealed to the Board of General Appeals. The Board of General Appeals reversed the ruling of the labour commissioner (hearing officer) and held that the appellee was guilty of serious breach of duty when he disobeyed the instructions of the co-appellant through its administrative manager. Appellee appealed the ruling of the Board of General Appeals to the Civil Law Court for the Sixth Judicial Circuit for judicial review upon a three-count petition. The Court reversed the ruling of the Board of General Appeals and held that the appellee be reinstated or paid two years' (or 24 months) salaries at the rate of four hundred fifty ($450.00) dollars per month, the last salary earned by appellee. Co-appellant then appealed from the ruling of the Civil Law Court on an eight-count bill of exceptions to this Court of last resort.

The pertinent issue for the determination of this case is whether or not the refusal of appellee to carry out the orders or instructions emanating from the co-appellant company through its administrative assistant, who was at the time acting for the manager of administrative services, was a serious breach of duty for which appellee could be dismissed. The salient points raised in co-appellant's counts 1, 2, 3, 4, 5, 6, and 7 of its bill of exceptions are that:

1. after co-appellant had disapproved appellee's recommendation to dismiss one Isaac Putuah, appellee unauthorizedly dismissed and imprisoned Isaac Putuah contrary to coappellant's instructions and/or orders;

2. appellee's flagrant disobedience to execute the orders of co-appellant was a clear case of insubordination which was tantamount to a serious breach of duty under the Labour Practices Law;
3. It is management exclusive right to employ and dismiss any employee serving within the co-appellant's company and once co-appellant had disapproved the recommendation for dismissal of any employee, appellee had no color of right to have dismissed such employee. Appellee's outright dismissal of Isaac Putuah was a serious breach of duty.

4. Co-appellant's instruction or order to appellee not to dismiss Isaac Putuah until his permanent employment status was looked into in order to avoid unnecessary labour dispute, because he had worked for several months, was not illegal or unreasonable;

5. It is provided in appellee's letter of employment "you will be directly responsible to me as manager, administrative services. This means of course, that you will also take guidance from my assistant J. Butler and our company legal advisor, Mr. J. Gould, who also reports directly to me." That at the time of the giving of the instructions and/or orders which appellee refused to obey, Mr. Butler was acting manager of administrative services.

The above issues laid in the bill of exceptions are the only salient issues which we feel are necessary to decide this case. We quote hereunder the portion of the brief of appellee traversing counts 1 through 7 of the bill of exceptions:

"1. The main issue upon which appellants' bill of exception is based is that appellee's refusal to have Putuah continue to work as instructed by co-appellant is flagrant disobedience and constitutes insubordination. Appellee submits as the trial court held that:

`Employee's duty to employer - Aside from any duties expressly imposed upon or undertaken by the employee in the contract of employment, the law implies various obligations and undertakings by an employee in entering into a contract of employment. It implies an undertaking on his part that he is competent to perform the duties for which he is hired, and is possessed of the requisite skill and knowledge to enable him to do so, and that he will do that work in a careful and workmanlike manner; that he will yield obedience to all reasonable rules, orders and instructions of the employer, and that he will conduct himself with sobriety and such decency and propriety of deportment as not to work injury to the business of his employer. The law implies an agreement on the part of the servant or employee to faithfully serve and be regardful of the interest of his employer during the term of his service, carefully discharge his duty as the extent reasonably required by the relation of employer and employee, and to treat his employer with respect.

A question as to the duties of an employee is to be determined, of course, in view of the nature of the contract of employment, the provisions of the agreement between employer and employee, and the attending circumstances which disclose the intention of the parties. Employees of a public service corporation assume upon entering the service an implied obligation to perform their duties in such a manner as will enable the corporation to discharge its obligations to the public.

In every contract of service it is implied that the employee shall obey the lawful rules, orders, and instructions of the employer - at least so far as they are reasonable and not merely arbitrary or capricious. The employee is not, however, bound by any rules that he has not contracted to observe or that are not incident to or assumed by him as being within the general scope of his employment. Before he can be deemed to have been bound by a rule, it must appear that he was cognizant of its terms.' 35 AM. JUR., Master and Servant, §§ 82 and 83, p. 514.

`As to discharge because of insolence or disrespect, it is important to establish, presume or deduce that 'the tendency of the employee's conduct' was 'to injure the employer's business' (emphasis by court.)

Insolence or disrespect. Unprovoked insolence or disrespect on the part of the employee toward the employer or the latter's representative may afford ground for the discharge or dismissal of the employee prior to the conclusion of the term of employment. Likewise, insolent or offensive conduct on the part of the employee toward a customer or acquaintance of the employer may be sufficient cause for dismissal, the tendency of the employee's conduct being to injure the employer's business, although the employee's dismissal is not justified where it appears that his acts of disrespect or insolence were provoked by conduct on the part of the employer.

Appellee pray therefore that counts 1 through 7 of appellant's bill of exceptions be overruled and the judgement of the lower court affirmed."

The appellee has not denied that according to paragraph 4 of his letter of employment he was directly responsible to the administrative manager and his assistant, nor has he denied ever refusing to carry out the instructions of the acting administrative manager. Instead, appellee is trying to set up justification as implied from the law citations quoted from the ruling of the judge, that a servant is not bound to execute illegal or unreasonable instructions or orders of his master. Appellee's quotations in his brief raise the issue that to discharge an employee it must be established, presumed or deduced that the tendency of the employee's conduct "was to injure the employer's business and there should be a showing of insolent or offensive conduct on the part of the employee toward a customer or acquaintance of the employer sufficiently to cause his dismissal." Paragraph 6 of appellee's quotation under insolence or disrespect provides that, "unprovoked insolence or disrespect on the part of the

employee toward the employer or the latter's representative may afford ground for the discharge or dismissal of the employee prior to the conclusion of the term of employment..."

The failure of an employee to carry out the legitimate instructions or orders of his employer when such instructions are within the power of the employer and are legal and reasonable is in our opinion disrespect on the part of the employee to the employer for which the employee may be dismissed. We also quote two of the communications from the administrative assistant, James D. Butler, to appellee dated April 16 and 17, 1982, respectively:

"UNIROYAL LIBERIAN AGRICULTURAL COMPANY
MEMORANDUM
To: Maj. E. J. Forkpah cc: F. C. Quinn
FROM: James D. Butler
SUBJECT: ISAAC PUTUAH

DATE: April 16, 1982
I see no tangible reasons for the dismissal of Mr. Putuah and therefore advise that he be re-instated without day to avoid unnecessary litigation in a matter that can be rightly termed as unfair labour practices.
James D. Butler

ADMINISTRATIVE ASSISTANT
"UNIROYAL LIBERIAN AGRICULTURAL COMPANY
TO Maj. E. J. Forkpah
FROM: James D. Butler
SUBJECT: Isaac Putuah

DATE: April 17, 1982
The above does not warrant a dialogue with you. I now direct that you have Mr. Putuah reinstated effective immediately.

James D. Butler
ADMINISTRATIVE ASSISTANT
F. C. Quinn
E. Gould
M. Doah"

From the communications just quoted sent from the administrative assistant to the appellee, it would seem that even after apple had unauthorizedly dismissed Isaac Putuah, he was

instructed to reinstate Isaac Putuah, but he refused to comply with the instruction of the administrative assistant to whom he was also responsible according to paragraph 4 of his letter of appointment. This act of appellee, according to his own legal quotations, supra, was sufficient ground to dismiss him as it constituted a serious breach of duty.

We have carefully perused the records in this case as well as the bill of exceptions and the two briefs filed by both counsels and we hold that the dismissal of appellee was legal and not wrongful; for if the employment letter of appellee did clearly spell out that appellee was responsible to the administrative manager and his assistant, J. Butler, and J. Butler was acting manager of administrative services when his instructions and/or orders were disobeyed, this was a serious breach of paragraph four of appellee's employment letter and therefore a serious breach of duty.

The contention of affirmative plea as raised in count 3 of appellee's brief is not conceded. Counts 2 and 4 of appellee's brief are not conceded.

The records revealed that appellee did refuse to execute instructions of the assistant for administrative services to whom he was also responsible as per paragraph four of his letter of employment. It is also revealed by the records that appellee was suspended for one month on February 22, 1982 without pay for what management termed as irresponsibility and warned that any future occurrence, the management would have no alternative but to accept his resignation. The letter of dismissal also indicates that appellee was requested to resign but it would appear that even though he verbally gave his resignation, he was not inclined to reducing it to writing. The question which arose then was whether an employer may dismiss his employee for disobedience to carry out his legitimate instruction? We shall take recourse to common law for the answer:

"Disobedience of Employer's Rules, Instructions, or orders. Among the fundamental duties of the employee is the obligation to yield obedience to all reasonable rules, orders, and instructions of the employer, and willful or intentional disobedience thereof, as a general rule, justifies a recission of the contract of service and the peremptory dismissal of the employee, whether the disobedience consists in a disregard of the express provisions of the contract, general rules or instructions, or particular commands. This rule is not restricted to employees in subordinate positions, but applies to those employed in executive or supervisory capacities, although with respect to the latter it is recognized that they are not bound to such strict adherence to directions as is one whose employment involves the exercise of less degree of responsibility and discretion. The fact that an employee holds a position of authority over others, involving the exercise of executory and supervisory powers, does not relieve him from the duty of obedience to orders of the superiors." 35 AM. JUR, Master and Servant, § 44, page 78.

In view of the facts as gathered from the records and the laws governing, it is our opinion that the dismissal of appellee was legal thereby precluding co-appellant from any liability. We therefore affirm the ruling of the Board of General Appeals with modification. That is, since co-appellant in its letter of termination had already offered to pay appellee for April and one month in lieu of notice, co-appellant should compensate appellee with three months' salary at the rate of $450.00 or a total of $1,350.00 plus any accrued leave he may be entitled to. The three months to be paid for are April and the one month offered in lieu of notice, plus May, the pay month in which appellee was dismissed. 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 give effect to this opinion. And it is hereby so ordered.

Judgment reversed.