

Messrs **Martin Dogoseh, et al.** of the City of Monrovia, Liberia INFORMANTS  
VERSUS The **Management of National Social Security and Welfare  
Corporation and Monrovia Breweries, Inc.** of the City of Monrovia, Liberia  
RESPONDENTS

LRSC 4  
BILL OF INFORMATION

HEARD: October 21, 2009 DECIDED: January 21, 2010

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE  
COURT

The genesis of this Bill of Information stems from a complaint filed by a group of retired workers of the Monrovia Breweries, Inc. against the National Social Security and Welfare Corporation (NASSCORP) in the National Labor Court in November, 2003. The Complainants/informants complained that they were retired by the Monrovia Breweries, Inc. and consistent with the Social Security Act, NASSCORP wrote to each employee informing him of his monthly pension benefit amount due him. NASSCORP began making payments in 2001 through 2002; however, without any notice to the retirees, ceased the payments of pension in 2003. The pensioners, after having failed to get NASSCORP to see reason to continue payment to them, filed a complaint with the Ministry of Labour. The Ministry initiated a hearing but finally ruled by default because of NASSCORP's attorney failure to show up for hearing. The Hearing Officer ordered payments from 2003 to 2005, which included up to the time the case was finally decided by the Ministry. NASSCORP took an appeal to the National Labour Court which upheld the ruling of the Hearing Officer. NASSCORP then appealed to the Supreme Court and this Court ruled affirming the final judgment of the National Labour Court.

The Informants have now come to this Court on a Bill of Information stating that after paying them the amount awarded as per the Supreme Court's Mandate and Opinion delivered on August 9, 2009, NASSCORP has failed and refused to make further monthly payments in full compliance with the Supreme Court's judgment. As a result, informants have not been paid their pension from 2005.

NASSCORP has argued that it has fully complied with the Supreme Court's Mandate confirming the Labour Court's ruling, ordering NASSCORP to make payments to the Informants for the period 2003 — 2005. That having complied with this Court's

Mandate, a Bill of Information will not lie. Besides, the Supreme Court's ruling did not incorporate any future payments, but affirmed payments specifically granted by the National Labour Court in its ruling affirming the Hearing Officer's award to the employees for three years. The Hearing officer's ruling beginning with his observation is as follows:

*'After listening intently to statements given, the arguments advanced, coupled with an analytical perusal of documentary evidence adduced, we observe the followings:*

- 1. That on November 6, 2003, Messrs Martin Dagoseh et. al filed a complaint with the Ministry of Labour against the Management of National Social Security and Welfare Cooperation in an action of Unfair Labour Practices (it refusal to pay their retirement benefits for 2003 without any reason after paying them for 2001 and 2002);*
- 2. That the forty-seven (47) complainants having been retired by the Monrovia Breweries, Inc. after serving said company for 25 and more years, applied to the National Social Security and Welfare Cooperation (NASSCORP) for retirement benefits. The complainants' applications were accepted; and then NASSCORP wrote them individually at different dates. It is believed that NASSCORP with its expertise had conducted an investigation to ensure the information gathered on the complainants to qualify them for retirement benefits were true and correct since in deed said payment is for life time as mentioned in their respective letters.*
- 3. THAT, Defendant/Management's Counsels refusal or neglected to deny or rebut these damning allegations by failing to honor Notices of Assignment duly served on them. INA Decree No. 21, Article 1, Section 8 States: "If a Defendant in a Labour case has failed to appear, plead or proceed to trial, or if the Hearing Officer... orders for any failure to proceed, the complainant may seek a Default Judgment against the Defendant. On an application for Default Judgment, the applicant shall file proof of the service and summons and complaint and give proof of the facts constituting the claim". Same is buttressed by 1LCLR, chapter 42, Section 42.1 and 42 6;*
- 4. THAT, the Labour Practices Law of Liberia is not silent on issue of retirement, but explicitly states in Chapter 26, Section 2501, 'An employee within the application of this Chapter is entitled to receive from his employer a retirement pension on retirement from an undertaking at the age of sixty (60), if such employee has completed at least fifteen (15) years of continuous services, or he may retire at any age after he has completed twenty five (25) years of service.'*
- 5. Further, in consistent with the Act creating the National Social Security and Welfare Cooperation, its Handbook states: "That an employee is qualified if he has one hundred (100) monthly contributions, which according to the records, all of said retirees have complied with".*

Therefore, this investigation being convinced that the within complainants have satisfied the requirements as found in the Law and Practices cited above; but defendant/Management NASSCORP has DEFAULTED, it is herein RULED that National Social Security and Welfare Cooperation (NASSCORP) is liable for payment of Pension 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

The issue considered by this Bench after listening to the arguments of the counsels for both parties is, *"Whether this Court's ruling in August, 2007, upholding the ruling of the National Labour Court implies and inherently obligates the NASSCORP to all and every subsequent future payment to the informants?"*

Title 22a, Chapter 89 of the Public Corporation law provides for the creation of the National Social Security and Welfare Corporation, an autonomous agency that may sue and be sued.

Section 89.2 this law provides for the establishment of three funds, the National Pension Fund, the Employment Injury Fund and the Welfare Fund to be administered by the Corporation.

With the exception of certain individuals listed in Section 89.15, the law requires every employer having twenty-five (25) persons or more in his employ to contribute to these funds by deducting money from the remuneration of the employees and paying same along with the employer's own contribution into an appropriate fund managed by NASSCORP. The Monrovia Breweries Inc., is a contributor to this fund.

Having retired few of its employees, the Management of the Monrovia Breweries, Inc. forwarded their names to NASSCORP to be paid monthly pension under the National pension scheme for Old Age.

The NASSCORP, after almost four months of administrative investigation, and having verified that these retirees were entitled to pension, wrote them as follows:

NASSCORP/INS/CLMS/BNFTS/2001/68 December 13, 2001 Mr. Martin

Dagoseh Monrovia Breweries Inc. Monrovia, Liberia

Dear Mr. Dagoseh:

AWARD OF RETIREMENT PENSION UNDER THE NATIONAL PENSION  
SCHEME

We write with reference to your claim submitted to the Claims and Benefits  
Department through our Monrovia Regional Office for pension benefit.

We wish to inform you that your claim has been processed and accepted for regular  
pension under the National Pension Scheme. In keeping with Section 89.21(a) of the  
Social Security Act, the benefit awarded you is based on 27% of your average  
monthly earnings of the best five (5) years for the last ten (10) years before your  
retirement from active service of your employment.

In view of the above, your average monthly earnings was \$1,024.17. Your benefit  
entitlement is 27% of this amount. Of this 27%, 83% forms the Liberia dollar  
component which gives you a monthly rate of L\$229.52 while the balance 17%  
represents the United States dollars component giving you a monthly rate of  
US\$47.01. You will receive these amounts for life (emphasis ours).

Your benefit will be paid through our Monrovia Regional Office until you advise us  
otherwise.

Kind regards.

Sincerely yours,

S.L. Fleming DIRECTOR-GENERAL

Cc: Monrovia Regional Office/NASSCORP Monrovia Breweries Inc.

Black's Law Dictionary has defined pension as "Retirement benefit paid regularly  
(normally monthly) with the amount of such based generally on the length of  
employment and the amount of wages or salary of pensioner". 5th Edition, Page  
1021. This letter as read, intends pension payments to each retiree on a monthly  
calculated payment for life.

Respondent, the NASSCORP, in its brief and argument before us says the Supreme  
Court's Mandate regarding payment to the employees/informants was definite; it  
confirmed that NASSCORP had defaulted in its payment to the informants, and that  
the Corporation was liable to the informants for the 3 years informants' pension  
payments were suspended. NASSCORP says, the Corporation having complied with  
the Mandate and paid the lump sum for 2003 — 2005, it has satisfied the Supreme

Court's Judgment and therefore Information will not lie.

Besides, it contends that that the informants had made misrepresentation and given misinformation about their actual ages or dates of birth.

This contention by NASSCORP, of informants misinforming it of their ages, was raised in a Bill of information and Motion to Dismiss filed by NASSCORP. This issue was addressed by the Hearing Officer in his ruling of February 7, 2004. The Hearing Officer ruled that NASSCORP's allegation, that the informants misrepresented their ages, was a material fact that needed to be substantiated by evidence. The tribunal was responsible to determine such dispute based on its merits, by taking of evidence and fact finding. Despite this ruling, NASSCORP's continuous absences from scheduled hearings set by the assigned Hearing Officers prompted the Ministry to proceed with the matter *ex parte*, requiring the informants to present their side of the matter.

In its August 9, 2007 Opinion confirming the Hearing officers Ruling, this Court made reference to the numerous failure of NASSCORP to show up for hearings when the matter was assigned. The Court stated:

"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." *Labor Law, Liberian Codes Revised, tit. 18 appendix no. 3, art. II, § 8 (1977).*"

Besides, Section 89.47 Legal Proceedings, of our Social Security Law states that :

Any employer who:

a. With intent to evade payment of any contribution or any other amount under this Decree or Regulations promulgated by the Director General, knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in any particular; Or

b. In order to benefit himself or some other person or persons, knowingly makes any false statement or representation, or produces or furnishes, or causes to be produced or furnished, any document or information which he knows to be false in any particular; or

c. Misrepresents or fails to disclose any material facts; or ....

g. Commits any other offense or defaults under this Decree or Regulations issued by the Director General; shall be guilty of a misdemeanor and, upon conviction, punishable as follows:

i. In case of an employer, by a fine of not less than \$500, nor more than \$2,000, or by imprisonment not exceeding one year.

ii. In case of an employee, by a fine of not less than \$25.00 nor more than \$2,000.00 or by imprisonment not exceeding six months.

This Court holds if the respondent NASSCORP feels strongly about any misrepresentation made by the informant regarding their ages, it has a legal remedy in a criminal proceeding, and this court will not lend hand to such accusation where NASSCORP's failed to appear to present evidence of fraud by the retired employees/informant before the Hearing Officer who is clothed with the authority to take evidence in an administrative hearing and make findings thereon. This Court has said: *"An administrative agency's findings as to the facts which are supported by substantial evidence are binding and conclusive, and may not be disturbed or set aside by a court, in the absence of fraud or bias"*. *Johnson vs. LAMCO J. V Operating Company*, 31 LLR, 735, 745, (1984).

Answering the issue of whether this Court's ruling in August 2007, upholding the ruling of the National Labour Court confirming payment due the informants as pension, could be implied as confirming the informants' entitlement to monthly pension payments, this Court answers in the affirmative.

A judgment should be complete and certain in itself and it is sufficiently certain if it can be made certain by reference to the pleadings or other papers on file in the case. 46 Am Jur 2d, Section 66, Certainty.

In this matter, the informants complained that they were retired by the Monrovia Breweries, Inc. and few months thereafter, NASSCORP began paying them monthly pension benefits as per the Social Security Law. However after payment from 2001-

2003, NASSCORP stopped payment. Failure to get NASSCORP to resume payments for an extended period of over two years, the informants took the Corporation to the Ministry of Labour which ruled that indeed NASSCORP had defaulted in its monthly pension payments. The Hearing Officer awarded informants their outstanding payments for three years and the ruling on appeal before the National Labor Court was reviewed and confirmed, and subsequently upheld by the Supreme Court on appeal before it. NASSCORP paid the award based on the Supreme Court's judgment, but they are now contending that having made payments as per the Supreme Court's ruling, they have satisfied the judgment; that the Supreme Court's ruling was definite only as to payments for 2003 — 2005; insinuating that in order to receive any other subsequent payment as of 2006, the informants would have to file a new action.

This ruling establishing indebtedness by suspension of retirement payment to informants was not only limited to payment for such indebtedness but also confirmation of NASSCORP's statutory obligation to pay monthly pension payments due the informants in accordance with NASSCORP's pension plan with the Monrovia Breweries, Inc. Therefore, withholding any portion of payment when due and not paid, and ruled by the Court to be owed and due, acquiesce right to retirement payment as per law. It is said: "The determinative factor in interpreting a judgment is the intention of the court, as gathered, not from an isolated part thereof but from all parts of the judgment itself. When construing written judgments, courts consider the circumstances present at the time of entry and do not consider the meaning of particular provisions of the judgment in isolation but in the context of the whole judgment. A judgment should be construed in light of the pleadings and in such a way that will give force and effect to every word of it, if possible, and make its several parts consistent, effective, and reasonable. A judgment must be construed in light of the situation of the court, what was before it, and the accompanying circumstances". 46 *Am Jud 2d*, JUDGMENTS "General rules of Construction" PAGE 447.

*In their letter to the informants, NASSCORP wrote: "In view of the above, your average monthly earnings was \$1,024.17. Your benefit entitlement is 27% of this amount. Of this 27%, 83% forms the Liberia dollar component which gives you a monthly rate of L\$229.52 while the balance 17% represents the United States dollars component giving you a monthly rate of US\$47.01. You will receive these amounts for life (emphasis ours).*

The Ruling from which this Information grows and which was confirmed by this Court, affirms the informants right to monthly pension payments until they die, and

where NASSCORP fails to pay any amount when due, the Corporation is indebted to the pensioners for the month(s) it defaults in its payment.

The issue, whether Information would lie in this case, this court also says yes? This Court has said, "A Bill of information will lie where the case must have either been pending before or decided by it; where there appear to be a usurpation of the province of the Court by the respondents, that there existed some irregularities or obstruction in the execution of the Court's mandate, or that there was a refusal to carry out the Court's orders (emphasis ours)".

*In this case, contrary to the Court's ruling affirming informants as beneficiaries under the National Pension Scheme which entitles NASSCORP to pay them monthly pension payment, NASSCORP has failed and refused to carry out the Court's Mandate. Therefore, information will lie to enforce NASSCORP's continuous payment of pension to the informants.*

WHEREFORE AND IN VIEW OF THE FOREGOING, this Court's mandates that NASSCORP pay all outstanding pension amounts due the informants as well as make subsequent and continuous monthly payments to informants in accordance with the Corporation's pension plan with the Monrovia Breweries, Inc. AND IT IS HEREBY SO ORDERD.

Counselor Chea Cheapoo, Sr. of the Cheapoo Law Firm represented the Informants, and Counselor Molly N. Gray, Sr. of the Jones and Jones Law Firm also represented the Respondents.