

**NATIONAL PORT AUTHORITY**, by and thru its Managing Director, **MOSES P. HARRIS, JR.**, Appellant, v. **JAMES PEABODY**, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO  
COUNTY.

Heard May 3, 1988. Decided July 29, 1988.

1. The findings of the Board of General Appeals as to the facts shall be conclusive if supported by sufficient evidence on the records considered as a whole.
2. The conduct of an employee which results in a substantial loss of money to the employer is a ground for and justifies the summary termination of the employee's services for gross negligence of duty.
3. An employer may dismiss an employee engaged for an indefinite period without notice, subject to payment only of wages due, where it is shown that the employee has been guilty of a serious breach of duty.
4. The lack of skill or manifest in efficiency of the employee, which makes impossible the fulfilment of his duties under the contract, is a ground for his summary dismissal.
5. A trial judge cannot confirm a ruling of a hearing officer where said ruling is fraught with inconsistencies.
6. In all averments of fraud or mistake, the circumstances constituting the fraud or mistake shall be stated with particularity.
7. An employer has no duty to first successfully prosecute an employee before terminating his services where the employee's act constituted gross negligence of duty and where the employer does not charged the employee with fraud or the commission of a criminal act.

Appellee brought an action of wrongful dismissal against the appellant growing out of the termination of his services by the appellant after an audit had revealed that the section which he controlled had under billed and over billed customers, and that the appellee had engaged in other irregularities, all of which had resulted into substantial losses to the appellant. Appellee had denied the appellant's allegations that he was responsible for the losses and had requested a re-audit in order to ascertain whether

the amount allegedly lost could be discovered. Appellee also contended that he had been dismissed without first being investigated.

The hearing officer who heard the matter ruled in favour of the appellee and ordered that he be paid a total of \$14,960.00, being payment for time lost, severance pay and payment in lieu of notice. The ruling was appealed to the National Labour Court, where it was affirmed. Appellant, not being satisfied appealed the matter further to the Supreme Court for review.

The Supreme Court disagreed with the ruling of the hearing officer and the judgment of the National Labour Court confirming said ruling, holding that the hearing officer's ruling and the judgment of the Labour Court were inconsistent with the evidence adduced at the trial and contrary to the Labour Practices Law. The Court observed that in as much as the appellee had admitted that the appellant had suffered substantial losses and had not refuted the allegations that those losses were caused by the under billing, over billing and missing bills, attributable to the appellee or the section over which he supervised and exercised control, his dismissal was justified.

The Court rejected the contention of the appellee and the holdings of the hearing officer and the National Labour Court that the appellee should have first been charged and prosecuted, and a criminal conviction obtained against him, before the dismissal was effected against him. It noted that the appellant had not accused the appellee of fraud or of the commission of a criminal offense. Rather, that the appellant accused the appellee of gross negligence. The fact that a witness for the State, while on the witness stand, had accused the appellee of fraud was insufficient to attribute to appellant the allegations of fraud made by the witness against the appellee. Under the circumstances, the Court said, the appellant owed no duty to the appellee to prosecute him criminally before effecting the termination of his services. The Court opined that the trial court had failed to accord the evidence adduced at the trial the necessary consideration, noting that findings of facts of the lower court would only be deemed conclusive if supported by sufficient evidence.

The Court further observed that acts of an employee which result in substantial losses to his employer constitute gross negligence of duty and is a ground for the employee's summary dismissal by the employer. It therefore concluded that the dismissal of the appellee was justified under the Labour Practices Law which provides for such dismissal without notice to the employee, the only obligation for such action being the payment of wages due.

The Court also disagreed with the holding of the National Labour Court to the effect that if the appellant wanted to recover the losses sustained by it, it should have resorted to court action and not to the dismissal of the appellee. The Court reasoned that as the acts which caused the losses were traceable to the appellee, it was proper for the employer to dismiss the employee and not incur any sanction of a constitutional nature or be deemed as other violation of a right of the employee. The Court therefore reversed the judgment of the National Labour Court.

John Teewia of the Carlor, Gordon, Hne and Teewia Law Offices appeared for appellant. Moses K Yangbe appeared for the appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

According to the certified records in this case, James Peabody, appellee herein, on July 4, 1986, instituted an action of wrongful dismissal against the National Port Authority (NPA), appellant herein, in which he alleged that appellant had wrongfully terminated his services and that the said termination grew out of a container storage audit report. Appellee contended that he was dismissed by appellant without first being investigated by appellant. Appellee denied the allegations levied against him by appellant and asserted that a re-audit be undertaken in order to ascertain whether the amount lost could be recovered.

After the testimonies of both parties were given and other evidence were produced, Mr. Johnny S. Foyah, the Director of Mines, Factories and Workmen's Compensation of the Ministry of Labour, ruled on the 14 th day of March, A. D. 1987 in favour of appellee, awarding him a total of \$14,960.00, itemized as follows:

1. Payment for time lost \$7,480.00
2. Severance payment 6,800.00
3. Payment in lieu of notice 680.00

Appellant excepted to the ruling of Mr. Foyah and appealed therefrom. The National Labour Court, Montserrado County heard the case since at this time the Board of General Appeals had been abolished by legislative enactment. The Court affirmed in its entirety the ruling of the Director of Mines, Factories and Workmen's Compensation. At the request of the appellant, the case is here for our review and final determination.

In a four-count bill of exceptions, summarized herein, the appellant, contending that

the ruling of the National Labour Court should be overruled because it is arbitrary, capricious, inconsistent with, and not supported by the evidence produced at the hearing. In short, appellant's charged that the ruling of the judge of the National Labour Court completely ignored the evidence adduced at the hearing.

With respect to the issue presented, i.e. whether or not Judge Williams' ruling was arbitrary and not supported by the evidence, we find ourselves in agreement with the position of appellant. In our opinion, the records from the hearing officer of the Ministry of Labour do not support either the ruling of the Ministry of Labour or that of the National Labour Court. In fact, the records clearly should have compelled the contrary result because neither Appellee James Peabody nor Director Foyah, or, for that matter, Judge Williams himself, contended that the losses sustained by appellant were not the result of under billing, over billing or missing bills, and for transactions for which no bills were made at all. Also, we do not find in the records certified to this Court any contention that appellee was not the supervisor of the container billing section, finance department, National Port Authority, and that Messrs. Joseph Smith and Emmanuel Haynes worked directly under him. What we find is that the National Labour Court Judge based his ruling upon the argument that if appellant wanted to retrieve the amount it lost as result of the under-billing, over-billing or missing bills, it should have sued and collected same through the court and not dismiss appellee.

Indeed, in spite the fact that Appellee Peabody, in testifying on his own behalf, confirmed that audits conducted showed that appellant had sustained losses as the result of the under billing and other irregularities, and that some of the customers involved had either gone out of business or were not operating for one reason or the other, the judge held that as a prerequisite to dismissing appellee it was incumbent upon appellant to institute a criminal suit and obtain a conviction in a court of competent jurisdiction. We are not convinced by the argument that the appellant should have brought criminal charges against appellee.

It is obvious that the trial court failed to accord the evidence adduced by the parties the necessary consideration, and, under such circumstances, this Court has not hesitated to reverse the lower court. In the case *Vamply of Liberia, Inc. v. Kandakai*, 22 LLR 241 (1973), this Court held that the findings of the Board of General Appeals as to the facts shall be conclusive if supported by sufficient evidence on the records considered as a whole. This vital principle of law was ignored or simply overlooked by the National Labour Court. The conduct of appellee which resulted in a substantial loss of money to the appellant justified the termination of his services by appellant for gross negligence of duty. See *The Labour Practices Laws of Liberia*, 18-A: 1508-6 (a), (b) and (c). For the reasons we have herein above stated, counts 1 &

2 of the appellant's bill of exceptions are sustained.

For the benefit of this opinion, we find it necessary to quote some pertinent portions of the ruling of Mr. Johnny S. Foyah, Director, Mines, Factories, Workmen's Compensation & Industrial Safety Division, Ministry of Labour:

". . . Gross negligence of duty and his fraudulent involvement in the discrepancies that resulted to a revenue loss to the management which amounted to \$66,523.30, and another amount in the Accountants Report for \$68,687.30 [renders] the reports [at variance] and . . . same cannot [therefore] be used against Mr. Peabody to warrant his termination. . . There are variations in the two testimonies as well . . . These reports are subject to clarification to arrive at the actual revenue loss as alleged by the management." (Emphases added).

It is interesting to note that Director Foyah, in his ruling, did not suggest that he was convinced that appellant sustained no loss, or that the appellee denied categorically that any shortage occurred as a result of the way and manner in which he performed or discharged his duties as supervisor of the container storage billing section. The thrust of Mr. Foyah's contention is that there was a doubt with respect to the actual amount of loss sustained by appellant. For example, in his ruling, at page 4, paragraph 1, he observed:

"The auditor in his report stated that there were over and under billing of customers, but the report did not state the amount of revenue realized when customers were over billed or whether management ever credited those customers who were over billed or debit customers who were under billed with the amount in question so as to ascertain the actual revenue loss sustained by the management."

In the mind of this Court, in raising the issue of the importance of a particular amount unaccounted for rather than whether or not there were in fact losses directly traceable to the act of appellee, Mr. Foyah believed that there was indeed a loss. Under such circumstances, therefore, the question is whether this act of appellee constitutes gross negligence of duty. We say it does and is ground for summary dismissal under the Liberian labour statute. For example, under Section 1508 (5) of this law, it is provided that ". . . an employer may dismiss an employee engaged for an indefinite period without notice, subject to payment only of wages due, where it is shown that the employee has been guilty of a serious breach of duty." In subsection 6(b) of the section just cited, *supra*, it is also stated, as a ground for summary dismissal:

"(b) lack of skill or manifest inefficiency of the employee which makes impossible the fulfillment of his duties under the contract."

The basic question that comes to one's mind is whether an employer should retain in its employ an employee in a capacity of a cashier or billing clerk who performs in the manner as was done by appellee? Undoubtedly, even a bishop would not hesitate to dispense with the services of such an employee. In this respect, we are of the opinion that the contention of the appellant, to the effect that the National Labour Court should not have affirmed the ruling of the hearing officer, is legally sound. The hearing officer's ruling is everything but fair and impartial.

We are also in agreement with appellant's contention that Judge Williams should not have affirmed the ruling of Director Foyah because same is inconsistent. Here again, we quote some excerpts from that ruling:

"It is the opinion of this investigation that since the management two witnesses' testimonies were at variance and the reports from the auditor and the assistant chief accountant cannot be corroborated, a re-audit into the alleged revenue loss be immediately instituted to ascertain the authenticity of Mr. James Peabody's involvement." (Emphases supplied).

Despite the preceding paragraph just quoted from Mr. Foyah's ruling, where he placed himself on record as recommending a re-audit, he went on to state as follows:

"In view of the foregoing, this investigation, having gathered pertinent records adduced into evidence and given the uncorroborated testimonies of management's two witnesses, rules that the management of the National Port Authority is guilty of the charges levied against it for unfair labour practice by Mr. James Peabody." (Emphases ours). The director continued: "For proper accountability of revenue loss, as alleged by management and the authenticity of the uncorroborated audit reports that involves. Mx. James Peabody and others, a re-audit should immediately be instituted by the Management, well conceived, for the participation of those employees allegedly involved in the container storage billing, for the accountability or revenue loss to management." (emphases ours).

We are mystified by the above quoted ruling of the hearing officer, and to the same degree, that of the National Labour Court Judge, insofar as it was subsequently affirmed by that Court. After recommending a re-audit immediately, Director Foyah ends his ruling in the next paragraph thus:

"We further hereby rule that the management makes payment to Mr. James Peabody in the full remuneration for illegal dismissal, for time lost from April 14, 1986 to March 14, 1987 (11 months) at \$680.00 per month, which equals \$7,480.00, since his services were illegally terminated under the pretense of revenue loss to the management, and that he be reinstated without further procrastination. As for any denial, the management is hereby compelled to compensate Mr. Peabody for 'illegal dismissal' according to the Labour Practices Law of Liberia. . ."

Judge Williams saw the issues in this case before the hearing officer as being, as follows:

1. Whether or not the charge levied against complainant James V. Peabody, which was the basis for his termination, was in fact in accordance with the Labour Practices Law of Liberia, or was established.

2. Whether or not the ruling of March 14, 1987 by the hearing officer was based on the facts and evidence adduced during the hearing before the hearing officer.

As the National Labour Court Judge named no other issue, it seemed that he regarded the two issues as the only issues before him.

Throughout his ruling, the judge emphasized that the dismissal of the appellee was wrongful because, according to him, the appellee was not tried by a court of competent jurisdiction which found him (Peabody) guilty of the charge. The judge's concern was not whether appellant had sustained any financial loss and the extent of the loss; rather, his concern was that the appellee should have been tried criminally and convicted of the crime before being dismissed.

On page 3 of his ruling, at paragraph 6, he held that appellee's constitutional right had been violated. He stated:

"It is . . . guaranteed by the Constitution that every person criminally charged shall have a right to be confronted with witnesses against him, and to have a speedy, public and impartial trial by a jury of the vicinity." He continued: "In order to legally dismiss an employee for the commission of a crime, an employer must first procure a criminal court's judgment declaring the employee guilty of the crime which has become final due to the employee's not appealing or a judgment of the Supreme Court." The judge ended his ruling thus: "The ruling of the hearing officer of the 14

th day of March, A. D. 1986, awarding complainant/respondent an amount of \$14,960.00 . . . is hereby confirmed and affirmed."

This brings us to count 3 of the bill of exceptions which accused the trial judge of committing another error because he based his ruling on the handbook of appellant which concerns major offenses such as fraud, etc., whereas appellee was terminated by appellant for "gross negligence of duty." For the benefit of this opinion, we hereby quote, as did Judge Williams in his ruling, the relevant portion of the appellant's letter of termination: "We regret to inform you that based on the Container Storage Audit Report and the investigation conducted by the senior staff of the finance division, which show gross negligence of duty by you, thus leading to a revenue loss of \$1,321.60 to the National Port Authority (NPA), your services are hereby terminated, effective April 14, 1986."

Appellant's handbook, at pages 12-13 (1982), provides that where management sustains loss of life and property as a result of the negligent act or performance of an employee, such an act shall constitute "gross negligence of duty" and shall cause the employee to be subjected to immediate dismissal or termination.

While it is true that before the hearing officer, the appellee and his legal counsel advanced the contention that Mr. Peabody was charged by appellant with having committed fraud against his employer, which charge was repeated by witness Edward DeShield, the fact of the matter is that the word "fraud," or even its concept, is absent from both the letter of termination and the testimony offered on behalf of appellant. See the minutes of November 19, 1986, sheet 3.

Apparently, the National Labour Court Judge also got the idea of "fraud" from an answer given by witness DeShield. In answering a question put to him while on the cross-examination, the witness said:

"Answer. According to what I discovered, even though the comptroller called it or classified it as negligence, but I assume it as a fraudulent act." (Emphasis supplied).

See minutes made before the hearing officer, November 19, 1986, page 3.

The Civil Procedure Law is not silent on the subject of fraud." It provides: "In all averments of fraud or mistake the circumstances constituting the fraud or mistake shall be stated with particularity. " See Civil Procedure Law, Rev. Code 1: 9.5 (2).

Finally, as to the contention of appellant in count four of the bill of exceptions that



the trial judge erred when he held that it was incumbent upon appellant to first successfully prosecute appellee criminally before dismissing him, the Court says that because appellant neither charged appellee with perpetrating fraud against appellant nor that he committed any other criminal act, appellant had no duty to prosecute appellee criminally before terminating his services. Appellant dismissed appellee for gross negligence of duty, which it may do under the Labour Practices Law cited supra. For these reasons, count four of the bill of exceptions is also sustained. It is therefore the holding of this Court that the termination of appellee was not wrongful but legitimate and that he is not entitled to any compensation.

In view of the foregoing, the judgment of the lower court is reversed, with costs disallowed in these proceedings.

*Judgment reversed.*