

**AUGUSTINE S. TAMBA**, Appellant, v. **CITIBANK**, by and thru its General Manager,  
Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Heard: May 24, 1983. Decided: July 6, 1983.

1. The dismissal of an employee is wrongful where the employee is not found to be guilty of any of the acts prescribed by the labor statute for dismissal of an employee.
2. A long serving employee who has not violated any of his employer's rules and regulations is entitled to compensation for wrongful dismissal to the fullest extent allowable.
3. Where wrongful dismissal is alleged, the Board of General Appeals shall have power to 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.
4. A person employed under a contract of indefinite duration who is wrongfully dismissed may be awarded up to two years salary in lieu of reinstatement.

Appellant was dismissed by appellee for "serious breach of obligation", for which he filed a complaint with the Ministry of Labour. The hearing officer ruled that appellant's dismissal was wrongful and, accordingly, ordered that he be reinstated or paid 15 months' salary in lieu of reinstatement. On appeal, the Board of General Appeals affirmed the ruling of the hearing officer, with the modification that appellant be paid 8 months' salary. The Board also ruled that because appellant occupied a managerial position, he was not entitled to overtime pay. On appeal to the Civil Law Court for the Sixth Judicial Circuit, the court affirmed the ruling of the Board. From this ruling, appellant announced and prosecuted an appeal to the Supreme Court.

The Supreme Court, holding the appellee was wrongfully dismissed and that a person employed under a contract of indefinite duration who is wrongfully dismissed may be awarded up to two years salary, affirmed the ruling of the trial court, with the modification that appellant be paid 24 months' salary, the maximum amount allowed by the Labor Law.

J. Emmanuel R. Berry appeared for the appellant. Christian D. Maxwell appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Augustine S. Tamba, the appellant, was employed by the appellee bank on June 5, 1962 and thereafter served the appellee up to and including July 4, 1978 when he received a letter

terminating his services from J. Beames, resident vice president of the appellee bank, terminating his services for what the resident vice president termed as "a serious breach of obligations". Appellant being dissatisfied with his dismissal filed a complaint for wrongful dismissal with the Ministry of Labour. The labour relations officer who investigated the complaint ruled that the appellant was wrongfully dismissed and ordered his reinstatement or in lieu of reinstatement be paid fifteen months salary. He took into consideration appellant's length of service and his age as a middle-aged man, relying on the Labor Practices Law, 18-A:9(a)(1)(b) (a)(1) (11).

Appellant appealed to the Board of General Appeals which confirmed the ruling of the labour relations officer with the modification that appellant should be paid eight months salary in lieu of reinstatement. It also ruled that the appellant was not entitled to overtime pay because he was functioning in a managerial position and section 700 (e) of the Labor Practices Law, cited supra, expressly excludes overtime payment to employees holding managerial positions. Appellant again appealed to the Civil Law Court of the Sixth Judicial Circuit for a judicial review. It should be noted, however, that both appellant and appellee filed their respective petitions with the Sixth Judicial Circuit Court, Montserrado County, praying for the reversion of the Board of General Appeal's decision. The appellee prayed the court to reverse and dismiss the ruling of the Board of General Appeals with costs against respondent (appellant), while appellant prayed that as the ruling of the Board of General Appeals was contrary to the law and the facts adduced at the hearing, same should be reversed and that he be awarded two (2) years' salary as compensation for his illegal dismissal as in keeping with law and that he be further awarded the sum of \$13,747.00 for overtime pay. After hearing arguments from both sides, the judge ruled as follows:

"This action brought before this court by a petition for judicial review originated at the Ministry of Labor, Youth and Sports, commencing with the hearing officer. From the records, the hearing officer awarded the complainant fifteen (15) months' salary in lieu of reinstatement. The hearing officer in his ruling said, inter alia, that he took into consideration the length of service of the aggrieved employee which he termed considerable. He made reference also to the age of the aggrieved employee, and in so doing specially classified the said employee as middle age. He said further in his ruling that because of the employee's middle age, he is still eligible for employment elsewhere. The ruling of the Board of General Appeals where the case was transferred on appeal, reduced the number of months to eight, for which they said the employee should be compensated since the salary was over eight hundred dollars. The Board also made reference to "circumstances surrounding the dismissal of the employee." This court, in the absence of any substantial explanation on such circumstances, is unable to comment on the same.

The court has carefully listened to the contentions raised by both counsel in the arguments and in ruling says that the ruling of the Board of General Appeals is hereby confirmed.

Citibank is hereby ruled to pay to the petitioner, Mr. Augustine Tamba, an amount of his salary for eight (8) months at eight hundred and nineteen dollars and seventy six cents per month the same being the aggregated amount of \$6,558.08. The Board of General Appeals denied overtime pay for the complainant, and so the court in confirming the ruling also sustains the denial. Ruling of the Board of General Appeals upheld.

Given under our hands in open court this 19th day of September A. D. 1981.

Sgd. A. Wallace Octavius Obey ASSIGNED CIRCUIT JUDGE".

The appellant still not being satisfied with the ruling of the judge has appealed to this Court of last resort. Hence, this case is here for final determination.

Counts 1, 2, 3 and 4 of the bill of exceptions relate to the payment of the appellant for eight months in lieu of reinstatement. The relevant statute on illegal dismissal provides that, "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 expectations in the case of dismissal in 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 preceding 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:

1. The Board of General Appeals may assess and order payment of all arrears of remuneration payable in any case referred to it." Labor Practices Law, 18-A:9, Wrongful Dismissal.

We also quote the letter of dismissal:

"July 4, 1978

Mr. Augustine S. Tamba

Monrovia, Liberia

Dear Mr. Tamba,

As an employee of Citibank, your honesty, integrity and conduct in the community as a whole affects the image of the Bank which is projected through the quality of its employees.

Following the accusation by the Police of your involvement or complicity in the ITC/Livingstone embezzlement case, you by way of explanation, made several inconsistent, contradictory and unsubstantiated statements to management. When given the opportunity, you refused to obtain and produce evidence to support your explanations and you even refused to face persons who, according to you, could verify your statements attesting to your innocence.

Meanwhile, we also received a letter from the Agricultural and Cooperative Development Bank dated June 22, 1978, advising that you had applied to them for employment and requesting information regarding your moral character and so forth.

This behavior on your part compromises your reliability and usefulness to the Bank and constitutes a serious breach of your obligations, irrespective of whether you are involved in the commission of a crime. Management, therefore, has no alternative than to terminate your services for loss of confidence.

Enclosed is our managers' check for \$819.38. The amount is made up as follows:

1. Salary for the month of July \$819.76
2. One months' salary in lieu of notice \$819.76.

Total: \$1,639.52.

Less withholding Tax 217.08.

Loan installment for July and August \$603.06

Net pay \$819.38

Your outstanding personal and housing loans amounting to \$3,545.03 and \$8,908.64, respectively, (excluding interest) will be retained at existing staff rates of interest for three months and you are required to repay or refinance them by October 6, 1978.

Please sign the attached copy of this letter, which will acknowledge that the aforementioned amount is received in full. Very truly yours,

T. J. Beames Sgd. Encl."

Having received this letter the appellant made this notation on said letter: "Original memo received 7/5/78 and not the amount as contained in said memo.

Sgd. Augustine Tamba."

Section 1508, which provides the condition under which an employer may legally dismiss his employees, stipulates as follows:

"1. No employer shall dismiss any employee with whom he is bound by a contract for a definite period before the end of that period unless it is shown that the employee has been guilty of a gross breach of duty or a total lack of capability to perform. Where this has not been proved, the dismissed employee shall be entitled to claim full remuneration for the unexpired portion of the contractual period.

2. The following acts and violations shall be deemed to be gross breaches of duty (without limiting the generality of the term) within the meaning of section 1 of this chapter and shall dispense the employer from payment of compensation for dismissal under the provisions of that Section:

(a) any unprovoked assault by an employee upon the employer or his agents in the course of or arising out of employment;

(b) persistent disregard by an employee of the technical measures for safety of the staff of the undertaking, provided that the said measures have been embodied in rules posted as required by law and the employer or his agent have ordered the employee in writing to comply with the said rules;

(c) disclosure by an employee of the working secrets of the employer's undertaking;

(d) absence of an employee for more than ten consecutive days (or more than 20 days over a period of six months) without good cause, in which case the employee shall be deemed to have terminated his contract. Save in the case of force majeure, an employee shall be required to notify the employer or his agent of the reason for his absence .

3. Where the contract is concluded between the employer and the employee for an indefinite period, the employer shall have the right to dismiss the employee on condition that he gives him two weeks written notice in the case of non-salaried employee and four weeks written notice in the case of salaried employee or payment in lieu of such notice.

4. The period of notice shall begin to run on the first day of the pay period next following that in which the notice was served.

5. 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.

6. The following acts and violations shall be deemed to be serious breaches of duty within the meaning of the preceding Section entitling the employer to terminate without notice or pay in lieu of notice contracts of employment for an indefinite period:

- (a) Any of the acts or violations specifically set in Subsection of this Section;
- (b) lack of skill or manifest inefficiency of the employee which makes impossible the fulfillment of his duties under the contract;
- (c) if the employee commits any other serious offense against his obligations under the contract."

The dismissal of the appellant was wrongful in view of the above statute since he was not guilty of any of the acts set forth in the above statute. Counts 1, 2, 3 and 4 are sustained.

In count 5, appellant contends that he is entitled to overtime payment but the appellee contended that the appellant held a managerial position and therefore he is not entitled to receive overtime pay as in keeping with section 700 (e). Employees holding managerial positions or those employed in confidential capacity are among the exceptions provided by section 700 (e) who are not to benefit from overtime pay according to the labor statute of Liberia. The records, however, reveal that the appellant was to receive overtime pay until his performance review falls due in March/April, 1975 and that after the increase all authorizations for overtime would definitely cease. This statement was contained in a memorandum dated January 2, 1975, under the signature of Mrs. Gertie Collins, personnel department. The records further show that the appellant's base salary was increased to \$7,776.00 effective April 26, 1976. This means that appellant was entitled to overtime pay from 1974 to April 26, 1976 when he received increment to commensurate with his title as office assistant. We also discovered from the records, especially in the prayer of appellant's brief, that the overtime pay which he requested for covered the period March, 1976 through May, 1978. Besides the statutory inhibition and the memorandum sent out by Mr. Boyle requesting strict adherence to Section 700 (e) of the Labor Law, the memorandum from Mrs. Gertie Collins specifically stated that the appellant Tamba was to receive overtime pay because of his tight financial position until March/April, 1975 when he was to receive a merit increase. Since the appellant had received increment effective April 26, 1976 according to the records before us which has not been denied by appellant, we have no choice but to sustain the decision of the Board of General Appeals denying the payment of overtime for the period March, 1976 through May, 1978, because appellant had already received increment to commensurate with his official title for the period under review.

Appellant also contended that he was near pension and that his dismissal was to avoid the payment of retirement benefits. According to Section III 2(a)(d) of the appellee Bank's employment policy found in the records before us in this case, an employee who remains with the Bank until he attains the age of 60 years, or who has 25 years of continuous service is eligible to enjoy retirement benefits by receiving monthly payments until his death which will be 40% of the annual salary received for the last five years. Accordingly, the appellant had 9 more years to become eligible for the retirement benefits. In the case National Iron

Ore. Ltd. v. Board of General Appeals and Kumorteh, 26 LLR 429 (1978), this Court upheld the decision of the Board of General Appeals for wrongful dismissal and the award of two years salary because the appellee Arthur Kumorteh who was wrongfully dismissed had served the appellant company 14 consecutive years without violating any of the company's rules and regulations. In this case, the appellant has served 16 consecutive years without violating any of appellee Bank's rules and regulations. We therefore hold that he should be awarded two years salary in lieu of reinstatement and not five years as contended by him.

In view of the foregoing circumstances and the law governing as cited, it is our considered opinion and we so hold that the ruling of the Board of the General Appeals as affirmed by the lower court be and the same is hereby affirmed with the modification that appellant be paid two years salary instead of eight months, at the rate of \$819.76 per month making the aggregate amount of \$19,674.24. Costs ruled against appellee. And it is hereby so ordered.

*Ruling affirmed*