AFULABE MURRAY-ROBERTS, Appellant, v. **FIRESTONE PLANTATIONS COMPANY**, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: December 11, 1989. Decided: January 9, 1990.

1. If an employer loses business and it becomes impracticable to maintain the position of an employee in the enterprise, the position may be declared redundant and the employee paid redundancy payment

2. The word "redundancy" may be defined as the involuntary loss of employment and business through no fault of either the employer or employee. Where no business exists, employment ceases to exist; and takes place only where an employer stops or declines doing a given business or part of it.

3. Wrongful dismissal means termination of the services of an employee in breach of his contract.

4. It is illegal and a violation of Part II, Chapter I, Section 3 of the Labor Practices Law for the sheriff to conduct investigation to gather additional evidence in a labor investigation.

Appellant was an employee of appellee, assigned to work at appellee's medical center. Appellant, along with other employees of appellee, was declared redundant. A check in the amount of $5,496.08 was prepared in favor of appellant as severance pay, but the appellant being desirous of benefitting from government's tax waiver on her severance pay, wrote the Ministry of Finance requesting for a tax waiver. Based upon her request, the Acting Minister of Finance wrote the appellee authorizing it to transfer the appellant's severance pay to the Ministry of Finance to be kept in escrow. The appellee did transfer the appellant's severance pay to the Ministry of Finance along with a release, which the appellant was expected to sign. Thereafter, appellee received a letter from appellant's counsel, alleging that the appellant had been wrongfully dismissed. Later, appellant filed a complaint against the appellee at the Ministry of Labour, alleging wrongful dismissal.

An investigation was conducted at the Ministry of Labour and the hearing officer ruled in favor of the appellee. The appellant excepted to the ruling of the hearing

officer and appealed to the Board of General Appeals which, after hearing the appeal, reversed the ruling of the hearing officer and held the appellee liable to the appellant for wrongful dismissal and awarded appellant $24,360.00.

From this ruling of the Board of General Appeals, appellee excepted and appealed to the National Labour Court for judicial review of the Board's ruling. The National Labour Court held a hearing of the petition for judicial review and thereafter reversed the ruling of the Board of General Appeals. The appellant excepted to the ruling of the National Labour Court and announced an appeal to the Supreme Court.

The Supreme Court the Court held that the appellee did comply with the policy of the government regarding redundancy and, accordingly, *affirmed* the judgment of the National Labour Court.

Toye C. Barnard and *E. Winfred Smallwood* appeared for the appellant. *H. Varney G. Sherman* appeared for the appellee.

MR. JUSTICE BELLEH delivered the opinion of the Court.

According to the certified records forwarded by the trial court and the history of the case submitted by both parties, the facts of this case are rather straightforward.

The appellee, the Firestone Plantations Company, owns and operates a medical center on its premises. The medical center is headed by a medical director who supervises the center with the assistance of other staff members. In February 1986, at a regular departmental meeting, appellee's authorized official advised the various departmental heads that due to the fall in price of rubber coupled with financial constraints experienced by the appellee, there was a need to institute cost-saving measures, including reduction of manpower. The departmental heads were given the assignment to review their respective areas and determine those areas, including manpower, where the appellee would save and reduce costs.

Based upon this advice, the medical director of appellee's medical center, Dr. Edwin Jallah, reviewed his departmental needs and, consequently, submitted to appellee's personnel department the names of five employees, including appellant, for severance.

On March 11, 1986, the personnel department, after reviewing the recommendation, confirmed same, and officially informed the affected employees. The letter addressed to appellant, which has given rise to the present litigation reads, as follows:

"The management of Firestone Plantations Company wishes to inform you that the operation of its Medical Department, where you work as a staff dietician, has been closely assessed and from all statistical indications and related information which have been verified, it has become quite evident that our present manpower enrollment is in excess of our present needs.

Regrettably, it has been determined that your position is in excess of our requirement and particularly that your continuous employment would be tantamount to an underutilization of your professional expertise in the face of our present dietary requirement at the hospital.

"The letter concluded by informing appellant that she would receive severance pay in keeping with the Labor Practices Law. Further, appellant was advised to contact the personnel department for severance pay. A check numbered 13668 for $5,496.08 was prepared in favour of appellant as severance pay, but the appellant desiring to benefit from governmental tax waiver asked the Ministry of Finance, through the then Acting Minister Lindsay Haines, for tax waiver. On the basis of her request, the Acting Minister wrote appellee authorizing it to transfer the severance pay of appellant to the Ministry of Finance to be kept in escrow. For the benefit of this opinion, we hereunder quote word for word the said letter from the Acting Minister:

"March 7, 1986
MF-2-7/132/ '86
The General Manager
Firestone Plantations Company
Harbel, Liberia

Mr. Manager:
This comes to inform you that Mrs. A. Murray Roberts, a former employee of your company, has requested for personal income tax exemption on her severance benefit to be paid by Firestone Plantations Company in keeping with the Ministry of Finance Circular No. 1-1983 in order to facilitate her proposed supplementary investment in her husband's clinic project.

According to the Circular, individuals wishing to take advantage of the tax waiver must first authorize their employer to deposit, in escrow, the amount of the severance benefit they wish to invest. Thereafter, the prospective investor will approach any of the promotional institutions listed in the Circular for project identification and other assistance, after which the supervising institution (bank) will request our approval for funds to be invested.

In view of the above, you are advised to deposit into an escrow account all or portion of Mrs. Roberts' severance pay as she will authorize you pursuant to the Circular. Let me clarify that the applicant will be entitled to personal income tax exemption only on the amount of her severance pay which she will authorize you to deposit into escrow account.

Please find enclosed copy of Circular No. 1-1983 for your easy reference.
Sincerely yours,
Lindsay M Haines
ACTING MINISTER"

Based on the above quoted letter of the Acting Minister, appellee prepared the transfer letter together with a release which appellant was expected to sign. Surprisingly, appellee received a letter from appellant's counsel alleging that she was wrongfully dismissed. Thereafter appellant, through her counsel, filed a complaint against appellee with the Ministry of Labour. The complaint reads thus:

"July 7, 1986
Honorable John Mayson
Minister of Labour
Ministry of Labour
Monrovia, Liberia

Dear Mr. Minister:
Ref: Wrongful Dismissal of Mrs. Afulabe
Murray-Roberts, Staff Dietician,
Firestone Medical Center
We have the honor to submit the following complaint against the Firestone Plantations Company, on behalf of our client, Mrs. Afulabe Murray-Roberts, whose services were terminated on March 11, 1986, by virtue of a letter written to her by Mr. Winston Beysolow, Personnel Operations Manager.

Mrs. Roberts was employed by the Phebe Hospital in Suakoko, Bong County, as a dietician in 1978 following the completion of her studies in the United States of America and after working with the JFK Hospital for four years, when she was induced by Dr. Edwin Jallah, Medical Director for the Firestone Medical Center, to work for Firestone Plantations Company as a dietician. She hesitated to leave her employment at that time because she was enjoying her work at Phebe Hospital and had developed very good relations with the doctors and personnel at the Phebe Hospital. Based upon the persistence of Dr. Jallah, Mrs.. Roberts decided to accept the job with Firestone Plantations Company."

On August 4, 1982, Mr. Winston E. Beyslow, Personnel Operations Manager, wrote a letter to Mrs. Roberts confirming her employment with Firestone Plantations Company, and this was buttressed by a contract signed on August 30, 1982.

On August 31, 1984, Mr. Beysolow wrote a letter to Mrs. Roberts terminating her September, 1983 employment contract and classified her as a permanent employee with Firestone Plantations Company effective September 17, 1984.

Surprisingly, on March 11, 1986, the Management of Firestone Plantations Company considered Mrs. Afulabe Murray-Roberts' position in excess of the company's requirement and, therefore, informed her that Firestone was terminating her services with the company.

We find no legal or factual basis upon which Firestone, in less than one and one-half years after classifying Mrs. Roberts as a permanent employee would now consider her position "in excess of the company's requirement.

We consider the termination of Mrs. Roberts' services at this time by Firestone Plantations Company wrongful, prejudicial and inhumane. We are therefore demanding that Mrs. Roberts be compensated in an aggregate amount of 24 months of her salary based on an average of the salaries earned during the last six months immediately preceding her letter of dismissal of March 11, 1986.

We are also requesting that Mrs. Roberts be given all her benefits to which she is entitled.

In view of the fact that Mrs. Roberts has vacated the house which was assigned to her by the company and she is now living in Monrovia and is without transportation, we

are respectfully requesting that the case be heard at the Labour Ministry/ in Monrovia.

A copy of this letter of complaint is being sent to the Management of Firestone Plantations Company for their information and notice, and at the same time, we have attached hereto a copy each of Mr. Beysolow's letter to Mrs. Roberts, as well as our reply to that letter, for your information and to form a part of the record."

With kindest regards,
Very truly yours,
Toye C. Bernard
COUNSELLOR-AT-LAW"

The complaint was investigated by Mr. N. Anthony Blamo, hearing officer at the Ministry of Labour, who ruled in favour of appellee on October 2, 1986. For the benefit of this opinion, we hereunder quote relevant portions of the hearing officer's ruling: "It is therefore the ruling of this investigation that in as much complainant, Mrs. Afulabe Murray Roberts, has accepted her severance by defendant/management (Firestone Plantations Company) for which the Finance Ministry on March 7, 1986, wrote the general manager of Firestone Plantations Company, defendant/,management has not contravened any provision of the Labor Practices Law to warrant the charge of wrongful dismissal as alleged by complainant's complaint. Rather, the management of Firestone Plantations Company has conformed with the set policy of the Government of the Republic of Liberia, relative to severance and/or redundancy benefit. Therefore, complainant Mrs. Afulabe Murray-Roberts having sought income tax waiver which is evident that she accepted her severance, she should sign the defendant/management's release in order for her severance pay benefits to be deposited in escrow as per Finance Ministry's letter of March 7, 1986 with Ref. No. MF-2-7 /132/86. And it is so ordered."

Appellant being dissatisfied with this ruling, appealed to the then Board of General Appeals. The Board of General Appeals heard the appeal and reversed the ruling of the hearing officer and held appellee liable for wrongful dismissal.

From this decision of the Board of General Appeals, appellee/management appealed to the National Labour Court on a petition for judicial review of the decision of the Board of General Appeals. For the benefit of this opinion, we hereunder quote relevant portions of said petition for judicial review:

"1. That co-appellee Afulabe M. Roberts filed a complaint of illegal dismissal before the Ministry of Labour, and an investigation into the matter was held by the hearing officer at Harbel, Liberia.

2. That during the investigation, appellant contended, and presented evidence to prove that Co-appellee Roberts was not illegally dismissed, but was made redundant because of the serious financial constraints the company is experiencing, and the hearing officer ruled in favour of appellant. From this ruling, Co-appellee Roberts appealed to the Board of General Appeals.

3. That during arguments before the Board of General appeals, counsel for Co-appellee Roberts raised, for the first time, the issue that Co-appellee Roberts' position as staff dietician had been filled by one Sarah Samuels, but introduced no evidence to support this allegation.

4. That the Board of General Appeals heard arguments and granted the request of Co-appellee Roberts' counsel 'to ascertain whether or not the said Sarah Samuels is in the employ of Firestone Plantations Company, and if so, what are her functions, when was she employed by said company, so as to enable this Board to arrive at a fair determination in this case.'

5. That on November 26, 1986, the co-appellee Board of General Appeals wrote requesting the general manager of the company to furnish the Board with a copy of the employment records of Sarah Samuels on or before Monday, December 1, 1986. Management did not comply within the time scheduled, but did so on December 10, 1986, in a letter from appellant's counsel addressed to the chairman of the Board of General Appeals, enclosing the employment records of Sarah Samuels, the payroll for February, October and November 1986, the labor requisition, her job description as well as the job description of the staff dietician.

6. On December 12, 1986, without assigning the case for further hearing in order for the parties to find out and examine the evidence with respect to the alleged employment of Sarah Samuels, the Board ruled against management on the following grounds: a) that throughout the entire proceedings before the hearing officer, management did not state that the act taken against the appellant was necessitated by financial constraints, b) that the sheriff of the Board who had been mandated 'by a special note of authorization' to go to Firestone Medical Center and `seek information on the present status' and functions of Sarah Samuels, had reported that

Sarah Samuels is presently the staff dietician, a position which had bean occupied by Co-appellee Roberts."

7. On December 21, 1986, appellant requested the Board to reconsider its ruling of December 12, 1986, for the following reasons:

(a)That the reason for terminating Co-appellee Roberts is that the company is experiencing serious financial problems; that Co-appellee Roberts as well as management's two witnesses had testified to this before the hearing officer as can be seen on pages 2, 6 and 13 of the hearing officer's records.

(b)That the Labor Practices Law does not provide for a sheriff, and it is not his function to conduct investigation with respect to the receiving or introducing of additional evidence. Rather it is the function of a labor inspector, or a hearing officer or the Board of General Appeals itself, with parties being given an opportunity to examine the evidence on the matter.

(c)That management of Firestone Plantations Company was not aware of the sheriffs mandate, neither did the sheriff inform management of his investigation in order to give management an opportunity to be present and present evidence on the matter.

(d) That neither the Board of General Appeals nor the sheriff furnished management with the evidence on which the sheriff based his report, nor did management have an opportunity to confront the sheriff as to the type of evidence, how it was acquired, and who offered it, and, therefore, as to the proceedings, subsequent to November 20, 1986, management had been denied due process.

(e)That had the sheriff or the Board proceeded properly, it would have been discovered that co-appellee Roberts' position had not been filled and that Sarah Samuels is a kitchen worker earning thirty (30) cents an hour as opposed to a staff dietician who makes $965.00 a month after taxes and that the job description of the staff dietician varies greatly from that of a kitchen worker.

(f) That in all respects management had complied with Government's policy on redundancy and that the issue of the alleged replacement of Co-appellee Roberts by Sarah Samuels was not raised, nor was any evidence thereon produced before the hearing officer.

8. That on March 6, 1987, in a ruling received by appellant on March 9, 1987, the Board reaffirmed its ruling of December 12, 1986, hence, this appeal for judicial review.

9. Appellant submits that the Board did overlook its evidence before the hearing officer with respect to the financial problems of the company, even though its attention was called thereto. The fact that it chose to ignore the records and the evidence contained therein is a serious error, which was prejudicial to appellant.

10. Appellant says that it was denied due process with respect to the purported evidence allegedly obtained by the sheriff, in that this evidence was never produced to the Board, nor was appellant given an opportunity to examine it or cross-examine those who produced it.

11.Appellant submits that even though it produced evidence regarding the employment status of Sarah Samuels prior to the Board's first ruling and during the reconsideration of the first ruling, the Board erroneously ignored the evidence and gave credence to a mere allegation made by Co-appellee Roberts and not supported by any evidence whatsoever.

12. Appellant submits that an allegation is not proof, and Co-appellee Roberts under the law should have been required to produce evidence to counteract or override that produced by appellant. The Board's failure to adhere to the principle of law that he who alleges a fact must prove it, is a serious blunder.

13. That the Labor Practices Law makes no provision for a sheriff, and consequently the sheriff is not legally authorized, to conduct investigation or obtain evidence for the Board of General Appeals. The law authorizes a hearing officer, a labor inspector or the Board itself; hence, the use of the sheriff was improper and illegal.

14. Appellant submits that the reason given by the Board in its March 6, 1987, ruling for the use of the sheriff is incorrect; in that the Board states that because management had failed to furnish records on or before December 1, 1986, therefore the Board was compelled to mandate the sheriff, under Chapter 1, Part 1, Title 18-A of the Labor Practices Law, to seek additional evidence on the employment status of Sarah Samuels.

The fact of the matter, as can be seen from the sheriffs report dated December 19, 1986, is that on November 27, 1986, the sheriff delivered the Board's letter of

November 26, 1986, requesting management to furnish the records on or before December 1, 1986. The sheriff conducted his investigation. On November 27, 1986, and the Board concedes in its ruling that it did not direct the sheriff to seek any information from management, on the biased assumption that management would not have given him the correct information. It is clear that the Board did not wait for management to meet the deadline of December 1, 1986, and, therefore, sending the sheriff to conduct an investigation on November 27, 1986, was not due to the fact that management had failed to comply with the Board's request, as the investigation was conducted prior to the time given management to furnish records.

15. Appellant also submits that the Board's failure to authorize the sheriff to include management in his investigation was in contravention of the law which requires that this be done when investigating at the work place any violations of the Labor Practices Laws.

WHEREFORE, and in view of the foregoing, appellant prays this Honourable Court to take judicial notice of the records of the hearings before the hearing officer and the Board of General Appeals, reverse the ruling of the Board of General Appeals and affirm the ruling of the hearing officer with costs against appellees.

The National Labour Court, after hearing arguments *pro et con,* sustained the petition, overruled the returns, and reversed the decision of the Board of General Appeals. For the benefit of this opinion, we hereunder quote the relevant portion of the National Labour Court's judgment:

"From all indications, facts, law citations and circumstances surrounding, this court is of the opinion that the petitioner's petition being so sound in law, it is hereby granted, and the ruling of the Board of General Appeals is hereby reversed.

The ruling of the hearing officer of the 2' day of October, A. D. 1986, is hereby confirmed and affirmed with the instruction that appellee Afulabe Murray Roberts signs for her severance pay benefit from petitioner/appellant without further delay. Costs against respondent/appellant. And it is so ordered."

It is from this judgment of the National Labour Court that the appeal now comes before us on a bill of exceptions containing seven counts. Because in our opinion, the issues raised in counts one to seven of the bill of exceptions are not relevant for the final determination of this case, same are hereby overruled.

Therefore, in our opinion, the only issue presented for our consideration and final determination of this case is whether or not Appellant Afulabe Murray-Roberts was wrongfully dismissed.

During the argument of this case before us counsel for Appellant Roberts strenuously contended that her dismissal was wrongful and illegal because according to appellant Robert's counsel, after the Management of Firestone Plantations Company declared the appellant's position redundant, the said company replaced the appellant with one Sarah Samuels, who had been working under the appellant. He argued that up to the time the case was decided by the hearing officer, the appellant did not know that the said Sarah Samuels had assumed the functions and duties that were previously performed by the appellant. The records reveal that during, the hearing before the then Board of General Appeals, counsel for appellant made an application to the Board to ascertain for itself from the management of Firestone Plantations Company whether or not one Sarah Samuels had occupied the position which was held by appellant, to which application counsel for Co-appellee Firestone Plantations Company did not object. The records also reveal that on November 26, 1986, the Board of General Appeals addressed a letter to the management of Firestone Plantations Company requesting management to furnish the Board with a copy of the employment records of Sarah Samuels on or before December 1, 1986, to enable the Board to arrive at a fair decision in the matter. Appellant Roberts' counsel contended that the management failed to furnish the Board with a copy of the employment records of Sarah Samuels; and it was for this failure, as argued by appellant Roberts' counsel, that the Board then mandated its sheriff the appellee's rubber plantation and seek information on the status and functions of the said Sarah Samuels. The sheriff reported that Sarah Samuels was performing the same functions and duties that were previously performed by the appellant Roberts with a change in the nomenclature of the office. That based upon this, according to counsel for appellant, the Board on December 12, 1986, ruled in favor of the appellant declaring that the management's action constitutes a violation of the Labor Practices Law and the Government's policy on redundancy. Whereupon, the Board of General Appeals awarded appellant $24,360.00, representing twenty-four months of appellant's salary, and thereby reversing the decision of the hearing officer. Finally, appellant's counsel contended that this decision of the Board was erroneously reversed by the National Labour Court.

In countering the appellant's arguments, appellee's counsel maintained that the judgment of the National Labour Court affirming the decision of the hearing officer should be upheld by this Court for reason, among other things, that the said Board

was without any authority to have sent a sheriff to conduct an investigation at appellee's medical center to gather additional evidence without the participation of appellee. That the refusal of appellant to accept her severance pay after she had caused the Ministry of Finance to direct appellee to transfer her severance pay for deposit in escrow does not amount to wrongful dismissal merely because she refused and there is no evidence to warrant the charge of the alleged wrongful dismissal.

Wrongful dismissal means termination of the services of an employee in breach of his contract of employment.

The contention of appellee is that because its business declined and that the patients at its hospital reduced from 150 to 50 daily and that it was a fact of common knowledge in 1986 that the price of rubber, which is the only commodity in appellee's line of business had dropped dramatically. Appellee submitted that it was therefore necessary to declare Appellant Roberts redundant.

While it is true that there is no statutory provision at present governing redundancy payment, the government has adopted a policy on redundant payment, as follows: "If an employer loses business and it becomes impractical to maintain the position of an employee in the enterprise, the position may be declared redundant and the employee paid redundancy payment." Victoria F. S. Lang, The Liberian Labor Law and Labor Policies, 110.

"An accepted definition of redundancy is that which was held in the *Toby v. Bong Mining Company* (National Labor Affairs Agency, 1971) and it is as follows: 'The involuntary loss of employment and business through no fault of either the employer or employee. Where no business exists employment cases to exist... and takes place only where an employer stops or declines doing a given business or part of it." *Ibid.*

In the instant case, we are of the opinion that appellee did nothing contrary to law to warrant the charge of wrongful dismissal as alleged by appellant, for reason that the record certified to this Court reveals that as the result of a decline in appellee's business, appellee, through its letter of March 11, 1986, informed appellant that "the operation of its medical department where you work as a staff dietician has been closely assessed and from all statistical indication and related information which have been verified, it has become quite evident that our present manpower enrollment is in excess of our present needs." Based upon this letter, appellee decided to declare appellant redundant and pay appellant's severance pay and this was accepted by appellant. Whereupon appellant applied to the Ministry of Finance for government

tax waiver on said severance pay which was accordingly accepted in keeping with the Minister's letter MF-2-7/132/'86 addressed to appellee on the issue. In short, appellee did comply with the policy of the Government regarding redundancy.

Regarding the investigation conducted by the sheriff of the Board of General Appeals to ascertain whether or not Sarah Samuels had replaced appellant Roberts, we hold that said investigation was illegal and therefore a gross violation of Part 1, Chapter 1, Section 3 of our Labor Practices Law governing summary review on appeal which provides:

"SECTION 3, SUMMARY REVIEW ON APPEAL The Board of General Appeals shall review the determination of the hearing officer upon copies of the record and other evidence filed with the Minister of Labor and Youth, and the parties to the appeal may not produce additional evidence. If, however, the Board of General Appeals requires further evidence to enable it to make a decision or for any other substantial reason, or if in the Board's opinion the aggrieved party was not given sufficient opportunity during the hearing to introduce relevant and material evidence, the Board of General Appeals may allow such evidence to be introduced either before the Board or before a hearing officer, as the Board may direct."

In view of the authorities cited, it is therefore our considered opinion that the judgment of the National Labour Court reversing the decision of the Board of General Appeals and upholding the decision of the hearing officer is sound in law, and is therefore hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction and enforce its judgment. Costs ruled against appellant. It is so ordered.

Judgment affirmed.