LAMCO J. V. OPERATING COMPANY, Appellant, v. **GIBSON GAILOR**, Appellee.

APPEAL FROM THE DEBT COURT FOR NIMBA COUNTY.

Heard: May 30, 1989. Decided: July 14, 1989.

1. The Supreme Court may reverse the judgment and remand for new trial any case that comes before it in which the judge's acts and ruling were potently prejudicial to the parties' rights and interest.

2. All issues of law raised in the pleadings must first be disposed of by the trial court before it considers the issues of fact.

3. Break-in-service is the period between the date an employee's employment is terminated to the date he is re-employed within the establishment.

4. An employee cannot claim the benefit of break-in-service unless there is an agreement with the employer allowing for benefits during that period; and in any case, break-in-service is restricted by the limitation period of seven years governed by debt and contract actions.

In September 1964, Appellee Gibson Gailor was employed by Lamco J. V. Operating Company, the appellant, as a driver within the transportation department. In 1971, appellant declared all of its employees in the transportation department redundant, terminated their services and paid them off. In the same year, Gibson Gailor, appellee before this court, was employed by MONITCO, a completely new company which contracted with appellant to render transportation services, formerly rendered by the transportation department of appellant.

After ten years of service with MONITCO, the appellee resigned and was re-employed by appellant in 1981. On January 1, 1987, five years seven months and six days of re-employment with the appellant, the appellee, upon his own request, was terminated on the basis of "voluntary redundancy" and compensated.

Following this payment, the appellee contended that the ten year period he served MONITCO should be included in his severance pay. Upon the appellant's refusal to comply, the appellee instituted an action against the appellant in the office of the labor inspector, Nimba County. Following a ruling in favor of the appellee, the matter was subsequently appealed to the Debt Court for Nimba County, which was properly clothed to hear and dispose of labor matters in said county. The judge of the debt court heard the appellee's complaint and ruled in his favor, raising and passing on matters that were never raised by any of the parties before said court nor were such matters proven at the trial.

On appeal to the Supreme Court for hearing and final determination, the Court reversed the judgment of the lower court and disallowed costs.

B. Anthony Morgan appeared for appellant. *Francis Y. S. Garlawolo* appeared for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

This case has its genesis in a complaint filed by Gibson Gailor, appellee, against Lamco J. V. Operating Company, appellant, before the labour inspector, Nimba County, on September 25, 1987. The complaint read, as follows:

"C/o Sylvester Gailah,
MAD Lamco Yekepa
February 25, 1987

Mr. Foday Kamara
Executive Vice President
Lamco Mine Workers'
Union Yekepa

Dear Mr. Kamara:

I would like to formally complain to you about the Personnel Department's refusal to pay me for the services rendered the company (LAMCO) over the past 22 years.

I was employed on September 14, 1964, and assigned to the then transportation department. This department was later on extracted from LAMCO and named MONITCO in October 1971 with all the employees (including myself) transferred without severance pay.

It was then agreed upon between the Union and LAMCO that we were still considered LAMCO employees and if any of us left MONITCO and rejoin LAMCO, the term of service will continue.

I rejoined LAMCO on June 9, 1981, and was assigned to the mine department but was later transferred to the Medical Department. Due to the company's present cost reduction program, I was made redundant on January 15, 1987.

Instead of being paid for 22 years as per agreement, personnel department through the labor administrator decided to pay me for only five years. All of the other employees that were transferred to MONITCO and later rejoined LAMCO and were laid off got their full term of severance pay.

All efforts to get personnel department to implement the agreement in my case have failed. I am therefore appealing to you to use your kind office to arrange with the personnel department so that I can get the full 22 years' pay.

Thanking you in advance for your usual kind cooperation,

I remain.
Very truly yours,
Gibson Gailor
B/N 9224630, previous B/N 8208.

In support of the above complaint, appellee testified on his own behalf and produced two former employees of LAMCO who confirmed that appellant paid them for break-in-period, meaning the period from the date of then employment to the time they were transferred to MONITCO and later re-employed by appellant. This fact was further substantiated by written instruments (final calculations or pay vouchers).

Appellee having rested evidence appellant's counsel, Counsellor Anthony Morgan, elected to testify as the first witness for and on behalf of his client. In essence, Counsellor Morgan admitted to the existence of a policy which obligates LAMCO to pay its employee for break-in-period. Witness Morgan further testified that management does not pay any employee whose break in-period exceeds three years.

The parties having rested evidence, the hearing officer ruled in favour of appellee, adjudging the appellant liable to the appellee for unfair labor practice. From this ruling appellant announced an appeal to the Debt Court for Nimba County. After a hearing of the appeal, the debt court confirmed the ruling of the hearing officer. Whereupon, exceptions were noted and an appeal announced and granted. Hence, the case has traveled to this judicature for final appellate determination.

At the hearing of this case, appellant filed a brief in which it has asked us to answer the issues stated hereinbelow:

"1. Whether or not the debt court judge erred when he rendered final judgment without passing on the issues of law raised in the petition and the returns for judicial review?

2. Whether or not the debt court judge erred when in the conduct of the appeal he did not confine himself to the records of the hearing from which the appeal was taken, but based his final judgment and calculations upon allegations contained in appellee's returns, which allegations were never adduced during the hearing of the case at the labour office.

3. Whether or not the debt court judge erred when in his final judgment he ruled that the appellee should be reinstated or paid in lieu of reinstatement even though illegal dismissal was not the issue and there is no evidence showing that the appellee was ever illegally dismissed.

4. Whether or not the final judgment made by the debt court judge is manifestly against the weight of the evidence adduced at the trial.

On the other hand, appellee also filed a brief in which he has asked us to answer these issues:

1. Whether or not appellant may properly refuse to pay break-in-service benefit to appellee when in fact other employees in the category of appellee have benefitted therefrom?

2. Whether or not the so-called new rule can properly affect appellee who was originally employed in 1964?

Let us now examine the facts and the law controlling in the premises.

According to the records certified to us, appellant, on September 1964, employed appellee as a driver within its transportation department. In 1971, appellant declared all of its employees in the transportation department redundant, terminated their services and paid them off accordingly. In October, 1971, appellee and others were employed by MONITCO, a newly formed transport company owned and operated by Liberians. MONITCO contracted with LAMCO, appellant herein, to render services formerly rendered by its defunct transportation department. Subsequently, in 1981, appellee having remained for a period of 10 years in the employment of MONITCO, resigned and was re-employed by appellant on June 9, 1981. On January 1, 1987, upon appellee's request, his services were terminated on a "voluntary redundancy" basis. He was paid for 5 years, 7 months, and 6 days, based upon his length of service with the appellant. Appellee contended that the time he served MONITCO should also be included in his severance pay, that is, that the 10 years which he served MONITCO should have been added to the 5 years, 7 months and 6 days which he subsequently served LAMCO, appellant herein, and that he be paid accordingly.

Even though appellant as well as appellee has presented issues to be answered, but before looking at these issues, the salient issue is whether or not appellee was still in the employ of appellant while serving MONITCO and if so, does he fall under the law which governs break-in-service, considering the ten-year service with MONITCO? Break-in-service as is understood simply means from the day one was terminated to the time he was re-employed within the same establishment. Ten years is no small period for one to conclude that it is a break-in-service. Furthermore, there is no law to support appellee's claim. Even the "Act Amending the Labour Practice Law of Liberia With Respect to Administration and Enforcement, and to Amend Decree No. 21 of the Interim National Assembly in Connection therewith, approved October 20, 1986," at Section 23.4, *Procedure on Review,* places a limitation on debt action, which, according to this section, should apply to labour matters. A person cannot spend ten (10) years in the employment of one company and claim compensation for that period from another company.

Our statute of limitations provides that debt actions based on written instruments shall be commenced within seven years. Civil Procedure Law, Rev. Code. 1: 2.13(1). Debt actions

which are not based on written instrument should be commenced within three (3) years. *Ibid,* ∫ 2.15.

Further, the trial judge erred when in fact and indeed appellee's claim as contained in his complaint and testimony was never proven at the trial. Even the alleged agreement referred to by appellee was never perfected or even introduced. We also wonder by what means did the trial judge arrive at the conclusion that appellee should be reinstated or paid in lieu thereof. No where does the record show that illegal dismissal was an issue. In the case *Anderson et al. v. Republic,* 27 LLR 67 (1978), this Court ruled, as follows: "The Supreme Court will reverse the judgment in, and remand for a new trial, any case that comes before it in which the judge's acts and rulings were patently prejudicial to defendant's rights and interests."

From an overall analysis of the trial judge's final judgment, gross errors were committed when he failed to pass upon the issues which were raised in the petition for judicial review. Under the law and procedure in this jurisdiction the trial judge should have passed upon all of the issues, including the law issues, raised in the petition. This Court held in the case *Korla and Smallwood v. Korla and Korla,* 22 LLR 54 (1973), that: "All issues of law raised in the pleadings must first be disposed of by the trial court before it considers the issues of fact."

In another case, *Cooper v. K & H Construction Company et al.,* 27 LLR 187 (1978), this Court said: "A judge must pass upon all issues of law raised in the pleadings before proceeding to trial." It was therefore error for the trial judge to fail to pass upon all of the law issues raised in the pleadings.

The trial judge also erred when he accepted allegations as evidence and based his final judgment thereon; e.g. the hourly rate allegedly earned by appellee and the allegation that appellant had also paid off employees who fell in the same category as the appellee, which allegations were not correct.

Appellee relied on Sonyah's testimony and payment of the break-in-period, but unlike appellee, Sonyah was out of LAMCO's employ for only five years, 1971-1976, which is far less than the period required by the statute of limitations on debt actions. Sonyah was within the statutory period of seven (7) years to make such claims, the appellee was not. Certainly, this Court will neither lend its ear to allegations not proven nor give an award not grounded in law and supported by evidence.

In view of what we have narrated and the circumstances, coupled with the laws cited, we are of the opinion that the judgment of the trial court should be and the same is hereby reversed. Costs disallowed. And it is so ordered.

Judgment reversed.