THE MANAGEMENT OF LAMCO J. V. OPERATING COMPANY,
Appellant, v**. IDEL KASHAMI** and **THE BOARD OF GENERAL APPEALS,**
Ministry of Labour, Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard May 11, 1988. Decided July 29, 1988.

1. It is contrary to law for a member of the Board of General Appeals who did not participate in the hearing of a case to sign the decision or ruling, along with other members of the board who heard the case, for the decision maker must be he who heard the case, and the duty to decide cannot be performed by one who has not considered the evidence or arguments

2. In the absence of constitutional, statutory, or case law authorities, a successor judge has no power to enter a judgment or decree in a case where the testimony was taken before his predecessor, and unless the parties consent to waive their rights, a judge, other than the one who heard the testimony, may not grant a judgment.

3. The rights, duties, powers and privileges of administrative tribunals are found in either the express language of implications of statutes, construed in the light of prevailing constitutional safeguards or limitations.

4. Administrative tribunals are statutory creations and their rights, duties, powers and privileges are all of statutory derivation.

5. A trial judge commits a reversible error in failing to decide on an issue showing a conflict in the ruling of a hearing officer, as for example the failure of the hearing officer to specify whether an award made by him is compensation for illegal dismissal or because of the employer's attempt to avoid the payment of pension to the employee.

6. When the dismissal of an employee is found to be wrongful, the court may grant reinstatement or payment in lieu of reinstatement. However, where the court finds the dismissal to be motivated by a desire on the part of the employer to avoid the payment of pension to the employee, the award becomes the aggregate salaries for a total of five years.

7. An employee is entitled to receive retirement pension on retirement from an undertaking at the age of 60, and if such employee has completed at least fifteen years of continuous service, or he may retire at any age after he has completed twenty-five years of continuous service in such undertaking.

8. All judgments must be announced in open court. a judgment is entered when it
is announced by the judge in open court. It is error, therefore, for a trial judge to make an oral announcement of his judgment in court and several days thereafter reduce the same into writing.

Appellee, whose services with the appellant was terminated for reason which the appellant termed as "unexcused absence from work for more than ten (10) consecutive days", brought an action in the office of the labour inspector for Yekepa, Nimba County, charging the appellant with illegally dismissing her. The its defense, the appellant contended that the appellee had overstayed her vacation by more than ten consecutive days, and that under the Labour Practices Law, it was entitled to dismiss her for the unexcused absence.

The labour inspector ruled that the appellee had been wrongfully dismissed by the appellant and that the dismissal was undertaken by the appellant in order to avoid the payment of pension. He therefore ordered that the appellant reinstate the appellee immediately without any retroactive benefits but restored as if the appellee had never been dismissed, or that alternatively, the appellant should pay the appellee twenty-four months salary, transportation allowance, vacation pay, etc., amounting to $10,257.40. No amount was included as compensation for appellee having allegedly been deprived of her pension. On appeal to the Board of General Appeals and the National Labour Court, the ruling of the labour inspector was affirmed. The members of the Board who signed the decision included a person who had not sat on the hearing of the case. Both the Board and the Labour Court relied on section 9 of the Labour Practices Law in upholding the ruling of the labour inspector.

On appeal to the Supreme Court, the judgment of the Labour Court confirming the ruling of the Board of General Appeals and the labour inspector was reversed. The Supreme Court held that it was error and contrary to the law for a member of the Board to sign a decision of the Board in a case in which he did not participate in the hearing thereof. The law, it said, was that only a judge or administrator who heard a case can decide it. It rejected the contention that even if the absent member of the Board had participated in the hearing of the case, the ruling would still have been the

same as a majority of the Board would have ruled in favour of the appellee, noting that had such member participated in the proceedings, he could have been persuaded by the arguments of the appellant, and in like manner, he possibly would have been able to persuade the other members to decided otherwise than in favour of the appellee.

The Court further held that as the appellee had worked with the appellant for only nine years, the labour inspector had erred in concluding that the dismissal was based upon the appellant's desire to avoid payment of pension to the appellee. The Court noted that the ruling was made even more confused by the fact that the labour inspector had failed to state whether the award constituted compensation for wrongful dismissal or because of the appellant's alleged desire to avoid the payment of pension.

The Court also opined that the Labour Court Judge had erred in not passing on the critical issue of the inconsistency in the ruling of the labour inspector concerning whether the award was made for the alleged wrongful dismissal of the appellee or was because of the attempt by the appellant to avoid the payment of pension. This issue, the Court observed, was squarely raised by the appellant, and the failure of the trial judge to comply with the requirement of the law which mandated that he deal with the issue constituted a reversible error.

Lastly, the Court held that it was error and contrary to the law for the trial judge to announce an verbal ruling in court and to several days thereafter reduce the same into writing. The Court therefore sustained all of the counts of the bill of exceptions, reversed the judgment, and remanded the case to further hearing before the hearing officer.

Toye C. Barnard of the Toye C. Barnard Law Firm appeared for appellant. Elijah J. Garnett, Sr. appeared for appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

Idel Kashami, appellee in these proceedings, was employed by appellant, LAMCO J. V. Operating Company, in 1977. Her services were terminated in 1984 because of what appellant term "unexcused absence from work for more than ten (10) consecutive days."

The appellee instituted an action of illegal dismissal against appellant in the office of

C. Wadah Manyou, Regional Labour Inspector, LAMCO, Yekepa, Nimba County. In her complaint, appellee contended that her dismissal was illegal because during the entire period in which she was away from work, she was either excused by appellant or by her physician. Appellant, on the other hand, contended that although appellee had been given a certain number of days for vacation, plus other days requested by her, it had terminated her services because she had failed to report to work and had over-stayed her vacation and the other requested period by ten (10) consecutive days.

Inspector Manyou ruled in favour of appellee as follows:

"In view of the foregoing, defendant management is liable of the charge 'wrongful dismissal' and also we recommend the following, to wit:

1. That the defendant management company reinstate complainant immediately without retroactive benefits and restored as if she had never been dismissed, or alternatively, pay complainant twenty four (24) months.

"Because the dismissal was deemed to deprive Complainant of her pension." See Labour Practices Law, Lib. Code 18-A: 9, at paragraphs Al & 11. (Emphases added).

Appellee's pay of $10,257.40 was based upon 24 months plus transportation allowance, vacation pay, etc. No amount was included as compensation for depriving appellee of her pension as the ruling suggested. The Board of General Appeals upheld Inspector Manyou's ruling and ordered the reinstatement of the appellee, or in lieu of reinstatement, compensation as per the hearing officer's ruling, in keeping with Section 9 of the Labour Practices Law. From this ruling of the Board, appellant appealed to the National Labour Court, Montserrado County, which affirmed the decision of the Board of General Appeals in its entirety.

Although a careful reading of the Board's decision reveals that it affirmed the labour inspector's ruling on the ground that appellee was wrongfully dismissed, the said decision is silent as to the other ground mentioned by the hearing officer; that is, that management had dismissed appellee to avoid paying her pension. On page 3 of its decision, the Board held:

"Since management asserts that appellee was absent from June 25, our computation of days between June 25, 1984 to June 30, 1984, the day on which the appellee was dismissed, shows only five days instead of the more than 10 days alleged by management on the dismissal slip.

In view of this and in view of the inconsistency in the computation of the days appellee was allegedly absent, we are convinced that the Management of Lamco has not established a prima facie case against the appellee."

Despite the fact that the petition of the appellant emphasized that the ruling of the labour inspector was inconsistent regarding the reason or reasons for making the award. The Labour Court Judge, in his ruling, only complicated the matter further. (See count 2 of appellants petition.) To support our view regarding the ruling of the Labour Court, we take recourse to said ruling, at page 2, paragraph 4, wherein the court said:

"And also we hold that the Board of General Appeals did not err in confirming the ruling of the hearing officer, same being in accordance with the Labour Practices Laws, Lib. Code 18A: 9, Wrongful Dismissal.

Where wrongful dismissal is alleged, the Board of General Appeals shall have power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement. The party against whom the order is made shall have the right of election to reinstate or pay such compensation. In assessing the amount of such compensation, the Board shall have regard to:

"(a)
(i) reasonable expectations in the case of dismissal in a contract of indefinite duration;

(ii) length of service; but in no case shall the amount awarded be more than the aggregate of two years salary or wages of the employee computed on the basis of the average rate of salary received 6 months immediately preceding: the dismissal; however, if there are reasonable grounds to effect a determination that the dismissal is to avoid the payment of pension, then the Board may award compensation of up to but not exceeding the aggregate of 5 years salary or wages computed on the basis of the average rate or salary received 6 months immediately preceding the dismissal . ."

From this ruling, the appellant appealed to this Court. Consequent thereon, appellant filed a nine-count bill of exceptions in which the following contentions were raised:

1. That by confirming the decision of the Board of General Appeals, His Honour Arthur Williams committed a reversible error, in that Mr. Donald George, a member of the Board, signed the decision though he did not participate in the hearing of the

case.

2. That the trial judge grossly erred in confirming the award of 24 months salary in favour of appellee, despite the fact that the ruling of the labour inspector was ambiguous as to whether the compensation was made on the basis of illegal dismissal or whether it was awarded only because the dismissal was to avoid the payment of pension to appellee.

3. That contrary to the mandate of the statute, Judge Williams verbally announced his ruling on the 11th day of July, 1986, and four clays later, July 15, 1986, he typed, signed and distribute, said ruling in his chambers:

We will resolve the issues seriatim. Appellant's first contention that Judge Williams ignored and refused to pass upon the issue that the signing of the decision of the Board by Member Donald George, who did not participate in the hearing, was contrary to law, must be sustained because the decision maker is and must be he who hears the controversy. This principle of law that he who hears the case must decide the same is so fundamental that we should not ordinarily dwell on it. In the absence of authorities, that is, statute, constitutional provision or court made rule, a successor judge has no power to enter a judgment or enter a decree where the testimony was taken before his predecessor, and that unless the parties consent or waive their rights, a judge, otherwise than the one who heard the testimony, may not grant a judgment. 64 AM. JUR. 2d., Judges, § 34.

In this jurisdiction, administrative tribunals are statutory creations and their rights, duties, powers and privileges are all of "statutory derivation. Much of the laws on administrative tribunals are derived by implication, which are arrived at through the process of interpretation of the express language of the statutes. In short, the rights, duties, powers and privileges of administrative tribunals are found in either the express language or implications of statutes, construes in the light of prevailing constitutional safeguards or limitations.

In the case Morgan v. United States, 298 U.S. 468, 56 S. Ct. 906, 80 L.Ed. 1288 (1936), the plaintiffs contended that the Secretary had made a certain order in which he set up rates without having heard or real any of the evidence, and without having heard the oral arguments or read or considered the briefs which the plaintiffs submitted.

In reversing the District Court, the Supreme Court held:

". . . But while the Assistant Secretary heard argument, he did not make the decision. The Secretary who, according to the allegations, neither heard nor read the evidence, or arguments, undertook to make the findings anc: fix the rates. The Assistant Secretary who had heard, assumed no responsibility for the findings or order, and the Secretary , who had not heard, did assume the responsibility."

In concluding, the Court held that the duty to decide could not be performed by one who had not considered the evidence or argument because the obligation is not an impersonal one but rather one akin to that of a judge. The one who decides must hear.

The argument was mane by appellees before this Bench that the other two members of the Board of General Appeals, Messrs. Sylvester Kpaka and Rudolphus Brown, who had heard the case, were in the majority and, and hence, even if Member Donald George had participated in the hearing, the result would have been the same. However, the Court says that as plausible as this argument may seem, we find it unpersuasive for reason that the said argument is based upon sheer fallacious reasoning, and because it overlooks the fundamental point, which is that Member George could have and may very well have influenced the two members who heard the case.

The second issue raised by the appellant is whether the judge of the National Labour Court committed a reversible error when, in confirming the decision of the Board of General Appeals, he failed to pass upon the issue of whether or not the award made to appellee by the labour inspector was compensation for illegal dismissal or because the appellant had attempted to avoid payment of pension to appellee. This issue was raised in count 2 of appellant's petition, filed in the National Labour Court, and stated in count 2 of the bill of exceptions filed in that court. Judge Williams therefore committed a reversible error when he failed to pass upon this issue, though raised squarely in the appellant's petition.

Under the Labour Practices Law of Liberia, when a dismissal of an employee is found to be wrongful, the court may grant reinstatement or payment in lieu of reinstatement. However, where the court finds the dismissal to be motivated by a desire on the part of management to avoid the payment of pension to the employee, then the award becomes the aggregate of salaries for a total of five (5) years. In the instant case, the hearing officer awarded 24 months to an employee who had served management for only 8 years. According to him, he had given the award because the

dismissal was to avoid or deprive the employee of her pension his or her dismissal was effected in order to avoid the payment of pension..

According to the records certified to this Court, the issue of pension was sua sponte raised by the hearing officer, and not by either appellee or her legal counsel. This ruling was therefore erroneous and should not have been confirmed either by the Board of General Appeals or the National Labour Court, especially so when the defect in the said ruling of the hearing officer was brought to the attention of the other two subsequent fora. One cannot be certain from reading the rulings of the hearing officer, the Board of General Appeals, and unfortunately, the National Labour Court, whether the $10,257.40 awarded appellee was compensation for wrongful dismissal as provided for under the first part of subsection 9 (ii) of the Labour Practices Law, or as compensation because of appellant's alleged attempt to avoid the payment of pension to appellee, as provided for in the latter portion of the same subsection. This was a reversible error. Indeed, it was mandatory that the National Labour Court decided in specific terms why the award was made.

The relevant section of the Labour Practices Law reads thus:

"Wrongful dismissal. Where wrongful dismissal is alleged, the Board of general Appeals shall have power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement. In assessing the amount of such compensation, the Board shall have regard to:

(a)
(i) reasonable expectations in the case of dismissal in a contract of indefinite duration;

(ii) length of service; but in no case shall the amount awarded be more than the aggregate of two years salary or wages of the employee..." Labour Practices Law, Lib. Code 18-A:9.

Under subsection (a)(ii) of the above quoted law, when the employee establishes that his or her dismissal was effected in order to avoid the payment of pension, the Board is authorized to award compensation of up to but not exceeding the aggregate of five (5) years salary or wages. The Court is astonished as to how and why the question of pension was introduced in the matter, since the law is unequivocal on pensions. The law provides:

"Retirement pensions. An employee within the application of this Chapter is entitled

to receive from his employer a retirement pension on retirement from an undertaking at the age of 60, and if such employee has completed at least fifteen years of continuous service, he may retire at any age after he has completed twenty-five years of continuous service in such undertaking." Labour Practices Law, Lib. Code 18-A:2501.

As to the contention of appellant that the judge of the National Labour Court erred in verbally announcing his ruling out of court on the 1 day of July, 1986, and typing and signing same on the 15th day of that month, here is what the statute commands:

"1. Time and manner of rendition. All judgments shall be announced in open court.

2. A judgment is entered when it is announced by the judge in open court." Civil Procedure Law, Rev. Code 1: 41.2(1)(2).

As can be seen from the mandate of the statute, it is clear that the Judge of the National Labour Court erred in the handling of his ruling in the case at bar.

The three important points listed from the appellant's bill of exceptions are therefore sustained.

In view of the foregoing, the judgment of the National Labour Court appealed from is hereby reversed, with instructions to the hearing officer at the Ministry of Labour to resume jurisdiction over the case and decide the same in keeping with law. Specifically, the hearing officer must decide whether the award of $10,257.40 was compensation for wrongful dismissal or whether it represented compensation for the alleged attempt by the appellant to avoid the payment of pension to the appellee. And it is hereby so ordered.

Judgment reversed.