LIBERIA TRACTOR AND EQUIPMENT COMPANY (LIBTRACO), by and thur its General Manager, Appellant, v. **CATHERINE SONPON**, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard May 4, 1988. Decided July 29, 1988.

1. An interlocutory ruling is one which lacks finality; one which is rendered in the middle of a case upon some plea, proceeding or default; one which is only intermediate and does not finally determine or complete the suit.

2. A judgment is 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 a case, but does not adjudicate the ultimate rights of the parties or finally put the case out of court.

3. A final judgment is one which determines and disposes of the whole merit of the case before the court by declaring that the plaintiff is or is not entitled to recovery by the remedy chosen, or which completely and finally disposes of a branch of a cause which is separate and distinct from the other parts thereof.

4. An employer is justified in dismissing an employee who refuses to carry out a lawful instruction, order or command.

5. An employee has a fundamental duty to give obedience to all legitimate and reasonable rules, orders and instructions of the employer, and a wilful or intentional disobedience justifies a rescission of the contract of service by the employer and the peremptory dismissal of the employee.

6. An employer has no right to require that the employee either temporarily or continuously engage in work which is distinctly and manifestly outside the circle of the duties incident to his position.

7. The question of whether the work or duty requested by the employer to be performed by the employee is distinctly and manifestly outside the circle of his duties incident to the employee's position is one of fact.

8. Rules, instructions, or commands cited by the employer as grounds constituting disobedience by the employee and forming the basis for his discharge must be reasonable and lawful, known to the employee, and must pertain to the duties for which the employee was engaged in order for the discharge to be legal.

9. The fact that a reasonable order give by the employer is distasteful to the employee and given in bad faith, for the purpose of getting rid of him, does not justify a refusal by the employee to comply with it.

Appellee, Catherine Sonpon, a laboratory technician working with the appellant, was summarily dismissed by the appellant because of her refusal to comply with its instructions made on several occasions to her, to tech a back-up laboratory technician. Appellee who had herself been trained abroad at the expense of the appellant, had given as reason for her refusal to train the back-up technician that she did not know how to teach.

The hearing officer found the dismissal to be illegal and ruled that the appellee be reinstated or compensated as provided by the labor law. Appellant appealed the decision to the Board of General Appeals which affirmed the same. An appeal was the taken from the Board's ruling to the circuit court, but was stayed due to appellant's filing of a petition before the Board for reconsideration of its ruling. While the decision on this petition was pending, the appellee filed a petition before the circuit court for enforcement of the Board's ruling. The enforcement petition having been granted, an appeal was taken to the Supreme Court.

The Supreme Court reversed the ruling of the circuit court, holding that as the petition for reconsideration had not been disposed of by the Board of General Appeals, the trial court could not entertain enforcement of the Board's ruling. On remand of the case to the Board to entertain the petition for reconsideration, the Board of General Appeals reversed itself and remanded the case to the hearing officer, with instructions that the appellee be required to undergo medical examination at the expense of the appellant. From this decision, the matter was appealed to the National Labour Court which reversed the Board's latter decision and reinstated the Board's previous decision, holding the appellee's dismissal to be wrongful.

On a further appeal to the Supreme Court, the judgment was reversed. The Supreme Court held that the appellant was justified in dismissing the appellee because the latter had committed a serious breach of duty in refusing to carry out the legitimate and

reasonable instructions of the employer. The Court noted that under the law, the appellee had the duty to obey the instructions and orders of the employer which were within the scope of duty of her positions, and that her refusal was a disrespect which constituted a serious breach of duty and a proper basis for her dismissal. The Court opined that the duty of the employee did not change because the instructions, although legal and reasonable, were distasteful to the employee or made in bad faith. The Court observed that the appellee had not even made an attempt to teach the back-up technician as instructed by the employer.

On the question of whether the decision of the Board of General Appeals on reconsideration of its earlier ruling was final, the Court held that the ruling was final and therefore appealable. The Court noted that the decision disposed of the question of whether the appellee's dismissal was wrongful, and hence, as to that aspect of the ruling, the same was final and not interlocutory. The Court therefore rejected the contention that the decision of the Board should not have been appealed since the Board had remanded the case to the hearing officer, noting that the remand was for a humanitarian reason and had nothing to do with the legality of the dismissal of the employee.

Ephraim Smallwood and Benjamin Togbah of the Togbah and Cooper Law Firm appeared for the appellant. Johnnie N Lewis appeared for the appellee.

MR. JUSTICE GBALAZEH delivered the opinion of the Court.

Catherine Sonpon was summarily dismissed for insubordination by her employer, LIBTRACO, communicated to her in a letter dated March 19, 1984 for alleged "...blatant disregard for the authority of the Parts Manager and for insubordination directed toward him and refusing to carry gut an agreed arrangement between herself and the Parts Manager." On the following day. March 20, 1984, Mrs. Sonpon complained to the Ministry of Labour charging wrongful dismissal on the part of the appellant management. She stated in her letter of complaint that she was last employed in the capacity of Laboratory Technician at a monthly salary of $480.00; that prior to her recent position, she had served LIBTRACO in various other capacities, lasting for eleven (11) unbroken years up to her dismissal; that in 1980 her employer had sent her to Geneva, Switzerland for advanced training in connection with running the affairs of the scheduled oil sampling (S.O.S.) laboratory, a subdivision of the spare parts section, and that on several occasions she was instructed to teach someone as a back-up laboratory technician which she refused to do because she said she did not know how to teach. Hence, her summary dismissal.

At the Ministry of Labour, the complaint was assigned to Francis Wisseh, hearing officer, who after a hearing found the appellant liable for wrongful dismissal and ordered that the complainant be reinstated or compensated as provided for at section 9 of the Liberian Labour Law. To this ruling appellant excepted and announced an appeal to the Board of General Appeals which confirmed and affirmed the hearing officer's ruling. Appellant again excepted to the decision appealed to the Sixth Judicial Circuit Court, Montserrado County. This was on the 7 th of June A. D. 1985. However, six days thereafter appellant filed a petition with the Board of General Appeals for reconsideration of its decision. On the other hand, appellee not being aware of this development on June 29, 1985, filed with the then People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, a petition for enforcement of the decision of the Board of General Appeals. Returns were duly filed and a hearing conducted by the trial court. Thereafter, the trial judge rendered judgment sustaining petitioner's petition and ordering enforcement of the Board's decision of June 7, 1985. To that ruling, appellant excepted and announced an appeal to the Honourable Supreme Court. Following a hearing before the Court during the March Term, A. D. 1986, the judgment of the trial court was reversed and the case remanded to the Board for entertainment of the petition for reconsideration of its June 7, 1985 decision. See Liberia Tractor and Equipment Company (LIBTRACO) v. Sonpon, 34 LLR 46 (1986), Supreme Court Opinion, decided on March 30, 1986.

On reconsideration, the Board reversed itself, holding that "...the Respondent Catherine Sonpon, was dismissed not because of a job related illness, but because of her insubordination to her employer, LIBTRACO...we hereby reverse the hearing officer's ruling and remand the cause to him with instruction that the respondent be sent to another medical doctor within this country for the purpose of establishing the cause of the respondent's complaints. Costs of her medical test should be borne by the management of LIBTRACO." From the ruling of the Board, Catherine Sonpon, through her counsel, filed a petition for judicial review with the National Labour Court, to which was filed a returns by respondent management. Following a hearing, the trial court granted the petition and reversed the decision of the Board rendered on March 4, 1987, after reconsideration by the Board of its prior decision. The court ordered the reinstatement of the Board's prior decision of June 7, 1985, which found that the petitioner's dismissal was wrongful and wherein she was awarded an amount of $11,664.00. Respondent noted exceptions to the ruling and announced an appeal to this Honourable Court. Hence, this appeal.

The first important issue of substantive law presented herein is whether or not an

employer is justified in dismissing an employee who refuses to carry out a lawful instruction, order or command?

The second issue presented is whether or not the decision, if the Board of General Appeals, given upon a reconsideration on March 4, 1987, reversing itself and declaring the dismissal not wrongful, was final so that an appeal would lie therefrom?

We shall discuss these two issues in the reverse order.

The Board's decision of March 4, 1987 had two parts, namely: (1) It disposed of the only issue before it, that is whether or not the complainant was wrongfully dismissed; and (2) it remanded to the hearing officer an issue not properly before it but which for perhaps humanitarian reason it thought proper to address sua sponte.

The question whether or not a ruling or judgment is final and appealable was discussed at length in the case Kovah et. al. and the Board of General Appeals v. The Management of Bong Mining Company, 34 LLR 158 (1986), which involved a claim for wrongful dismissal, and was decided by this Honourable Court on July 31, 1986, during the March Term, A. D. 1986. In that case, Bong Mining Company had dismissed Steven Kovah, John Kollie and Roosevelt Ben for alleged "lack of confidence and for breach of the rules of the establishment." The aggrieved parties filed a complaint with to the Ministry of Labour, alleging wrongful dismissal. After a hearing, the hearing officer held for the dismissed employees. The Bong Mining Company and the complainants, being dissatisfied with the ruling of the hearing officer, appealed to the Board of General Appeals of the Ministry of Labour. After hearing both appeals, the Board upheld the hearing officer's ruling which was to the effect that complainants were wrongfully dismissed, but it modified the award, increasing the amount of the award from $14,570.40 to $25,769.43. Dissatisfied again, the Bong Mining Company petitioned the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for a judicial review. After hearing the arguments of the parties, the trial judge held that the Board ought not to have used the evidence on which it based its calculation and ordered the case remanded to begin at the hearing officer level for the second time in order to allow a proper procedure to be adopted for the purpose of obtaining evidence that would allow a correct calculation of the award made in favour of the dismissed employees. The employees then appealed from the ruling, arguing that the trial judge's ruling should be reversed and that of the Board upheld. Neither of the parties in that case disputed the ruling that the dismissal was wrongful. They, however, disagreed with the amount of the award. Appellee contended that the appeal should be dismissed because the ruling appealed from was

interlocutory and not final and consequently not appealable. The appellee also contended that the Board of General Appeals had used evidence wrongfully obtained in arriving at the award made to the appellants. Hence, it argued, the trial judge ruled correctly in order to arrive at a just settlement of the calculation. One of the issues dealt with extensively in the Bong Mining Company was whether or not a ruling remanding a matter necessary for further proceedings and as enhances a just and proper determination of some issue as a final ruling which is appealable, or an interlocutory ruling which is not appealable? In disposing of that issue, the Court said that an interlocutory ruling was one which lacked finality; one which is rendered in the middle of a cause upon some plea, proceeding or default; one which is only intermediate and does not finally determine or complete the suit. The Court said further that a judgment is 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.

On the other hand, concerning a final judgment, the Court said that a final judgment was one which determines and disposes of the whole merit of the cause before the court by declaring that the plaintiff is or not entitled to recovery by the remedy chosen, or which completely and finally disposes of a branch of a cause which is separate and distinct from other parts thereof. The Court particularly pointed out that for the purpose of an appeal, a final judgment is one which terminates the litigation between the parties on the merits and leaves nothing to be done except enforcement by execution of what has been determined.

After discussing the definitions of final judgment and interlocutory judgment, the Court held that a judgment rendered by a higher court or tribunal which remands the matter to a lower court or tribunal for a final determination of the rights of the parties is an interlocutory arid not final judgment because it failed to make a final determination of the rights of the parties as to awards. The Court also held that since the ruling was interlocutory, it was not appealable. The Court quoted a long line of cases in support of its holding.

In the instant case, the single issue presented in Catherine Sonpon's complaint was whether or not she was properly dismissed for insubordination for refusing to carry out a reasonable instruction of her employer. This issue was clearly disposed of when, upon reconsideration, the Board held that the appellee was dismissed not because of a job related illness, but be-cause of her was insubordination to her employer,

LIBTRACO. As such, there was nothing left to be said about the issue of wrongful dismissal. The said ruling finally settled the controversy between the parties on its merit. Hence, it was appealable, at least in part and with respect to that specific portion of the ruling. As for the second portion of the ruling, the same was not properly before the tribunal. Technically therefore the issue should never have been raised sua sponte and decided. It is clear in this jurisdiction that courts do not raise issues for the parties. Hence, an appeal, being a matter of right, a party adversely affected by a ruling such as was made in the instant case, may appeal in part or in whole. Civil Procedure Law, Rev. Code 1: 51.2.

Appellee in the instant case had the right to appeal from that portion of the ruling which was adverse to it and which finally determined the one and only issue properly before the tribunal. Accordingly, we hold, with respect to this issue, that the ruling was final and, hence, appealable.

On the substantive issue of whether or not an employer is justified in dismissing an employee who refuses to carry out a lawful instruction, order or command, we say yes. We hold that among the fundamental duties of the employee is the obligation to give obedience to all reasonable rules, orders and instructions of the employer. A willful or intentional disobedience thereof, as a general rule, justifies a recession of the contract of service and the peremptory dismissal of the employee. This result obtains whether the disobedience consists in disregard of the express provisions of the contract, general rules or instructions or particular commands. The Management of Liberia Agricultural Company (LAC) v. Forkpah, 31 LLR 698 (1983) and 35 AM. JUR, Master and Servant, § 44. In the Management of Liberia Agricultural Company case, which was decided on February 9, 1984, the evidence showed that one Ernest J. Forkpah was employed by the Liberia Agricultural Company (LAC) on May 22, 1981, as chief of plant protection. His services were terminated on May 3, 1982 for what the company termed "irresponsible conduct and especially his refusal to carry out management's instructions". The hearing officer who heard the case ruled that the employee's refusal to carry out management's instructions was without bad intention, and that therefore he should be paid his salary for the months of April and May 1982, plus one month salary in lieu of notice. On appeal to the Board of General Appeals, the ruling was reversed. The Board held that the appellee therein was guilty of serious breach of duty when he disobeyed the instructions of his employer.

Appellee therein then appealed to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for judicial review. The court reversed the ruling of the Board of General Appeals and held that the employee be reinstated or paid two years salary.

Appellant thereupon appealed from the ruling of the Civil Law Court to the Supreme Court which, after a hearing, reversed the lower court's ruling. The pertinent issue resolved by the Court in that case was whether or not the refusal of appellee to carry gut the orders or instructions emanating from the appellant company was a serious breach of duty for which appellee could be dismissed. The Court stated the issue thus: "Can an employer dismiss his employee for disobedience to carry out his legitimate instruction"? In answering the question, the Court held that predicated upon the general rule, stated supra, the failure of an employee to carry out the legitimate and reasonable instructions or orders of his employer which was in the Court's opinion a disrespect by the employee, for which the said employee could be dismissed. The act of the appellee, the Court said, was sufficient ground to dismiss him as it constituted a serious breach of duty.

We see no substantial difference between the Management of the Liberia Agricultural Company case and the instant case. On the other hand, another general rule which governs the master/ servant or employer/employee relationship is that the master or employer has no legal right to require that the servant shall either temporarily or continuously engage in work which is distinctly and manifestly outside the circle of the duties incident to his position. 4 ALR 2d., Demotion or Change of Duties, p. 279. The question of whether in any given instance the work or duty requested by the employer to be performed by the employee is distinctly and manifestly outside the circle of duties incident to the employee's position is one of fact.

Moreover, rules, instructions, or commands, cited by the employer as grounds constituting disobedience by the employee and a basis for the discharge of the said employee must be reasonable and lawful, must be known to the employee, and must pertain to the duties for which the employee has engaged in order for the discharge to be legal. This principle of law states further that the mere fact that a reasonable order given by an employer to his employee is distasteful to the latter and given in bad faith, for the purpose of getting rid of him, does not justify a refusal by the employee to comply with it. 35 AM. JUR., Master and Servant, § 45, p. 479.

We note that in the instant case the appellee has not deny that she was directly responsible and answerable to the parts manager, or that she had refused to carry out the instruction of the company. Instead, it seems that appellee is trying, at least by inference, to set up as justification for her refusal to carry out the employer's instructions that the said instructions were not legal and reasonable, and that under the circumstances, she, the employee, was not bound to execute such illegal or unreasonable instructions or orders of her employer. Appellee's justification is that

she is ignorant of the art of teaching. The records show however that she did not even make a feeble attempt at teaching and then let the employer evaluate her attempt. There was ample evidence produced by appellant to substantiate the foregoing, as well as appellee's acquiescence after reading the internal memorandum of January 12, 1984 under the signature of James J. Heffner, parts manager, which was received and signed by appellee in the upper left hand corner. The following statement appear in the body of the said Memo: "We have only one trained operator which means that when she is sick or on vacation, lab work ceases. This problem will be resolved in 1984 as Catherine Sonpon has agreed to train someone." Had this not been true the appellee would have promptly objected as was her swift reaction in filing a complaint. We note the saying that "if words are silver, then silence is gold." Silence also indicates consent, especially in the instant case.

Moreover, we hold the view that the increment in salary given as an inducement to the appellee to teach, which increment she accepted in good faith, was sufficient consideration to make the arrangement to teach binding. Indeed, even in the absence of such arrangement between Catherine Sonpon and the appellant, the already existing contract of employment for an indefinite period obligated her to comply with the instructions given her. Those instructions were reasonable, legal, and incident to her position, and were within the scope of her knowledge, skills and experience. It was a duty implied by law predicated upon the master/servant relationship. We see nothing unlawful or unreasonable about an arrangement where management instructs its employee without prior agreement to train another employee in the area in which the employee had been trained abroad at the company's expense and was the only one in the company with the requisite knowledge, skills and experience to do so. Instructing Catherine Sonpon, the only well-trained, skillful and experienced S. 0. S. laboratory technician to teach Aissie Haggins by the apprenticeship method, cannot be said to be "distinctly and quite outside the circle of the duties incident to her position." In any event, whether or not the appellee suspected that management was finding a way to dismiss her that did not provide grounds for refusing to comply with a reasonable order to train a back-up laboratory technician who would relieve her in case she was sick or too exhausted to work. With respect to the duties an employee owes to his employer, legal authorities have said that 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 under-taking by him or her that he or she is competent to perform the duties for which he or she is hired and is possessed of the requisite skill and knowledge to enable him or her to do so; and that he will do that work in a

careful and workman like manner; that he will yield obedience to all reasonable rules, orders and instructions of the employer. In our considered opinion, the instruction to teach and/or train a back-up laboratory technician was legal and reasonable. Hence, appellee's refusal to comply with its employer constituted insubordination and a gross breach of duty, predicated upon which employer was within its right to dismiss her for refusing to comply with the instructions.

Wherefore, and in view of the foregoing, we reverse the judgment of the National Labour Court and rule that appellant's summary dismissal of appellee was not wrongful. Costs are disallowed. And it is hereby so ordered.

Judgment reversed.