

Martin Dagoseh, et. al. of the City of Monrovia, Liberia Appellees versus The
Management of the National Social Security and Welfare Corporation and
Monrovia Breweries, Inc. Appellants

APPEAL FROM THE NATIONAL LABOR COURT, MONTSERRADO
COUNTY.

Heard: March 21, 2007 Decided: August 9, 2007

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

The appellees had been employees of Monrovia Breweries, Inc. for many years. Following their retirement, they applied to the Claims and Benefits Department of the National Social Security and Welfare Corporation (NASSCORP), appellant, for pension benefits. NASSCORP, in separate letters to the appellees, acknowledged that their claims had been accepted and processed, and in keeping with applicable provisions of the Social Security Act, each appellee was informed of the amount of the monthly benefit. The appellees were informed, also, that their benefits would be paid through NASSCORP's Monrovia Regional Office until advised otherwise. Copies of NASSCORP's letters to the appellees were provided to Monrovia Breweries, Inc.

It appears that the appellees were paid their benefits in 2001 and 2002; payments, however, were terminated sometime in 2003.

On 6 November 2003, Martin Dagoseh and others, appellees, filed a complaint with the Ministry of Labor against NASSCORP for Unfair Labor Practices. The appellees alleged substantially that their pension benefits, awarded in 2001 under NASSCORP's Employment, Injury and National Pension Scheme Policy, had been abruptly terminated in 2003 without any justifiable cause.

On 27 February 2004, NASSCORP moved the hearing to join Monrovia Breweries, Inc., a party-defendant to the complaint. Although the motion was resisted by the appellees, the Hearing Officer granted the motion, and Monrovia Breweries, Inc. was joined as a party-defendant.

The matter was initially assigned to Philip G. Williams, Director of Labor Standards and Labor Relations Officer. On 28 September 2004, as the hearing progressed, NASSCORP requested Hearing Officer Williams to recuse himself from presiding

over the hearing. While Hearing Officer Williams noted that there was no legal basis for the request, and we agree with him, he nonetheless granted the request. The hearing was then assigned to G. Rudolphus Brown, Senior Coordinator of the Division of Labor Standards, who continued with the hearing. On 20 January 2005, counsel for the appellees requested Hearing Officer Brown to recuse himself, also, from presiding over the hearing. The request was granted, and here again we agree there was no legal basis either for the request by counsel for the appellees, or for granting the request by the Hearing Officer. The hearing was finally assigned to Nathaniel S. Dickerson, Director, Workmen's Compensation, Labor Standards Division, who concluded the hearing and rendered a judgment on 28 March 2005.

Hearing of this case commenced with a letter dated 14 November 2003 from Hearing Officer Williams citing NASSCORP to a pre-trial conference on 19 November 2003. At the pre-trial conference, the appellees were represented by Attorneys William K. Ware, Sr. and P. Mulbah Richards. NASSCORP was represented by Mr. Geeplah-Tiklo Konton, Assistant Director/Legal Department, NASSCORP. The record shows that Mr. Konton requested that the pre-trial conference be adjourned to enable him "to meet with [the] Management [of NASSCORP] and get to [the appellees] through their counsels on Wednesday, 26 November 2003." Counsels for the appellees interposed no objections to the request, and the hearing was adjourned.

It is unclear, from the record in this case, whether the parties met on 26 November 2003, and if they met, what the outcome of the meeting was. In any event, the hearing was assigned for 7 January 2004, at 1:00 p.m. At the call of the hearing at 1:45 p.m., due to the absence for counsels of NASSCORP, and while counsel for the appellees was making a submission on the absence of NASSCORP, Counselor Samuel Nyazeegboo, in-house counsel for NASSCORP, appeared. The Hearing Officer warned Counselor Nyazeegboo of his tardiness, and the hearing was adjourned until 13 January 2004.

The hearing was not resumed on 13 January 2004, but after much assignments and re-assignments, the hearing finally got underway on 1 April 2004, with Martin Dagoseh taking the stand. At the end of the day's sitting, the hearing was adjourned to resume on 6 April 2004. The hearing did not resume on 6 April 2004 as had been scheduled, and the records are devoid of the reasons. The hearing, however, resumed on 16 April 2004, when Martin Dagoseh resumed the stand on the direct examination. At the end of the day's sitting, the hearing was adjourned to resume on 22 April 2004.

When hearing resumed on 22 April 2004, counsel for NASSCORP brought to the attention of the Hearing Officer that NASSCORP had filed a petition for summary proceedings before the National Labor Court. Counsel submitted that the writ from the National Labor Court served as a stay of the hearing, and he prayed that the hearing be suspended pending the disposition of the petition by the National Labor Court. The Hearing Officer sustained the submission of counsel for NASSCORP, and suspended the hearing.

On 2 July 2004, the Clerk of the National Labor Court, G. Abednego N. Simpson, Sr., upon the directives of Her Honor Comfort S. Natt, Judge of the National Labor Court, directed Hearing Officer Williams to resume jurisdiction, and to proceed with the hearing. On reading of the mandate, the hearing was assigned for 20 July 2004.

The hearing did not resume on 20 July 2004 as had been scheduled, and once again the records are devoid of the reasons. The hearing resumed on 1 September 2004 when Attorney Albert Sims of Sherman and Sherman, Inc., counsel for NASSCORP, informed the hearing that counsel "[had] written an excuse for postponement due to the death of the father of one of [appellants'] counsels and that the burial ceremonies [were] about taking place [then]." Although counsels for the appellees resisted the request, the Hearing Officer granted the request and reassigned the hearing for Monday, 6 September 2004. We quote, however, a portion of the Hearing Officer's ruling on NASSCORP's request for the postponement of the hearing.

". . . In our opinion, the contentions raised by one of counsels for defendants that several notices of assignment were issued and served on all parties and that there was no appearing of the complainants, as well as by their counsel, is very [misleading]. To [verify] this allegation], the defendant should have [specified] the days and dates when the complainants failed to appear. This would be evidence. To our mind, the basis for requesting the postponement is no legal reason to ask for an adjournment as prayed for by one of counsels for the defendants. While it is true that we are also in sympathy with one of counsels for defendant for the loss of his father, we have noticed that lots of flimsy excuses have been made, especially by the defendant and their scores of lawyers. One of such example is the excuse that was received on August 10, 2004 from one of counsels for the defendant on dirty sheet of paper when said counsel is representing a reputable institution such as NASSCORP. Further to this, we notice that all of these excuses are intended to delay the speedy disposition of this matter, for the fact that there are several lawyers from three different institutions that are representing both the first and second defendants in these proceedings. And at such, these flimsy excuses are intended to keep this matter in abeyance. However,

time having been far spent, this investigation is seriously warning defendants and their lawyers to desist from these tendencies that are capable to keep this matter in abeyance. One of counsels for the defendants being present for today's hearing, a regular notice of assignment will not be served for the next sitting. He is hereby ordered to ensure that the minutes of today's sitting will be delivered to the first defendant.

"Wherefore and in view of these facts, the trial stands adjourned to resume on Monday, September 6, 2004 at 1:00 p.m. [The] parties [being] present, [there is no need for] a regular notice of assignment to be [issued] and served, as the minutes for today [shall] constitute a regular notice of assignment. It is so ordered."

The hearing was not resumed on 6 September 2004, due to the illness of the Hearing Officer. At the resumption of the hearing on 28 September 2004, the hearing was adjourned until 30 September 2004, for reasons given by the Hearing Officer which are unintelligible, to say the least.

The hearing did not resume on 30 September 2004, and, for the third time, the records are devoid of the reasons. On 18 October 2004, when the hearing resumed, counsel for the appellants prayed for a default judgment due to the absence of the appellants and their counsels, noting that the notice of assignment had been served upon, acknowledged by counsel for the appellants, and returns to that effect made by the ministerial officer of the hearing. The Hearing Officer deferred ruling on the application.

When the hearing resumed on 26 October 2004, the hearing entertained a motion to recuse which had been filed by NASSCORP. The motion to recuse must have been granted; for the next sitting of the hearing was 24 November 2004, with G. Rudolphus Brown as Hearing Officer. There were hearings on 1 December 2004 and 3 December 2004.

On 20 January 2005, counsels for the appellees requested Hearing Officer Brown to recuse himself from sitting over the hearing. The request was granted, and the hearing was assigned to Nathaniel S. Dickerson. A notice of assignment for resumption of the hearing on 7 February 2005 was issued, and served on both parties on 31 January 2005. Neither the counsels for the appellants nor the appellants appeared on 7 February 2005, and although counsel for the appellees could have sought a default judgment against the appellants, counsel for the appellees elected to request another assignment, with a strong warning to the appellants. The Hearing

Officer granted the request and ordered the issuance of a notice of assignment for the hearing to resume on 10 February 2005. Although served on both parties, at the resumption of the hearing on 10 February 2005, neither the counsels for the appellants nor the appellees were in attendance. Counsel for the appellees thereupon prayed:

"(1) That Martin Dagoseh, [appellees'] first witness, who had taken the stand and testified, and had gone through direct examination be discharged from the witness stand.

"(2) That the remaining two witnesses be allowed to take the stand, respectively, and testify so as to make [the] imperfect judgment perfect.

"(3) That a default judgment be rendered in favor of the appellees."

The Hearing Officer granted the request, and two witnesses, Sam S. Gboyee and Peter Koffa, testified in favor of the appellees. On the resting of the production of evidence, the Hearing Officer entertained argument by counsel for the appellees.

On 28 March 2005, Hearing Officer Dickerson, entered a default judgment against the appellants, the conclusion of which we quote:

"Therefore this investigation being convinced that the within complainants have satisfied the requirements as found in the law and practices cited above, [and that] the defendant/management NASSCORP has defaulted, it is hereby ruled that NASSCORP is liable for payment of pensions to the complainants for the years it were suspended, and up to the present, in the total of:

"(a) Liberian dollars component LD\$82,194.76

"(b) United States dollars component US\$89,801.92

"Same being their just and legal entitlements as calculated and hereto attached. These calculations cover three (3) years, that is 2003-2005 which equals thirty-six months.

"Even though Messrs. Abraham Sheriff, Joseph Sieh, Morris Tanning, John Boler and Jallah Morjlo formed part of the complainants, but due to the last Monrovia fighting, their records got missing as a result they are not included in the attached calculations, but NASSCORP being the sole custodian for records of retirees, it is

prudent that NASSCORP includes their names on the calculations as their retirement benefits for three (3) years, 2003-2005."

On 14 April 2005, the appellants filed a seven-count motion before the Division of Labor Standards to rescind the default judgment. The motion was resisted. On 20 May 2005, Hearing Officer Dickerson "over-ruled" and denied the motion.

On 30 May 2005, the appellants filed a five-count petition for judicial review before the National Labor Court for Montserrat County. We quote counts three and four of the petition.

"3. That during the trial of these proceedings, co-respondent Hearing Officer granted a default judgment against the petitioners contrary to the law, practice and procedure in this jurisdiction, on the ground that the services and the Sheriff's returns to the two notices of assignment on the 31st day of January 2005 and the 7th day of February 2005, respectively, which allegedly notified complainants and movant/defendant-management, as well as their legal counsel, to appear on February 7, 2005 at 11:00 a.m. and February 10, 2005, at 11:00 a.m., respectively, and subsequently held petitioner liable to corespondents Messrs. Martin Dargoseh, et. al. for Unfair Labor Practice. Your Honor is respectfully requested to take judicial notice of the records particularly the said ruling of [the] co-respondent Hearing Officer.

"4. That petitioner filed a motion to rescind judgement but [the] co-respondent Hearing Officer denied and dismissed the motion contrary to law and the facts of the case. . . ."

On 23 September 2005, the appellees filed a five-count resistance to the petition for judicial review. We quote counts one and four of the resistance.

"1. That petitioners have failed to serve respondents (Messrs. Martin Dargoseh, et. al.) a copy of their petition, as required by law. Respondents (Messrs. Dargoseh, et. al.) were only privileged to get a copy of said petition from co-defendant Dickerson on June 7, 2005, while the said petition was docketed for the June 9, 2005 term. Said privileged copy was signed for and received by Mr. Sam S. Gboyee. . .

"4. That as to petitioner's count three, respondents strongly argue and contend that respondent Hearing Officer Dickerson did not commit any reversible error, as the default judgment rendered by him against petitioners was consistent with law, as said default judgment was rendered after the issuance of at least two notices of

assignment, which were served and returned served, but petitioners/defendants failed and refused to appear, plead or proceed with trial. .

The petition for judicial review was heard by Her Honor Comfort S. Natt, Judge of the National Labor Court, who, by judgment dated 13 April 2006, confirmed and affirmed the default judgment of Hearing Officer Dickerson. The appellants excepted to the judgment of the National Labor Court, and has brought this case up on a six-count bill of exceptions.

In the legal brief filed before this Court, counsels for the appellants have advanced two issues which they state this "Honorable Court needs to hear and determine. . . ." We shall pass upon the first of the two issues in the determination of this appeal.

"Whether or not a default judgment will lie against a lawyer who represented his client at all stages of a hearing but did not appear upon the last notice of assignment?"

We note at the outset that counsels for the appellants have neither represented their clients at all stages of the hearing, nor is it true that it was only upon the last notice of assignment that they did not appear.

The record certified to this Court is replete with instances of counsels for the appellants either being tardy in attendance upon assignments, or not attending at all. For example, on 7 January 2004, the hearing was scheduled for 1:00 p.m. Counsels for the appellants arrived at the hearing after 1:45 p.m. On 1 September 2004, Attorney Albert Sims of Sherman and Sherman, Inc., counsels for NASSCORP, informed the hearing that counsel "[had] written an excuse for postponement due to the death of the father of one of [NASSCORP's] counsels and that the burial ceremonies [were] about taking place [then]." On 18 October 2004, counsels for the appellees prayed for a default judgment due to the absence of both counsels for the appellants and the appellants, notwithstanding the notice of assignment had been served upon and acknowledged by counsels for both parties. The Hearing Officer noted the absence of both counsels for the appellants and the appellants, did not grant the default judgment, but instead made the following ruling:

"Having entertained and/or listened keenly to complainants' argument, coupled with legal citations spread on the records of these proceedings, this trial stands adjourned, pending the issuance of a regular notice of assignment so as to afford the defendants [their] day in court for its side of the argument. The investigation further says that

copies of the minutes of today's sitting will be attached to said notice of assignment to be issued and served on both parties, with a strong warning to defendants that upon their failure to honor said notice of assignment, the law will take its course as made and provided for. The matter stands adjourned. . . ."

In the case of the notices of assignments for resumption of the hearing on 31 January 2005 and 7 February 2005, counsels for the appellants have not denied that the notices were not served upon and acknowledged by employees of Kemp and Associates Legal Consultancy Chambers, Inc., counsels for appellants. Counsels contend, however, that the persons accepting the notices of assignment were not authorized to receive them on behalf of Kemp and Associates.

This Court, in *In Re Contempt Proceedings against Counselors Frances Johnson-Morris, J. Emmanuel Wureh and Isaac E. Wonasue, growing out of the case The Central Bank, by and thru its Executive Governor and all other authorized representatives of the city of Monrovia, Liberia movants v. The Brasilia Travel Agency, represented by its General Manager, Reda T. Said, of the city of Monrovia, Liberia, and The Liberian Trading and Development Bank (TRADEVCO), represented by its President, Stefano Pellegrino, of the city of Monrovia, Liberia respondents, Motion to Intervene*, October Term 2001, held and mandated:

"The Supreme Court of Liberia, in pursuance of its constitutional and statutory duties and responsibilities, hereby orders and mandates the following:

"1. That effective immediately, all lawyers are hereby ordered to resume their normal duties as lawyers which duties include, but are not limited to the defense and protection of aggrieved persons, both natural and unnatural, attending court and administrative hearings and proceedings, and complying with court rulings, orders, instructions and decisions.

"2. That hereafter and immediately following this order, all court papers or precepts will be deemed adequately and properly served if presented to any staff or personnel of all lawyers or law firms from the rank or position of receptionist and/or secretary, where applicable."

We hold, under *In Re Contempt Proceedings against Counselors Frances Johnson-Morris, J. Emmanuel Wureh and Isaac E. Wonasue, growing out of the case The Central Bank, by and thru its Executive Governor and all other authorized representatives of the city of Monrovia, Liberia v. The Brasilia Travel Agency, represented by its General Manager, Reda T. Said, of the city of Monrovia, Liberia, and The Liberian Trading and Development Bank (TRADEVCO)*,

represented by its President, Stefano Pellegrino, of the city of Monrovia, Liberia, that the two notices of assignment were adequately and properly served on counsels for the appellants.

Even assuming that the persons were not authorized to accept the notices of assignment on behalf of Kemp and Associates, the purpose of service of a notice of assignment is to give notice to the parties of the time and place of a hearing. So long, therefore, that the parties have this notice, it is immaterial whether the person accepting the notice of assignment from the ministerial officer was authorized to receive same, once it was accepted and delivered to counsel for the party. Reliance: *Liberia Logging and Wood Processing Corporation v. Allison*, 40 LLR 199, 203-5 (2000).

We agree with the decision of Her Honor Comfort S. Natt, Judge of the National Labor Court, that Hearing Officer Dickerson was justified in granting the application of the appellees for a default judgment.

Labor Law, Liberian Codes Revised, tit. 18, appendix no. 3, art. II, § 8 (1977), on Default Judgment, provides:

"If a defendant in a labor case has failed to appear, plead or proceed to trial, or if the Hearing Officer orders a default for any other failure to proceed, the complainant may seek a default judgment against the defendant. On an application for a default judgment, the applicant shall file proof of service of the summons and complaint and give proof of the facts constituting the claim, [and] the default judgment. The Ministry of Labor is hereby empowered to enforce such judgment by imprisonment until said default judgment is fully complied with."

We hold, in view of the record certified to this court, that the Hearing Officer was justified in granting the application for a default judgment, and that the appellees satisfied the requirements of the law that they "give proof of the facts constituting the claim." *Monrovia Tobacco Corporation v. Flomo*, 36 LLR 523, 527-8 (1989); *Liberia Logging and Wood Processing Corporation v. Allison*, 40 LLR 199, 206 (2000); *Liberian Bank for Development and Investment v. Natt*, Opinion of the Supreme Court of Liberia, October Term, 2006; *Kerdoo v. Bright Rubber Plantation/Farm*, Opinion of the Supreme Court of Liberia, March Term, 2007.

We note that the appellees, in count one of their returns to the appellants' petition for judicial review, have alleged that they were not served a copy of the appellants' petition. The appellants have not denied the allegation.

Labor Law, Liberian Codes Revised, tit. 18, appendix no. 3, art. II, § 7 (1977), on time limitation for taking an appeal, provides:

"Copies of the petition shall be served promptly on the Hearing Officer who rendered the decision, *and all parties on record*" (emphasis supplied).

Just as this Court has held in several cases that it is the notice of the completion of the appeal which confers jurisdiction of the Supreme Court over the parties, we hold that the National Labor Court acquires jurisdiction over a respondent, where a petition for judicial review is filed, only if a copy of the petition for judicial review is served on the respondent. In the absence of service of the petition on the respondent, the National Labor Court should, on application of the respondent, dismiss the petition for judicial review, and in accordance with Decree no. 21 of the Interim National Assembly, incorporated into the Labor Law, Liberian Codes Revised, tit. 18, art. II, § 7 (1977), on Time Limitation for taking an appeal, rule that the decision of the Hearing Officer became final and conclusive upon the expiration of thirty days after copies of his ruling have been received by the parties to the case. See: *The Management of Jos Hansen v. Wadah*, 35 LLR 655, 656-7 (1988); *Ankra v. The Liberian Federation of Labor Unions (LEFU)*, 36 LLR 343, 349 (1989); *Kennedy v. Carlton Petroleum, Inc.*, 38 LLR 360, 364 (1997).

In view of the foregoing, the final judgment of the National Labor Court is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the National Labor Court for Montserrado County to resume jurisdiction over this case and to give effect to this judgment. It is so ordered.

Judgment affirmed.