THE LIBERIA INDUSTRIAL DEVELOPMENT CORPORATION (LIDCO), Represented by its President, MR. LEROY E. FRANCIS, Appellant, v. **SOLOMON WESSEH et al.**, Appellees.

APPEAL FROM THE NATIONAL LABOR COURT, MONTSERRADO COUNTY.

Heard: October 12, 1988. Decided: December 29, 1988.

1. All admissions made by a party or his agent acting within the scope of his authority are admissible into evidence.

2. The best evidence which the case admits of must be always produced.

Appellees were terminated by their employer, appellant, because of a financial downturn in appellant's business. In its letter of termination, appellant, through its agent, acknowledged its employment termination commitments to appellees, but indicated that it was unable to meet those commitments at the time. Appellant promised to make payment of benefits in the future and sent a letter to the Ministry of Labour regarding same. When appellants failed to meet its commitment, appellees filed a cause with the Ministry of Labour. The hearing officer issued a ruling which the Supreme Court would eventually describe as "ambiguous, indistinct, and incomprehensible." The Board of General Appeals set aside his ruling and remanded it for further hearing. At the new hearing, the hearing officer heard ruled in favor of appellees, awarding them $137,360.00. On appeal, the judge of the National Labour Court increased the award to $224,360.00. On review by the Supreme Court, the Court found that while the appellants had admitted to their liability to the appellees, the rulings of the tribunals below with regards to the extent of the award were not supported by the evidence. The Court therefore reversed the judgment and remanded the case.

A. Cadmus Moore, Sr. for appellants. Philip A. Z Banks, III, for appellees.

MR . JUSTICE KPOMAKPOR delivered the opinion of the Court.

Solomon Wesseh, et al., (twenty seven in all) now appellees, were employees of Liberia Industrial Development Corporation (LIDCO), now appellant, until May 31, 1984 when the said appellant terminated the services of appellees on the ground of serious "financial strains" resulting from "global economic condition." The letter of

termination acknowledged the indebtedness of appellant to appellees in the following words:

"We are paying you your monthly salary of two months. We are cognizant of our indebtedness to you in varying amounts, dependent upon your salary and length of service, everything is being done to pay your due amounts within the shortest possible time under the guidance of the
Ministry of Labour…"

Prior to termination of the services of appellees on the date mentioned above, appellants, on May 3, 1984, addressed a letter to the then Acting Minister of the Ministry of Labour, under the signature of Alethea Johnson, legal representative of appellant, informing the Ministry that they were experiencing financial hardship, which made it difficult for them to meet their commitments inclusive of salaries to the terminated employees. This cause was filed with the Ministry of Labour by appellees when appellant failed to honor its promise and commitments herein mentioned, to pay the amounts due appellees within the time specified, after LIDCO had been returned to appellant in December 1982.

Appellants was one of several corporations confiscated in early 1980 by the Government of Liberia. From 1980, appellants was operated and managed by the Bureau of Reacquisition, an agency of the then military government of the People's Redemption Council. According to appellants themselves, the corporation was returned to its owner in December, 1982. On April 11, 1985, Mr. Dixon Daye, then a hearing officer, heard the matter and ruled that appellant was liable to appellees for arrears which were not paid within the period of January 1983 to May 1984, "because management had complied with section 1508 of the Labor Practices Law of Liberia by giving them written notices of termination dated June 1 to May 31, 1984." He also ruled that the appellees were not entitled to any redundancy payment from January 1983 to May 1984, "at which time the Government of Liberia through the Bureau of Reacquisition turned the property over to the proprietor of the company." Mr. Daye concluded that any compensation made to appellees while the case was pending should be deducted from their entitlements. However, the ruling of Mr. Dave was so ambiguous, indistinct and incomprehensible that both parties appealed from it to the Board of General Appeals.

The primary issues identified and decided by the Board were: whether or not the hearing officer's ruling is supported by the facts and evidence at the trial; and whether or not his ruling is enforceable? Of course, the Board had no choice but to set aside

that ruling and remand the case for further hearing. The concluding portion of the Board's decision reads thus:

The best solution, in the instant case, is to set aside the hearing officer's ruling and to remand the case to him with the following instructions: that the hearing officer states a sum certain in this case; that calculation of complainants' entitlements be based on their employment records including, where necessary, the payrolls of said complainants existing prior to the confiscation of the property; finally, that all payments already made by appellant LIDCO to appellees, Solomon Wesseh et al., be properly determined and accordingly deducted from whatever sum certain the hearing officer might arrive at.

In obedience to the Board's decision, a new hearing officer, Mr. Johnny S. Foyah, Director of Mines, Factories, Workmen's Compensation & Industrial Safety, after stating the facts and history of the case in the first six pages, ruled in the following manner, relying on records in two cases previously handled by former Director Dixon T. Daye: "The gross salary for 12 months is $87,000.00, plus payment of one month in-lieu-of notice, $7,250.00, equals $94,250.00, minus 3 months' salary already paid (gross) $21,750.00, plus severance payment of $63,060.00, leaving to a grand total of $135,560.00, to be paid by the Management of Liberia Industrial Development Corporation (LIDCO)."

According to the above ruling of Director Foyah, the total entitlement due appellees is $135,560.00. However, in calculating the said compensation, Mr. Foyah came out with a total of $137,360.00 as compensation due the appellees. From this obvious inconsistent ruling, appellants again announced an appeal to the Board of General Appeals, but this appeal was heard by the National Labour Court, since the Board had then been dissolved.

As seen from the ruling of Mr. Foyah, he ignored the Board's decision that appellees' entitlements be calculated on the basis of their employment records prior to the confiscation period, and that the amount obtained from the calculations salaries of three months be deducted since same had already been paid to appellees. This act of Mr. Foyah was an utter disregard of an appellate mandate without any justification.

For his part, His Honour Arthur K. Williams, the National Labor Court Judge, added insult to injury, to say the least, by arbitrarily awarding appellees $224,360.00. In the first paragraph of his ruling, the learned judge claimed that when appellees lost their jobs, they "filed a complaint claiming $224,360.00" when, in fact, it was he, who for

the first time, invented this figure. Even the counsel for appellees, Counselor Philip A. Z. Banks, III, expressed surprise over the fact that the trial judge had, without any justification, awarded appellees $224,360.00.

We also observed that Judge Williams' ruling is inconsistent, among other things. For example, he held: "This court, upon careful perusal of the records, observed that the ruling of the hearing officer is in accordance with the facts and law governing such case made and provided." (Our emphasis.) Notwithstanding the lines just quoted, the judge charged Mr. Foyah with being in error in calculating the award which he claimed should have been $224,360.00 and not $137,360.00. However, although the trial judge accused the hearing officer of making an error in calculating the award due appellees, he failed to point out the error. In fact, he himself neglected to deduct the amount appellant paid the appellees for three months while they attempted to negotiate a settlement.

Again, the learned judge concluded his ruling with yet another inconsistency: "Wherefore, and in view of the foregoing, the ruling of the hearing officer being sound and in keeping with evidence adduced during the hearing, same is hereby confirmed and affirmed. Management is to pay to the respondents/ complainants the total sum of $224,360.00 without further delay ....” (Our emphasis). How could the hearing officer be in error in calculation the award and yet said ruling be characterized as sound in law and in keeping with the evidence?

The question that is begging for an answer also is, did the appellees and their learned counsel entertain the slightest hope that this Court would uphold the ruling of the trial judge? It is fair for us to say that had both the trial court and the parties involved been concerned about justice and fair play, this case would probably not be before us, at least not in its present form. Appellees in cases of this kind take chances and come to this Court, hoping that the Supreme Court will confirm such bizarre awards, or as Counsellor Banks urged us to do, "give that ruling or decision which the lower court should have given". Yes, we will give the ruling that the trial judge should have given.

During his argument before this bar, counsel for appellant strenuously contended that if at all they are liable, the entitlements of appellees should be calculated on the basis of the corporation by government. Appellant also argued that should this Court find appellant liable to appellees, the period during which the corporation was managed and operated by the Bureau of Re-acquisition should not be included in the award, and that the date of recovery of the corporation by appellant is determined to be February 15, 1985, same being the date the appropriate decree, giving back

confiscated properties to their owners, was promulgated and published. Finally, appellants further contended that the ruling of the Labor Court should be reversed because it lacks certainty, since it failed to state the period for which appellees were awarded "arrears for 12 months" or $87,000.00.

Appellees argued that we should uphold the ruling of the National Labor Court because appellant itself has admitted not only being indebted to appellees as its former employees, but also requested the Ministry of Labor to calculate the award due appellees in keeping with law. Appellees also contended that appellant voluntarily admitted, by its own letter of termination, that it owes appellees compensation for declaring them redundant and promised in said letter that it would honor its obligation to appellees. Appellees further contended that we should uphold the ruling of the Labour Court with respect to the period during which the property was seized, operated and managed by government. According to appellees, the corporate existence continue with no interruptions. Of course, counsel for appellees conceded, both in their brief and during the argument, that it would be perfectly legal to exclude from the award the period during which the corporation was controlled and managed by the People's Redemption Council government. According to the appellees, this period is from 1980 to 1982. Finally, counsel for appellees argued that any error committed by the trial judge in calculating the award should not result in a remand of the case since, according to him, "the records are clear as to the amount, and given the inherent powers of this Honourable Court to make such modifications as the court determines . . .."

The simple issue raised by the facts and arguments before us is whether or not the appellees are entitled to the award made by the hearing officer and affirmed by the National Labor Court?

We stated earlier in this opinion that appellant admitted owing appellees and promised to pay. The specific question before us is, therefore, to what extent is appellant liable to the appellees? In this regard, the contention of appellant that in calculating appellees' entitlements, the payroll of the corporation prior to the confiscation of the company be used for that purpose, is sustained. However, in our opinion, we would be subjecting appellants to undue hardship, contrary to transparent justice, were we to hold and insist that the Bureau of Reacquisition payroll be used for the purpose of calculating appellees' entitlements and that the basis of the calculation be from the date of employment up to the date of termination. To do so, we would be closing our eyes to justice and realities, especially given our experience with the early 1980s. The contention of appellant to the effect

that the period during which the corporation was operated and managed by the Government of Liberia be excluded from the calculation and award is also sustained by us. We need not say much about this as the appellees have, through their legal counsel, though tacitly, conceded that it was not really entitled to any compensation for that period.

However, we cannot sustain appellant's contention that in calculating the award in favor of the appellees, the year 1983 be excluded because, as their legal counsel contended during his argument before this Court, LIDCO was turned over to its owner on May 15, 1984. It is the opinion of this Court that December 1982 is the date on which appellant reacquired the operation and management of the corporation from the government, even though May 15 1984 was pronounced as the official date. For example, while defendant management, now appellant, was being cross-examined after its testimony in-chief, the following question was put to its witness:

Q. Mr. defendant, in your statement, you mentioned that the property was turned over to you in 1982, am I correct?

A. This is the fact according to records that the property was turned over to us by the Commanding General then, at the end of 1982, December 1982, to Ms. Alethea Johnson.

See the minutes of the hearing conducted by Inspector Johnny S. Foyah, as found on page 13, February 28, 1985.

When Mrs. Alethea Johnson testified on behalf of appellant, she also said emphatically that the property (corporation) was returned to its owners in 1982. See the testimony in-chief of appellant as found in the minutes before hearing officer Johnny S. Foyah, page 10, February 16, 1985, and count three (3) of appellant's own bill of exceptions, filed on its behalf by Findley & Associates and approved by His Honour Arthur K, William, the trial judge.

Although it is true that the decree which returned confiscated properties to their rightful owners was promulgated and published on May 15, 1984, appellant voluntarily admitted that perhaps unlike other people, its own property was returned to it in December 1982. In such a case, we have no valid reason to disagree with appellants and insist that it was impossible. In fact, it is a well known fact around here that some citizens have "more speed," to use a Liberian slang, than others. All admissions by a party himself or agent acting within the scope of his authority are

admissible. Civil Procedure Law, Rev. Code 1:25.8 (1). The Civil Procedure Law also provides that "the best evidence which the case admits of must be always produced." The evidence given by appellant to the effect that its property was returned to it by government in December 1982 is the best evidence there is. See Civil Procedure Law, Rev. Code 1: 25.6; Bank of Monrovia, Inc. v. Enemy Property Liquidation Commission, 16 LLR 324 (1945); and Baz Brothers Corporation v. Gray, 26 LLR 99 (1977).

The arguments of appellants that the award of $87,000.00 for 12-month lacks certainty is also concede by us. In is our view, however, that appellants, by its own admission in the letter of termination, testimonies during the hearing and bill of exceptions approved by the trial judge, is liable to the appellees. It is the holding of this Court that, by appellants own voluntary admissions, appellees were declared redundant on May 31, 1984; they are therefore liable to its former employees and committed themselves to compensate them in accordance with law.

It is the opinion of this Court, therefore, that appellees are entitled to: (1) redundancy pay to be calculated from the date of employment of each employee to the date of termination; (2) notice pay, if any; and (3) unpaid arrears. It is also the opinion of this Court that: (1) the period from April 1980 up to and including December 1982 be deducted from any award or entitlement made in appellees' favor ; (2) compensation already made to appellees be deducted from any award or entitlement made in their favor; and (3) the last payroll used by the corporation (LIDCO) to pay appellees in 1980 before the corporation was confiscated by the Liberian government be used as a basis for calculating all entitlements of appellees.

In view of the foregoing, the ruling of the National Labour Court, affirming and confirming that of the hearing officer, is hereby reversed and the case remanded to the hearing officer for further proceedings consistent with this opinion. Costs dis-allowed. And it is so ordered.

Ruling reversed.