NATIONAL PORT AUTHORITY, by and thru its Managing Director, MOSES P. HARRIS, JR., Appellant, v. **F. BROPLEH WOLO et al.**, Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: June 21, 1988. Decided: July 29, 1988.

1. The right of an employer to declare an employee redundant does not mean that the employee forfeits his right given under the law.

2. The employee who is declared redundant must be compensated as the law prescribes.

3. An employee declared redundant is entitled to one month notice or payment in lieu thereof, and to one month salary for each year served with the employer in the case of a salary employee, and four weeks for each year served in the case of a non-salary employee.

In an action of unfair labour practice in which the hearing officer found the appellant liable to its former employees, appellees herein, for transportation allowance and redundancy pay, an appeal was taken to the Board of General Appeals which confirmed the decision. The Board however remanded the case for further evidence to be taken and documents admitted into evidence by the hearing officer relative to the exact amount of the transportation allowance and the redundancy pay.

In the process of making the calculations, the hearing officers permitted new names to be added to the list of complainants. The National Labour Court affirmed the award, including those affecting the new names added to the list of redundant employees, when it passed on the appellant's petition for judicial review.

The Supreme Court affirmed the award but with modification. In so doing, the Court rejected the contention of the appellant that the appellees were not entitle to an award for transportation, noting that under the appellant's handbook, it obligated itself to provide its employees transportation, creating thereby a legal obligation for which it could be held liable.

On the question of the redundancy notice pay, the Court held that the Labor Law provided for one month pay to the redundant employee for each year of service in the case of salary employees and four weeks for each employee for each year of

service in the case of non-salary employees. The Court observed, however, that the hearing officer had added new names to the list of complainants after the case was remanded to him to admit documents into evidence for the purpose of calculating the award of the original complainants. This, the Court said, was wrong, since the new names, not being among the original list of complainants, should not have been added. The Court therefore eliminated the new names from the list and reduced the award accordingly. As so modified, the Court confirmed the award of the National Labour Court.

John T Teewia, in association with James D. Gordon, appeared for appellant. Theophilus Gould of Brumskine and Associates appeared for appellees.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

Appellees filed a complaint against the management of the National Port Authority, appellant herein, at the Ministry of Labour on March 27, 1986. The complainant pointed out that the appellees were declared redundant without notice and that the appellant had refused and neglected to provide transportation for the period 1982 to December 1985, the time they were declared redundant. The hearing officer ruled in favor of the appellees, which ruling was appealed by the appellant to the Board of General Appeals.

After a hearing by the Board of General Appeals, the case was remanded to the hearing officer with instruction that certain documents material to the case be admitted into evidence. In obedience to the instructions of the Board of General Appeals, the hearing officer admitted the documents into evidence and calculated the amount equivalent to the transportation allowance plus one month notice pay prayed for by appellees in their complaint. The total award per the said calculation amounted to $356,878.32. From this ruling, appellant again appealed to the Board of General Appeals. However, due to the dissolution of the Board of General Appeals, the appellant filed a petition for judicial review of the case on May 25, 1987, before the National labour Court. Appellees filed their returns to the petition on June 30, 1987.

When the case was called for judicial review before the National Labour Court on July 7, 1987, appellant moved the court to strike appellees' returns from the records of the said court due to the late filing of the returns, as well as the failure of the appellees to serve a copy thereof on the appellant. The National Labour Court denied the motion and thereafter heard arguments pro and con. Final judgment was entered on September 11, 1987 by the court. Based upon the calculation of the hearing

officer, the court awarded the appellees the amount of $356,878.32. It was from this ruling that appellant announced an appeal to this Honourable Court and has filed a three-count bill of exceptions, which we quite hereunder:

"1. That Your Honour made an interlocutory ruling on the 1st day of September, 1987, remanding the case to the hearing officer to effect a proper calculation of the entitlements of the appellees, to which ruling appellant excepted since the ruling was interlocutory.

2. That the hearing officer, without citing appellant to participate in the calculations as required by statute and numerous opinions of the Supreme Court, proceeded to make the calculations in the absence of appellant, which calculations Your Honour affirmed and confirmed to the prejudice of appellant since he was not present to challenge the correctness of the said calculations. Consequently, Your Honour committed a reversible error for which your entire ruling should be set aside.

3. That the act of the hearing officer in not citing appellant to participate in the calculations is a deprivation of due process of law enshrined in our Constitution, which calculations Your Honour should not have affirmed and con-firmed since appellant did not take part in the calculation. Your Honour's final judgment should therefore be set aside."

When the case was called for hearing before us, in keeping with the appellant's brief, the following issues were argued:

"1. Whether or not the award of $356,878.32 is supported by the evidence adduced at the trial of the case?

2. Whether or not an answer or a return to a petition can be filed and served without statutory time?

3. Whether or not a notice pay is applicable to a redundant employee upon an order of the Chief Executive?

4. Whether or not the claim for transportation allowance is justified under the management-employee contract?"

After appellant had rested arguments, appellees argued the below issues:

"1. Whether or not the appellant did not have its day in court?

2. Whether or not the appellant, National Port Authority, is under a duty to provide transportation and notice pay for the appellees?"

In presenting the two issues, appellees argued that the appellant had its day in court as it was cited to the hearing, had the opportunity to cross-examine witnesses, and to testify in the proceedings in the lower court. Appellees requested the Court to take judicial notice of the records which were before us, and cited for reliance the Minutes of the Ministry of Labour and the National Labour Court.

It is now our binding duty to consider the issues presented by both parties and to arrive at a conclusion that is legal and just. However, for our consideration the pertinent issue which concerns us the most is whether or not the appellant, National Port Authority, is under a legal duty to provide transportation and notice pay to the appellees.

Our first search goes to the very handbook of the appellant, which is used as a guide for employment, layoff, and all other benefits that an employee is entitled to. Section 1 B, under transportation, states:

"The N.P.A. has also assumed full responsibility to provide transportation to all employees at no extra cost. All employees should contact the transportation section for information concerning buses routes."

Appellees contend that they were not provided with transportation and that as such they had to transport themselves to work, for which they claim appellant, has to reimburse them.

In keeping with section 1B of appellant's handbook, it is obligatory for the National Port Authority to provide transportation for all of its employees, and thus the employees are entitled to transportation.

Turning to the issue of one month notice pay, we note that the appellant has argued the issue as "whether or not a notice pay is applicable to a redundant employee upon the order of the Chief Executive?" This argument of appellant is not tenable in law as would cause appellees to forfeit their rights. The Chief executive has the right to give such instruction, but even if this was not the case, the right of management to declare an employee redundant does not mean that an employee should forfeit the right

given him under the law. Therefore, an employee who is declared redundant must be compensated as the law prescribes. The Chief Executive did not say in his letter to the appellant that the redundant workers should not be paid, and he did not select or name those who were affected under the redundancy action taken by appellant.

It was appellant that made the selection and made payment. According to the Labor Law, when redundancy is resorted to by an employer, the employee affected thereby is given one month notice or payment in lieu thereof. Such employee is paid one month for each year served in case of a salary employee and four weeks for each year served in the case Of a non-salary employee. Labor Law, Lib. Code 18-A:1508.

Another issue which is also of importance and which will enable us to determine the actual award to be received by appellees is whether or not the amount of $356,878.32 awarded by the hearing officer and confirmed by the National Labour Court is supported by the weight of the evidence. Appellant contends that additional names were inserted when the case was remanded by the Board of general Appeals to the hearing officer for admission into evidence of certain documents as would have enabled the hearing officer to adequately calculate the actual amount of the award. It was during the admission of those documents and the calculation of the award, appellant says, that the number of employees was increased far above 145. Appellant contends that the number above 145 was brought into the proceedings under scrupulous means and that even some of those included in that number had long been declared redundant and justly compensated.

During the arguments before us and from our review of the documents, it was confirmed that the contention of appellant was quite in place. As such, the additional names should not have been included. The persons whose names were added were not parties to the original complaint which the hearing officer passed upon and which was remanded for appropriate calculation. Only 145 employees should have been compensated and they should have been justly entitled to receive $178,475.00.

Wherefore, and in view of the foregoing, we hereby rule that only 145 persons, the original complainants before the hearing officer, be compensated in the sum of $178,475.00. This reflects a modification of the ruling of the hearing officer which was confirmed and affirmed by the National labour Court. Judgment is confirmed with modification. Costs in these proceedings are ruled against appellant. And it is hereby so ordered.

Judgment affirmed with modification.