

NATIONAL PORT AUTHORITY, by and thru its Managing Director, A. LAMI KROMAH, Petitioner/Appellant, v. **ARTHUR WILLIE**, and **HIS HONOUR SAMUEL KPANAN**, Judge of the National Labour Court, Respondents/Appellees.

APPEAL FROM THE NATIONAL LABOR COURT, MONTSERRADO
COUNTY.

Heard: April 14, 1994. Decided: September 23, 1994.

1. An employee is deemed to have terminated his contract if he absents himself from work for more than ten (10) consecutive days or more than twenty (20) days over a period of six months without good cause.
2. The Liberian civil war constituted good cause to negate the conclusion that an employee is deemed to have terminated his contract for an absence of ten(10) consecutive days from work.
3. The obligation of contracts is limited to the parties making them and, ordinarily, only those who are parties to contracts are liable for their breach. Parties to a contract cannot thereby impose any liability on one who, under its terms, is a stranger to the contract and, in any event, in order to bring in a third person contractually, an expression of assent by such person is necessary.
4. 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, 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.

Appellee instituted an action of wrongful dismissal in the Ministry of Labour against the Management of the National Port Authority (NPA) upon the termination of his employment after 14 years of service. Appellee's services were disrupted by the civil war as a result of which he sought refuge in Guinea.. His services were terminated during his absence. The hearing officer ruled that appellee be re-instituted or be paid 12 months salary and a refund of his pension contribution. Appellant excepted to this ruling and petitioned the National Labor Court for judicial review. The National Labor Court upheld the dismissal of the appellee under 1508(2), reversed the award of salary payment granted by the hearing officer, and sustained the payment of the pension contribution. Both appellant and appellee excepted to this ruling and announced an appeal to the Supreme Court, but appellee failed to perfect his appeal.

The Supreme Court, upon review of the records, held that the dismissal of the appellee was wrongful and, accordingly, *reversed* the ruling of the National Labour Court sustaining the dismissal under 1508(2), and *affirmed* the ruling of the hearing officer with modifications. The Court also *affirmed* the payment of the pension contribution.

Osborne K Diggs, Jr. appeared for appellant; *Frederick Cherue* appeared for appellee.

MR. JUSTICE SMALLWOOD delivered the opinion of the Court.

On September 21, 1992, the appellee, Arthur Willie, thru his Counsel, Attorney Arthur Paylay, filed a complaint against the Management of National Port Authority before the Ministry of Labour claiming that he had been wrongfully dismissed by the said management. The facts culled from the records indicate that the appellee was employed by the National Port Authority (NPA) on April 1, 1978 as a security officer, a position he held for 14 unbroken years. His services with the company were disrupted by the civil war when in June of 1990 the Company ceased to operate and he took refuge in the Republic of Guinea. He returned to Liberia on July 27, 1992 and upon reporting to work on July 28, 1992, he was presented a letter dated June 23, 1992, terminating his services with the Company.

REF: DLF/287/'92 September 21, 1992

The Honourable
Minister of Labour
Ministry of Labour
Republic of Liberia
Monrovia, Liberia

Dear Honourable Minister:

We have the honour most respectfully to file this complaint against the management of the National Port Authority for and on behalf of our client, Mr. Arthur Willie who was wrongfully dismissed on June 23, 1992.

Mr. Willie was employed by the National Port Authority (NPA) on April 1, 1978 as a security officer (Patrolman). He meritoriously served management in this capacity for 14 years without any breach of duty. Attached is a certificate of recognition for the invaluable services rendered management by Mr. Willie.

In June of 1990, management ceased total operations as a result of the civil war in Liberia, which escalated to the extent that most employees fled from Monrovia and he sought refuge in N'zerekore, Guinea until July 27, 1992 when it was possible for him to return home and report to work. Unfortunately when he reported to work he was presented with a letter terminating his services, without any tangible reason.

The complainant contends and says that his leaving the country to go to Guinea where he spent the time until his return was not voluntary as all of the employees including the management team, were victims of the war situation, and had to flee for refuge somewhere, but some of these employees have returned and are still in the employ of NPA.

In view of the foregoing, we would appreciate were you to cite management to show cause if any why it should not reinstate Mr. Willie or pay him in lieu thereof the following benefits for wrongfully terminating his services without tangible cause. The benefits to which he is entitled are as follows:

1. 2 yrs. accrued salary arrears - 24 months x \$254.00= 6,096.00
 2. 14 months severance pay - 14 months x \$254.00= 3,556.00
 3. 1 month pay in lieu of notice - 254.00
- 254.00
\$9,906.00

With sentiments of my highest esteem, we remain.

Very truly yours,

THE DUGBOR LAW FIRM

Arthur Paylay

ATTORNEY-IN-FACT

The complaint was turned over to Mr. Philip G. Williams, labour relations officer, for investigation which was commenced on this 1st day of October A. D. 1993, and ended on the 13th day of July A. D. 1993. The ruling of the hearing officer rendered on the 28th day of July A. D. 1993, was in favour of the complainant to the effect that he be reinstated or be paid the following:

1. Twelve (12 months salary @\$254.00 per month = \$3,048.00
 2. One (1) month's salary arrear (June 1990) = \$ 254.00
 3. One (1) month's salary in lieu of notice = \$ 254.00
- \$3,556.00

Total pension plan refund US\$2,299.20

The management of NPA not being pleased with the ruling of the hearing officer, filed a 6-count petition before the National Labour Court for judicial review.

In counts 1 and 2 of the petition, management contends that the complaint failed to prove that he was in N'zerekore, Republic of Guinea from June 1990 to July 1992, because of the civil war to have enabled him invoke the principle of *vis majeure*; and further he should have presented 'copies of entry documents or oral evidence during the investigation at the Ministry of Labour which enabled him to return to Liberia.' His failure to produce such evidence, the management contended, the hearing officer should have ruled in favour of the Management.

The petitioner contends in count 3 of the petition that "once publication was made by both press and electronic media, constructive notice has been shown." Hence respondent should have returned to work on the time specified in the announcements. Copies each of the Inquirer and the Eye News papers, both of May 22, 1992, and a copy of the public service announcement, dated May 20, 1992, signed by management of the NPA are in the file of the case. These notices required all employees of the Freeport of Monrovia to return to work by June 20, 1992, or their names will be "removed" from the payroll. Petitioner admitted in count 4 of the petition that management is obligated to those employees on active duty, dismissed and retired, with regards to pension refund in US dollars." Management contends, however, that the matter relating to the pension refund in US dollars is pending in Court in the United States of America in a case between *National Port Authority v. ALICO*; which means that until the case is terminated in favor of NPA and the money is paid, these employees will not be paid their pension funds.

The respondents in their returns contend in count one thereof, that the contention of the petitioner that respondent Arthur Willie should have produced evidence that he was absent from the country is untenable and unsound, in that, the petitioner has admitted at the hearing that due to the civil crisis, all employees were instructed to leave the management's working area for safety and that management was aware that many Liberians indeed left the Country for their safety.

In count 2, it is contended by the co-respondent Arthur Willie, that the subject matter is the illegal dismissal of an employee who was working for the petitioner before the civil crisis and who was dismissed without any justifiable reason. Whether the employee returned from refugee camp in a plane, a canoe or a ship is immaterial.

It is contended in count three that petitioner's notice to be completed as intended by the laws, should have been served on the employee by publication and the absence of any proof of postal receipts to the known destination of co-respondent, Arthur Willie, made said notice insufficient.

It is contended in count four (4) that the petitioner having admitted co-respondent's claim of his pension refund in United States dollars need not be traversed.

On the 14th day of October A.D. 1993, the judge of the National Labour Court rendered his ruling on the petition for judicial review and the returns thereto. In concluding his ruling he said:

"Wherefore, and in view of the foregoing, the dismissal of the co-respondent under 1508 (2)(d), is hereby sustained and the 12 month salary award of L\$3,048.00 given to the respondent by the hearing officer is reversed; the one month salary arrear for June 1990 is sustained; the one month salary in lieu of notice is reversed. The US\$2,299.20 award for the employee pension is sustained as the petitioner conceded to the authenticity of this claim..."

To this ruling the petitioner, the management of National Port Authority entered exceptions to that portion of the ruling which relates to pension payment and announced appeal to the Supreme Court sitting in its March A. D. 1994 Term. The respondent also entered exceptions to that portion of the ruling which reversed the award of salary payment granted by the hearing officer and took appeal to the Supreme Court sitting in its March, A. D. 1994 Term. Both appeals were granted. Surprisingly, however, the respondent did not perfect its appeal.

The petitioner filed a two-count bill of exceptions, count one of which relates to the portion of the judge's ruling dealing with the refund of the pension fund in US dollars, which petitioner claims is against the weight of the evidence adduced at the trial. Count 2 of the bill of exceptions is based on the ruling of the judge in count 4 of the petition, wherein the petitioner admitted its obligation to its employees for the refund in US dollars of their pension funds, but contend that the matter is pending in a court in the United States and in its argument, referred to the memorandum of understanding between the board of directors and representatives of the workers. The court in its ruling on this issue said:

"On the issue of the pension payment, petitioner conceded that they are obligated to the co-respondent in US dollars, but argued that this will be paid when the case in the United States of America is settled since they have entered into an understanding with the workers on this. This Court will not buy this argument since co-respondent Arthur Willie is not a party to that memorandum of understanding signed between some workers and the NPA. That agreement introduced into evidence by petitioner is not binding on co-respondent Arthur Willie, he not being party to the agreement".

It is not disputed that in June 1990, because of the escalation of the civil war, the NPA closed down its operations and permitted its employees to seek safety as was done by all citizens and residents of the City of Monrovia, Republic of Liberia. Some sought refuge in other parts of the country, while others sought refuge in neighboring, countries while some traveled to Europe and America.

From the records before us there are testimonies of witnesses for the appellant to the effect that the corporation, National Port Authority (NPA), resumed operation about November 1990 and as employees commenced to return to work, they were accepted.

On the 2nd day of March 1992, a memorandum of understanding was executed by the board of directors and representatives of the employees of the National Port Authority other than managerial and professional and confidential staff. This document is divided into several sections but we shall dwell on the last section in this opinion which deals with "understanding". Paragraph "A" states that effective March 2, 1992, a total of 790 employees should be put on compulsory leave of absence for a minimum period of up to one year with certain benefits:

- 1 Each employee shall receive 55% of last salary each pay day.
2. Each employee shall be entitled to the use of the clinic and medical facilities which is at the Freeport of Monrovia.
3. National Port Authority will pay on behalf of the affected employees the total amount to the National Social Security & Welfare Corporation.
4. The affected employees are permitted to ride the National Port Authority (NPA) bus at all times.

These are but few of the benefits the employees who entered this agreement with the management will enjoy.

On May 20, 1992, the management of National Port Authority signed a public service announcement which was allegedly carried on ELBC and published in the Eye and the Inquirer newspapers. This announcement was to the effect that the Company was informing all of its employees assigned to the Freeport of Monrovia that as of the 20th June 1991 any employee who failed to report to work will be removed from the payroll of National Port Authority. The respondent, Arthur Willie, who, according to him, had taken refuge in N'zerekore, Republic of Guinea, returned to Liberia on 27th July 1992 and reported to work only to be handed a letter of dismissal dated June 23, 1992.

The Port Management Company claimed to have been exercising its rights provided under sections 1508(2)(d) of the Labour Practice Law in Liberia. That law provides:

"Absence of an employee for more than ten consecutive days (or more than 20 days over a period of 6 months) without good cause, in which case the employee shall be deemed to have terminated his contract. Save in the case of *vis major*, an employee shall be required to notify the employer or his agent of the reason for his absence".
Labour Practices Law, Lib. Code 18-A: 1508(2)(d).

Appellant in count 1 of its bill of exceptions alleges that the judge's ruling as it relates to the issue of US dollars pension refund is against the weight of evidence adduced at the trial. In the records we have the testimony of a Mr. John P. Morris who testified for the appellant, National Port Authority as follows:

Q. "Mr. Witness, the complainant in this case in person of Mr. Arthur Willie has filed a complaint of illegal dismissal against the Management of National Port Authority (N.P.A.). He has placed on record that the management of National Port Authority (N.P.A.) has a pension benefit (US pension benefits); you have been called as a witness to testify on Management's behalf, you will now at this time please state all you know with regards to the case?"

A. Yes, it is the truth that National Port Authority (N.P.A.) management owed all her workers/employees a pension benefit including all those on active duty, dismissed and retired. This pension case *National Port Authority (N.P.A.) v. Alico*, is presently in court in the United States of America "

The appellant in count 4 of its petition for judicial review said:

"That petitioner admits that it has an obligation to those employees on active duty, dismissed and retired, with regards to pension refund in US dollars. But this matter is pending in court in the United States. Petitioner prays Your Honour to read witness John P. Morris' testimony in chief which reveals that this matter relating to pension refund in United States dollars is pending in court in the United States, in the case, *NPA v. Alico*. Relevant testimony is on page 24 of the minutes of the 15th day of June 1993".

The judge of the National Labour Court sustained the ruling of the hearing officer of the Ministry of Labour on the pension fund in these words: "The US\$2,299.20 award for the employee pension is sustained as the petitioner conceded to the authenticity of this claim". The contention of the appellant, that the ruling of the judge of the Labour Court as it relates to the refund of the pension funds is against the weight of the evidence adduced at the trial, is therefore not sustained. Also with count 2 of the bill of exceptions which deals with the same issue of the pension refund in US dollar is not sustained.

It is clear that the management of NPA closed down operations at the Freeport of Monrovia in July 1990 according to appellant's witness Peter W. Togbah because of the civil crisis and that its employees were forced to seek refuge for their personal safety to other parts of the country or in neighboring countries, as did the appellee.

It is alleged that the Freeport of Monrovia resumed operations in November of 1990 but there was no public service announcement for the return of its employees who had been displaced and had sought refuge either in other parts of the country or outside of the country to return to work until the announcement dated May 20, 1992 and published May 22, 1992 in both the Eye and Inquire news papers. Those announcements which, according to the appellant, were also made on radio "required the workers to take note that as of the 20th of June 1992, any employee of the above mentioned Port (Freeport of Monrovia) who failed to report to work will be removed from the payroll of the National Port Authority, Freeport of Monrovia, Liberia".

The appellee, Arthur Willie returned to Liberia on July 27, 1992 and reported to work on July 28, 1992, at which time he was handed a notice of removal from payroll dated June 23, 1992 with an effective date of June 23, 1992, and last date of service June 22, 1992. Under explanation and comments in the document the following is recited:

"Your services with the National Port Authority are hereby terminated in accordance with the Labour Practice Law of Liberia, §1508 (2) and § VII, count E, pp.10 of the Employees Handbook of the National Port Authority.

We have already quoted 2 (d) of section 1508 of the Labour Practices Law of Liberia. It is provided that: "Absence of an employee for more than ten (10) consecutive days or more than twenty (20) days over a period of six months without good cause, in which case the employee shall be deemed to have terminated his contract."

Considering how the civil war escalated and the carnage which took place in this country, which caused citizens as well as residents to flee the country, it can not be fairly and conscientiously concluded that the appellee, Arthur Willie, did not have good cause for his absence.

When the Labour Law of Liberia were written, it was not foreseen that a civil war would some day occur in this country; hence the law writers included only *vis major* when an employee may notify his employer of the reason for his absence. Though the civil war was man made, it was serious enough to be taken judicial notice of, and the employees should enjoy the same benefits as if it had been a *vis major*.

The memorandum of understanding which is referred to in this matter as a contract, was entered on the 2nd day of March A. D. 1992 while the appellee was still a refugee in the Republic of Guinea. The memorandum provided for the benefit of the employees of National Port Authority who were still on the job, and for the 790 employees being put on compulsory leave of absence, neither of which group included the appellee. The memorandum also provided that when funds became available, the Board of Directors would terminate those employees that have been put on compulsory leave of absence either in stages or by group, paying each the following benefits:

1. Two full pay, bonus and one month full pay in lieu of notice.
2. (1) month full salary for each year worked to the affected employees.
3. 3% and 5% salary arrears to affected persons who were not paid in 1987.

The appellee could not enjoy any of the above benefits because, having been dismissed, he was neither an employee nor was he one of the 790 employees placed on compulsory leave of absence.

The memorandum also provided that the parties had agreed that no new employment in the category covered by the memorandum will be affected. It also provided that if the need for temporary manpower increases, only those employees on compulsory leave of absence will be called for temporary services. Further, if there is need for permanent manpower increases, those employees on compulsory leave of absence will be given first preference. Also, if there is a need for temporary or permanent manpower increase after the termination of those employees, management will give preference to the terminated employees. This has reference to those employees put on compulsory leave of absence who have been terminated during the one year beginning March 2, 1992. The appellee in this case could not enjoy any of the above benefits. The word employee refers to one who works for an employer; a person working for salary or wages. The appellee having been dismissed, is no longer considered as an employee of the National Port Authority, especially so when he was not one of those put on compulsory leave of absence to be in the position to enjoy the benefits enumerated under the memorandum of understanding.

In the records of this case, is a second memorandum of understanding executed on the 26th day of February 1993, by and between the Board of Directors of the National Port Authority and 55 of the 1993 retirees of the National Port Authority. The appellee is not one of them, he having been outrightly dismissed on June 24, 1992.

It is provided in the law of contract that as a general thing, the obligation of contracts is limited to the parties making them, and, ordinarily, only those who are parties to contracts are liable for their breach. Parties to a contract cannot thereby impose any liability on one who, under its terms, is a stranger to the contract, and, in any event, in order to bind a third person contractually, an expression of assent by such person is necessary. 17AM JUR 2d, *Contracts*, § 294

We have earlier in this opinion quoted the letter of the complainant, Arthur Willie, addressed to the Minister of Labour in which complaint he alleged that he was wrongfully dismissed. Section 9 of Chapter 1 of the statute which created the Board of General Appeals in the Ministry of Labour, Youth & Sports provides:

"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 expectation 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 proceeding 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;

b. The Board of General Appeals may assess and order payment of all arrears of remuneration payable in any case referred to it".

This Court in the case *National Iron Ore, Ltd. v. Board of General Appeals et cd.*, 26LLR 429 (1978) said:

"A person employed under a contract of indefinite duration who is wrongfully dismissed may be awarded under the applicable statute an amount of up to two years wages"

In the records forwarded to this Court is a certificate of recognition from the National Port Authority to appellee Arthur Willie issued on the 2nd day of December 1989 honoring him for ten years consecutive invaluable services rendered the organization. Arthur Willie claimed to have served for 14 unbroken years without any breach of duty up to the time he was dismissed, he having been employed April 1, 1978.

It is therefore our opinion that the appellee was wrongfully dismissed.

The ruling of the judge of the National Labour Court sustaining the dismissal of the appellee under section 1508 (2) (d) is hereby reversed and the ruling of the hearing officer affirmed with the modification that instead of 12 months salary, he be paid 24 months salary.

3. He shall therefore be paid the following:

24 months salary x \$254.00

\$5,096.00

1 month salary arrear (June 1990)	254.00
1 month salary in lieu of notice	<u>254.00</u>
\$6,604.00	
Refund of pension plan in US dollar	S\$2,294.20

The Clerk of this Court is hereby instructed to send a mandate to the judge of the National Labour Court commanding him to give effect to this opinion. Costs are ruled against the appellant. And it is so hereby ordered.

Judgment reversed