NATIONAL PORT AUTHORITY (NPA), Appellant, *v.* EDWIN MASSAQUOI et al., Appellees.

APPEAL FROM THE NATIONAL LABOR COURT, MONTSERRADO COUNTY.

Heard: December 4, 1995. Decided: January 26, 1996.

1. The remanding of a case for re-hearing does not judicially determine its merit so as to warrant the applicability of *res judicata.*

2. The execution by an employee of a release of all claims for wages, or of his rights against the employer, is void and ineffective unless there has been full payment of the amounts due to the employee.

3. The execution by an employee of a release of all claims or rights against the employer does not bar the employee from subsequently asserting rights that were not covered by the release and does not constitute a defense by the employer to an action by the employee for such claims.

4. Casual labor means all unskilled labour employed for a period of less than a working day. *Labor Practices Law, Lib. Code* 18A:2.21(c).

5. Employment is not casual if it is for a part of ones's time at regularly recurring periods.

6. Where an employee has worked for a period of continuous service for an employer, he cannot be classified as a casual laborer. Any such classification is a violation of the Labour Practices Law of Liberia.

7. In the absence of a lawful agreement between the management and an employee with respect to the manner of payment, all employee benefits are payable in the legal tender then prevailing in Liberia.

Appellees were dismissed by appellant management after working continuously for the company for periods ranging from two (2) to eight (8) consecutive years. Three years after their dismissal, appellees instituted an action of unfair labor practice, claiming accrued annual leave pay and transportation benefits. This action was later withdrawn, settled out of court, and a release issued in favor of appellant. Subsequently, appellees instituted the instant action in the Ministry of Labour for pension refund scheme and accrued benefits, claiming the sum of US$125,101.00. The hearing officer, after hearing the complaint, ruled in favor of the

appellant management. From this ruling, the appellees petitioned the National Labour Court for judicial review. The National Labour Court reversed the ruling of the hearing officer and awarded appellees US$125,101.00 as pension entitlements. The appellant, not being satisfied with the ruling of the national Labour Court, appealed to the Supreme Court.

Appellant contended, among other things, that appellees were casual laborers and that as casual laborers they were not insured; that because the appellees were not insured, no deductions were effected from their salaries to entitle them to pension benefits; and that even if it were ruled that deduct-ions were made from appellees salaries, the appellees would be entitled to receive the benefits in local currency and not in United States dollars, unless there is a showing of a lawful agreement binding appellant to pay said benefits in United States dollars. Appellants also contended that appellees, having earlier filed an action of unfair labor practice claiming transportation and leave pay benefits against the same employer, and growing out of the same employment relation-ship, are barred by the principle of *res judicata.* Appellees, on the other hand, contended that the policy of management in classifying them as casual laborers after several years of services and denying them insurance benefits on the basis of this classification was a gross violation of the labour law.

The Supreme Court, upon review of the records, found that the claims sought by the appellees were not identical and that the remanding of the first action for rehearing did not judicially determine the merits of the case so as to warrant the application of the doctrine of *res judicata.* The Supreme Court also overruled the issue of release and held that appellees failure to join all their claims in their previous action against appellant was not a bar to a subsequent action.

On the issue of appellees being classified as casual laborers, the Supreme Court agreed with the ruling of the National Labour Court that the policy of the appellant management in classifying appellees as casual laborers after a period of continuous service was a violation of the Labor Practices Law of Liberia. The Supreme Court found, however, that no deductions were made from appellees salaries for pension and that no lawful agreement existed between the appellant management and appellees that bound management to pay the insurance benefits in US dollars. The Court therefore held that the award to appellees should be in Liberian dollars, the recognized local currency then prevailing. Accordingly, the Supreme Court *affirmed* the ruling of the National Labour Court with modification.

Osborne Diggs of the Togbah and Cooper Law Firm appeared for appellant. *Krubor Kollie*, in association with *Charles K. Williams* of the Dugbor Law Firm, appeared for the appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This case is before us on appeal for judicial review from a judgment rendered awarding the appellees the sum of One Hundred Twenty-Five Thousand One Hundred and One United States dollars (US$125,101.00) as accrued pension refund benefits under the appellant's pension scheme. The ruling was made against the appellant herein, the National Port Authority (NPA), by His Honour F. Nyepan Topor, assigned circuit court judge, then presiding over the National Labour Court for Montserrado County, Republic of Liberia, during the March Term, A. D. 1995.

The facts culled from the records in this case before us reveal that the appellees were dismissed by the appellant management in 1985 after working with the appellant for periods ranging from two (2) to eight (8) consecutive years. Three (3) years after their dismissal, appellees instituted an action of unfair labour practices against the appellant for their annual leave pay and accrued transportation benefits amounting to Liberian dollars one hundred thirteen thousand four hundred eleven dollars and fifty-five cents (L$113,411.55), which said benefits the hearing officer awarded the appellees by a default judgment. The National Labour Court, upon judicial review, reversed the ruling of the hearing officer and remanded the case. On appeal, this Court affirmed the said judgment. Appellees' previous case was then withdrawn and compromised out of court. As per agreement reached between the parties, appellant paid appellees a compromised amount of eighty-four thousand and fifty Liberian dollars thirty two cents (L$84,050.32) in 1993 as their annual leave and accrued transportation benefits and obtained a release therefor.

On the 22nd day of October, A. D. 1993, appellees brought the current action of unfair labour practices against the appellant management, claiming the sum of One Hundred and Twenty-Five Thousand, One Hundred and One United States dollars (US$125,101.00) for accrued pension refund to which they claimed entitlement under the pension scheme of the appellant. Appellees contended in their complaint at the Ministry of Labour that they had worked with the appellant for the period of eight (8) unbroken years and that during that time they paid 5% of their salaries each month for the said scheme established by appellant for all its workers. Appellees further complained that appellant refused to pay them their contributory benefits on grounds that they were classified by management as casual labourers.

The hearing officer, upon hearing the complaint, ruled in favour of appellant and the appellees appealed to the National Labour Court for Montserrado County for judicial review. The National Labour Court, upon a hearing of the petition, reversed the ruling of the hearing officer and awarded the appellees the sum of US$125,101.00 on the 6th day of

April, A. D. 1995 as their pension entitlements, stating as the grounds therefor that the payroll of appellant indicated the deductions of the appellants wages for the pension scheme and that an employee who worked for eight (8) years could not be regarded as a casual worker in this jurisdiction. The appellant, being dissatisfied with this ruling, excepted thereto and appealed to this Court for judicial review and a final determination of the case.

Appellant filed a ten-count bill of exceptions, counts five (5) and seven (7) of which this Court deems worthy for the fair adjudication of this matter. We shall hereunder quote these counts for the benefit of this opinion.

"5.His Honour prejudicially erred when he ruled that the hearing officer did not traverse the issue of alleged gross irregularity practiced by respondent/management against petitioner.

7.That Your Honour wrongfully applied the case *Krangar et al. v. NPA,* 36 LLR 931 (1989), October Term, in concluding that the Supreme Court in remanding the case held that petitioners, after eight years of service in the respondent/management institution, should not be classified as casual labourers and therefore they were entitled to their contributory pension benefits."

Appellant alleged in count five (5) of its bill of except-ions that the trial judge prejudicially erred in ruling that the hearing officer failed to traverse an alleged gross irregularity practiced by appellant management against the appellees. We observed from the records before us that the appellees basically complained to the Ministry of Labour that the appellant had committed unfair labour practices by classifying them as casual labourers after eight (8) consecutive years of service with the organization, and that as a consequence of that classification they were denied their insurance pension refund benefits. The hearing officer failed to traverse that paramount issue of appellees' status and the denial of their pension benefits, which necessitated the institution of the labour action now before us on appeal for judicial review and final determination. We do not believe that the National Labour Court judge erred in taking note of this point. Count five (5) of appellant's bill of exceptions is therefore not sustained.

With regards to count seven (7) of appellant's bill of exceptions, i.e. that the trial judge wrongfully applied *Krangar et al. v. National Port Authority*, 36 LLR 831 (1989), a recourse to the referenced opinion reveals that this Court affirmed the judgment of the National Labour Court which reversed the default judgment of the hearing officer on the ground that the default judgment was not made perfect by the introduction of evidence to substantiate their leave pay and transportation benefits. This is the first time we have been called upon to decide the status of the appellees in contemplation of the labour statute and their insurance

benefits, in accordance with appellant's handbook. We are in agreement with the appellant that the trial judge wrong-fully applied *Krangar et al. v. National Port Authority,* delivered by Mr. Justice James K. Belleh. Count seven (7) of the bill of exceptions is therefore sustained.

Appellant's counsel argued before us that appellees are bound by law to receive their insurance benefits in local currency, if it could be proved that 5% was deducted from their salaries by appellant; and that payment in United States dollars could only be made upon a showing of a lawful agreement binding appellant to pay said benefits in United States dollars.

Appellant also contended that the lower court judge proceeded to hear the matter in the absence of relevant documents, such as the payroll of the permanent employees indicating the 5% insurance deduction, despite its request for the inclusion of said records. Counsel for appellant further maintained that a compromise settlement of appellees' previous claims for transportation and annual leave benefits paid by appellant management did not constitute an admission of management's liability to the appellees.

Appellant's counsel also strenuously argued before us that the appellees are barred by the principle of *res judicata*, in that the same appellees had filed an action of unfair labour practices in 1988, claiming transportation and leave pay benefits against the same appellant. Appellant noted that the said matter ended by a withdrawal of the action and a com-promise of the case following the remanding of the matter by the Supreme Court of Liberia. *Id.* Appellant further argued in its brief that the appellees are estopped from pursuing the instant case because of their failure to include their insurance benefits in the first action instituted in 1988. Appellant predicate this argument on the theory that inclusion of the claim should have been undertaken to avoid a multiplicity of suits.

The fifth issue argued by appellant before us is that appellant management only deducted taxes from the wages/ salaries of the appellees as indicated on their payroll, and that no deduction was made of any amount for insurance purposes because appellees were not insured since they were casual labourers. Appellant's counsel therefore requested this Court to reverse the ruling of the
National Labour Court and affirm the ruling of the hearing officer.

Appellees, on the other hand, contended that the policy of appellant management in classifying them as casual labourers after eight years of service, and thereby denying them their insurance benefits, was a gross violation of the labour law. Casual labourers are "unskilled labourers employed for a period of less than a working day" and that they were not protected by management during the period of their service on appellant's regular payrolls and under the supervision and control of management on its premises.

Appellees also contended that appellant denied them their insurance benefits for the reason that they were classified as casual laborers without justifying under what law they were classified as such after eight (8) consecutive years of service with the appellant. Counsel for appellees strongly argued before this Court that the issues of currency in which appellees required payment of the benefits, the issuing of release, and the joinder of claims in the first action were not raised by appellant at the Ministry of Labour and should not therefore be entertained by this Court. Appellees therefore requested this Court to dismiss appellant's appeal and to hold appellant liable for the claims of US$125,101.00 plus interests, in keeping with appellant's Employees Handbook.

There are other legal issues raised in the briefs and argued by both counsels before us, but the only decisive issue for the determination of this case is whether or not the policy of appellant management in classifying appellees as casual laborers, after years of continuous service, is a gross violation of the Labour Practices Law of Liberia.

We shall digress for a moment to discuss some issues raised and argued before us by both counsels before giving a fair construction and interpretation of the labour statute under review.

With regards to the *Krangar* case, quoted *supra,* this Court says that its opinion in that case affirmed the judgment of the National Labour Court remanding the case to the Ministry of Labour for re-hearing on the grounds that the default judgment was not made perfect pursuant to INA decree # 21 which governs default judgment in labour actions. With regards to the principle of res judicata raised and argued by counsel for appellant, the Court holds that the remanding of a case for re-hearing does not judicially determine its merits as would warrant the applicability of the principle of *res judicata.* Further, appellees claimed leave pay and accrued transportation benefits in *Krangar et al*, but not their insurance benefits, as in the instant case. We are disinclined to apply the principle of *res judicata* in the case at bar for the reasons stated in this opinion.

On the issue of release, we observe that appellees executed a release in favor of the appellant on the 17th day of September, A. D. 1993, for the payment of their accrued transportation and leave benefits. This release did not include the claim for insurance benefits as such claim was not included in their previous action. It is generally held regarding labour claims that:

"The execution by an employee of a release of all claims for wages, or of his rights against the employer under the Fair Labour Standards Act is void and ineffective, unless there has

been full payment of the amounts due the employee under the Fair Labour Standards Act. Consequently, the execution by an employee of a release of his rights against the employer does not bar the employee from subsequently asserting these rights and does not constitute a defense by the employer to an action by the employee under the Fair Labour Standards Act. 48A AM JUR 2d, *Labour and Labour Relations,* § 2480.

Therefore, the contention of the appellant regarding the release executed by the appellees is therefore not sustained. Furthermore, appellant's contention that appellees' failure to join all their claims in their previous action against the appellant is a bar to a subsequent action is not germane to the case at bar and therefore needs no further discussion.

We shall now discuss the sole and decisive issue in this case by giving a prompt and fair construction and interpretation of the labour statute. We hereunder quote the relevant provisions of the labour statute for the benefit of this opinion.

"'Casual labour' means all unskilled labour employed for a period of less than a working day as defined by Labour Practices Law, Lib. Code 18A:2.21(c)."

The basic contention of appellees is that appellant management's policy which classified them as casual labourers, after eight (8) years of service, and which denied them of their insurance benefits, was a gross violation of the Labour Practices Law. They assert that they are entitled to insurance benefits and protection as employees on the premises and under the supervision and control of the appellant. Appellant, on the other hand, basically contended that there was no 5% deduction from the wages/salaries of the appellees for reason that they were classified as casual labourers, and that only austerity taxes were deducted, as indicated on its payroll for casual workers.

It is a fundamental principle of law that "some minimum wage laws have been inapplicable to employment which is casual or at intervals. However, employment is not casual if it is for part of one's time at regularly recurring periods, such as three full days each week." 48A AM JUR 2d., *Labour and Labour Relations*, § 2561.

We shall give the plain and obvious meaning of the labour statute as its language is plain and unambiguous, and conveys a clear and definite meaning. This does not require that we resort to the rules of statutory interpretation and construction. It is our constitutional and binding duty not to depart from the natural meaning of the statute, but to expound on it according to its meaning and intent, and to further give it force and effect. We see no substantial motive why the appellees were not provided protection by appellant pursuant to the quoted provision when serving under the supervision and control of appellant on its

premises. The labor statute considers casual labourers as unskilled workers who are employed for a duration of less than a working day and who are therefore not considered as employees. Labour Practices Law, Lib. Code 18A:2.21(c). The records in this case revealed that appellant classified appellees as casual labourers after a period ranging from two to eight years of continuous service under the supervision and control of the appellant and on the premises of appellant. The appellees have alleged that this conduct denied them their insurance benefits in violation of the labour statute.

Appellant has not shown any substantial reason to justify its policy in classifying appellees as casual employees after years of service with the institution, and as a result of which they were denied protection and insurance benefits by appellant management. We are in full agreement with the National Labour Court judge that the policy of the appellant management in classifying appellees as casual labourers, after a period of continuous service, is in violation of the labour laws of Liberia. We therefore hold that appellees should have been classified as permanent employees during their continuous service as contemplated by the Labour Practices Law, cited *supra.*

During the argument of the case before us, the following question was posed to the appellees' counsel by the Bench:

"Q: According to your argument, do you see any statement of deduction or deductions made on the payroll for pension?"

"A: No, the management wanted to cheat the appellees/ employees of their right to the pension benefit."

The answer of counsel for appellees/employees and the records in this case evidently show that appellant management did not deduct 5% from the wages of the appellees for the purpose of the insurance refund scheme as was done in the case of those workers management considered as permanent employees. We therefore disagree with the National Labour Court award to the appellees/employees of the sum of One Hundred Twenty-Five Thousand One Hundred and One United States dollars (US$125,101.00), in the absence of any deduction of 5% from their wages or any lawful agreement between the employees and the appellant management which bound the management to pay the insurance benefits in the sum of US$125,101.00 as claimed by the appellees. See Revenue and Finance Law, Rev. Code 36: 71.5(a)(b)(c). We hold, however, that the appellees/employees are entitled to the sum of L$125,101.00 as their insurance benefits for the reasons stated in this opinion.

In view of the foregoing, it is our opinion that the judgment appealed from is and the same

is hereby affirmed as modified in this opinion. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and to give effect to this opinion. Costs are ruled against the appellant. And it is hereby so ordered.

Judgment affirmed with modification.