

SCANSHIP (LIBERIA), INC., represented by its Authorized Representative,
Appellant, v. **TUNEY NIMLEY** and **H. ANTHONY BLAMO**, Hearing Officer,
Ministry of Labour, Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO
COUNTY.

Heard: November 10, 1993. Decided: February 18, 1994.

1. The failure of the clerk of the trial court to forward the records on an appeal to the Supreme Court within ninety days, as required by statute, is not attributable to neglect of the appellant, if he has exerted every effort to have the records transmitted within the time prescribed by law; and the clerk's failure does not under the circumstances constitute a basis for dismissal of the appeal.
2. This Court will not dismiss a case because of the lateness of the records reaching it when all of the other legal requirements have been met, especially when the neglect is due to a judicial officer.

Appellees filed a motion to dismiss appellant's appeal alleging failure to comply with the statutory requirement governing appeal. The appellant resisted the motion contending that its failure to timely transmit the records to the Supreme Court was attributable to the clerk. The Court held that where the failure to timely transmit the records of the trial court to the Supreme Court is not attributable to the negligence of the clerk of the trial court and not the appellant, the appeal will be dismissed. The Court held that in the instant case, the failure to transmit the records was due to the negligence of the appellant. It therefore granted the motion to dismiss and ordered the appeal *dismissed*.

John N. Morris for appellant. *Farmere G. Stubblefield* for appellees.

JUSTICE SMALLWOOD delivered the opinion of the Court

This case is before this Court on appeal taken from the ruling delivered by the judge of the National Labour Court, His Honour Arthur K. Williams, on the 10th day of January A. D. 1990. The records revealed that the complainant, now co-appellee, Tuney Nimely, employed with Scanship (Liberia), Inc. since October 1976 as clerk/typist in Sinoe County, was transferred to Harper, Maryland County, on December 1, 1983, where he served until March 4, 1988, when his services with the

company was terminated based on a letter dated April 13, 1988, over the signature of the General Administrator, S. Eldered Liberty.

With this letter in hand, Mr. Tuney Nimely filed this complaint with the Ministry of Labour on August 29, 1988, claiming that he had been wrongfully dismissed by his employer, Scanship (Liberia) Inc. requesting an investigation into the cause of causes which led to his dismissal as he was unaware of any misconduct he had committed against the interest of the company.

An investigation into the complaint commenced on the 2nd day of September A. D. 1988, at the Ministry of Labour, Monrovia, Liberia, before Mr. N. Anthony Blamo, Deputy Director for Labour Standards.

On the 6th day of November A. D. 1988, Deputy Director Blamo rendered his ruling in favor of the complainant, Tuney Nimely, in which he said:

"That since defendant alleged the violations of serious breach of duty and failed to prove same, it should be made liable to pay complainant as stated below."

The hearing officer awarded the complainant a total of \$5,175.00 representing 15 months times \$345.00. The 15 months represent 12 months severance pay, one month's pay for time served, one month's notice pay and one month's leave pay.

The defendant, not satisfied with the ruling, appealed to the National Labour Court and after the hearing, His Honour Judge Arthur K. Williams, rendered the court's ruling on the 10th day of January 1990, in which he confirmed the ruling of the hearing officer with modification. The modification was that instead of 15 months, the complainant should be compensated for 10 months at the rate of \$345.00 per month, making a total of \$3,450.00 instead of the \$5,175.00 awarded by the hearing officer. It is from this ruling that this matter is before us on appeal on a four-count bill of exceptions.

The National Labour Court judge in his ruling rendered January 10, 1990, said, among other things:

"The records transmitted to us revealed that respondent was dismissed without investigation to determine whether he was actually convicted of said crime. After his dismissal respondent was acquitted by the Fourth Judicial Circuit, Maryland County, and issued clearance. It was upon receipt of this clearance respondent filed a

complaint before the Ministry of Labour, contending that he was wrongfully dismissed."

Our perusal of the records before this Court does not make any mention of any trial or the prosecution of the complainant, now appellee, before this Court, in the Fourth Judicial Circuit Court, Maryland County, Republic of Liberia, nor is there any mention of being taken to court by the complainant in his letter of complaint filed before the Ministry of Labour, which letter is dated August 29, 1988. We deem it necessary to herein quote the sixth paragraph of the letter of complaint filed with the Ministry of Labour as follows:

"On March 4th 1988, Scanship dismissed me wrongfully, as the photocopy letter attached can clarify, and accused me for being responsible for mysterious disappearance of things in the office. I was never taken to court and convicted."

We are at a complete loss to understand why the judge of the National Labour Court put in his ruling that the complainant was acquitted by the Fourth Judicial Circuit Court, Maryland County, and given a clearance. The complainant himself in his letter of complaint, as well as in answers to questions on the crossexamination and by the hearing officer as found on sheets 3 & 4 of the minutes October 19, 1988, said:

"No, we never went to court. Nobody told me that I was fired because I stole money." He also said: "No, I was never tried and convicted."

We feel compelled to sound a warning to all judges not to become emotionally involved in cases that are being heard by them, nor should they add or subtract from the testimonies of party litigants.

There is only one issue upon which the decision of the case rests and that is, whether or not there was an internal investigation conducted by the management as contemplated by the labour statute.

The letter of dismissal dated April 13, 1988 and addressed to Tuney Nimely contains the following paragraph:

"Following your confession on March 2, 1988, in the presence of your union president and some office staff, it was established that you were unauthorizedly in possession of the office key, which you had earlier denied. Your entry into the office at the time you did was also unauthorized. We therefore consider those violations a

serious breach of duty. Exercising our rights under the Labour Law we hereby direct that your services be terminated with effect as of March 4, 1988, the date on which you were suspended from work, pending internal investigation."

We shall now turn to the records in the case to determine whether or not there was an internal investigation conducted after March 4, 1988.

The complainant, Tuney Nimely, in his testimony before the Labour Ministry, had this to say:

"I was jailed on the 2nd of March, 1988, at 7:30 p.m. On the 14th of April 1988, I received a letter from Mr. Anderson that I should move out of his house, without notice, and I complied. On April 13, 1988, I received a wrongful dismissal letter that all mysterious disappearance of cash from some offices, I am held responsible."

Mr. John Natt, president of the Union, made the following testimony before the hearing officer:

"At 8:00 a.m. on March 21", after everybody came to work I called the employees to inform them that in connection with the complaint that came to the Union concerning disappearance of things from the office of the Branch manager of worship, Harper, Maryland, there was a man at about 6:55 a.m. that morning coming from the office of the next man and I advised them to be very careful and not to play with their jobs. The matter was later reported to the Branch Manager."

In answer to questions asked him on the direct examination regarding the reaction of the branch manager to the report he had made, he said:

"the reaction of the branch manager was that we send for a police officer to have Mr. Tuney Nimely contacted for further investigation."

Mr. S. S. Sekou, branch manager of Scanship, Harper, Cape Palmas, had this to say:

"On March 2, 1988, when I got in office...Mr. Natt informed us of an incident that occurred early in the morning on March 2, during which he caught Mr. Tuney Nimely coming from Oliver Dugbeh's office at 6:55 a.m. Immediately he called Mr. Nimely for confrontation. When he asked him he admitted meeting Mr. Natt early in the morning, he also admitted that keys dropped from his hand. The case was very interesting because of concurrence in the facts. We adjourned the meeting and went

for lunch. When we got in at 2:00 p.m., I sent for a police officer for more details and we again called the staff for the same investigation. At that end, Mr. Nimely said that he was the one who was keeping the office main door key and he is the one that is staying downstairs, and therefore there is no way for him to clear himself from all the doubts on him. He suggested that we change all the office locks on the account, he will pay for it and he will vacate downstairs of the building. I refused, this suggestion at that stage. He started begging all together for forgiveness, at which time I turned him over to the police for more investigation."

Mr. Dugbeh, in his testimony, had this to say:

"On March 2, 1988, Mr. Natt, our union president traveled to Cape Palmas and lodged in our guest house. During his stay, he called our attention that morning to the fact that he saw Tuney Nimely at my office door and a key had dropped from him. We then sent for Tuney Nimely to Mr. Sekou's office, the branch manager. When we asked him about what we had heard, he said that it was true that he entered the main office, but he never entered my office. So we started questioning him. Then I said if you truly entered my office, please speak the truth so that we can beg Mr. Sekou, the branch manager. He said he only entered in the main office. From one thing to another Mr. Blidi asked him question, is it true that a key fell from you. He said "yes", it was the office main door key. Then he said "since I live downstairs in the office building, have the key in my possession, and you claim that money is missing from the office, it is better that you change all the locks." Then he said this, Mr. Sekou turned him over to the policeman, Mr. Blidi. Mr. Blidi, the police officer (CID) did not make a general statement before the hearing officer but was simply asked questions, some of which and the answers are as follows:

Q. Mr. Witness, when Mr. Nimely made this confession, was Mr. Dugbeh present?

A. I cannot remember Mr. Dugbeh being present but Mr. Natt and the Secretary of the Union, Mr. Williams were present.

Q. Mr. Witness, during your investigation, was Mr. Dugbeh ever invited since his office was the office that Mr. Nimely was allegedly coming from?

A. It is proper, but as I have said I cannot remember.

Q. Mr. Witness, did Dugbeh complain of any money or items being missing in his office on the day in question?

A. A complaint was made by Mr. Sekou, and not Mr. Dugbeh.

Q. Mr. Dugbeh did testify before the CID when the case was turned over for intensive investigation.

Q. Mr. Witness, is it not a fact, that when you called Mr. Tuney Nimely for the purported thorough investigation, Mr. Nimely denied being in possession of any key for Mr. Dugbeh's office and rather it was a front door key that fell from his hand that morning?

A. Mr. Tuney Nimely admitted coming out of Mr. Dugbeh's office and that a key did drop from him in front of the said door.

Q. Mr. Witness, I trust then that since Mr. Nimely confessed, you have a statement of confession, am I correct?

A. There is a statement made by Mr. Nimely during the intensive investigation before the CID.

This constitutes the testimonies of witnesses regarding what transpired on March 2, 1988. We have been unable to find any record of an "internal investigation" before or after March 4, 1988, or mentioned in the company's letter of dismissal dated April 13, 1988, nor have we found the statement of the confession.

The appellant in his brief argued that there was confrontation with Mr. Nimely based on the information from Mr. Natt, and that Mr. Nimely admitted that Mr. Natt did see him coming out of Mr. Oliver Dugbeh's office about 6:55 a.m. with the keys to Dugbeh's office.

The witnesses contradicted each other on the question of Mr. Nimely's admission of entering Mr. Dugbeh's office on the morning of March 2, 1988, and that the key that dropped from Mr. Nimely was the key to Mr. Dugbeh's office. For instance, Mr. Dugbeh...whose office it is alleged that Mr. Nimely entered, said:

"So we sent for Tuney Nimely in Mr. Sekou's office, the branch manager. So when we sent for him and when we asked him what we had heard, he said that it was true that he entered the main office, but he never entered in my office. So we started questioning him. Then I said if you truly entered my office, please speak the truth so

that we can beg Mr. Sekou, the branch manager. He said "no", he only entered in the main office... So then from one thing to another Mr. Blidi asked him another question, is it true that a key fell from you, he said "yes", it was the key to the door of the main office."

The branch manager, Mr. S.S. Sekou never testified that Mr. Nimely admitted entering the office of Oliver Dugbeh on March 2, 1988, and that the key which dropped from him was the key to Dugbeh's office. Rather, he testified that Nimely admitted meeting Mr. Natt early that morning and that keys dropped from his hands.

Following the alleged confrontation of March 2, 1988, on March 4, 1988, a letter of suspension was sent to Mr. Nimely, the appellee, suspending him from the service of the company pending an internal investigation. We have read through the entire records, including the petition for judicial review, and in none of these documents and records is there any mention of an internal investigation, apart from its mention in the letter of dismissal of April 13, 1988. Even though the letter of dismissal makes mention of the suspension on March 4, 1988 "pending our internal investigation" yet it does not make mention that the... internal investigation was conducted and the result thereof. Rather, it recounts the alleged confession made on March 2, 1988, which is not supported by the records.

The appellant management of Scanship (Liberia) Inc., charged the appellee, Tuney Nimely, with serious breach of duty in keeping with its letter of April 13, 1988, dismissing Mr. Tuney Nimely from the services of said company.

Section 1508, sub-section 5, of the Labour Laws of Liberia, states:

"Notwithstanding the provision of section 1508 of this chapter, 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." (Emphasis ours).

This sub-section of section 1508 of the Labour Laws was interpreted by our Supreme Court in the year 1981, in which the court held:

"It is therefore our interpretation of the above quoted law that the Legislature intended that before an employee can be dismissed by his employer for having allegedly committed a gross breach of duty, there must be an investigation properly conducted at the place of business of the employer to establish the accused

employee's innocence or guilt, or else the dismissal of the employee involved will be deemed legally unjustified. *The United Liberia Rubber Corporation and the Board of General Appeals v. McCauley*, 29 LLR 342 (1981).

The appellant, Scanship (Liberia) Inc., not having conducted an internal investigation as contemplated by the labour statute prior to the dismissal of the appellee, we hold that the said dismissal was wrongful.

Our Labour Practices Law also provides that where wrongful dismissal is alleged, the person wrongfully dismissed shall be awarded payment of reasonable compensation, giving consideration to reasonable expectation in case of dismissal under a contract of indefinite duration, the length of service, but in no case shall the amount awarded be more than the aggregate of two years salary or wages computed on the basis of the average rate of salary received six months immediately preceding the dismissal. *National Iron Ore, Ltd v. the Board of General Appeals*, 26 LLR 429, 432-434 (1978).

The ruling of the judge of the National Labour Court, awarding compensation to Appellee Tuney Nimely of ten (10) months salary at the rate of \$345.00 per month, making a total of \$3,450.00, is sustained.

In view of the foregoing, the ruling of the judge of the National Labour Court affirming and confirming the ruling of the hearing officer, with its modification, is hereby affirmed, with costs ruled against the appellant. The Clerk of this Court is instructed to send a mandate to the judge of the National Labour Court commanding him to give effect to this opinion. And it is hereby so ordered.

Judgment affirmed, with modification.