

DRAGAGES ET TRAWAUX PUBLICS, Appellant, v. **JOSEPH P. SOJON**, Appellee.

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

Heard: November 16, 1982. Decided: February 3, 1983.

1. The statutory procedure as to how and when to remove matters from an administrative forum to the courts for judicial review and the procedure thereat, must be strictly adhered to; otherwise courts of justice have no authority to open the records and conduct judicial reviews, except to enforce the administrative decision.

2. A party aggrieved by a decision made by the Board of General Appeals may appeal from such decision or any part thereof to the circuit court or debt court in the county in which the Board held its proceeding by filing a petition to the circuit court or debt court within 10 days after receipt by the aggrieved party of a copy of the administrative decision. Copies of the petition shall be served promptly upon the Board of General Appeals which rendered the decision, and upon all parties of record.

3. Counsel must superintend their cases, for if they stand by and permit statutory periods prescribed for the performance of certain acts to elapse without doing them, they cannot benefit from their own negligence.

4. The decision of the Board of General Appeals shall be final and conclusive upon the expiration of the tenth day after copies of its decision have been served on the parties to the

5. The decision of the Appeals Board upon a reconsideration of the matter shall become final and conclusive as to all matters reconsidered upon expiration of the tenth day after copies of its decision have been served on the parties to the proceeding, unless prior to that day a party shall seek judicial review of the decision.

6. A motion for enlargement of time may be granted by court where excusable neglect to act within statutory time is shown and established.

Appellee filed a complaint of illegal dismissal against appellant in the Ministry of Labor claiming that he was dismissed at a time when his contract had not expired. The hearing officer ruled in favor of appellee and ordered that appellee be paid for the remaining eight months of his unexpired contract. The case progressed from the hearing officer to the Board of General Appeals which affirmed the ruling of the hearing officer with modifications. Appellant did not file any petition for judicial review within the period prescribed by statute. Rather, on the 13th day after the Board's ruling, appellant petitioned the Board for reconsideration of its ruling, which was denied.

From the ruling denying reconsideration, appellee filed a petition in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to set aside the Board's ruling on his application for reconsideration. The Civil Law Court held that there was no petition before it for judicial review and, accordingly, ordered the ruling of the Board of General Appeals enforced, from which ruling appellant appealed to the Supreme Court.

The Supreme Court affirmed the judgment of the Civil Law Court, holding, among other things, that the procedure for removing a case from an administrative forum to the courts must be strictly adhered to; otherwise, the courts have no authority to open the records and conduct judicial reviews. To the extent that appellant did not petition the trial court for judicial

MR JUSTICE SMITH delivered the opinion of the Court.

This case originates from the Ministry of Labor, and is now before us on appeal from the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, on a five-count bill of exceptions which in substance states that: (1) according to the records, fraud is apparent but that the trial judge refused and neglected to pass upon the same; (2) the trial judge refused to hear the facts and circumstances which led to appellant's motion for enlargement of time; (3) the trial judge dismissed appellant's petition to set aside the ruling of the Board of General Appeals, Ministry of Labor, on the ground of late filing, which act of late filing is attributed to the clerk of court and should not, therefore, prejudice any of the parties; and (4) the trial judge sustained the decision of the Board of General Appeals adjudging the appellant liable to pay to the appellee the amount of \$4,900.00 plus ten percent (10%) interest.

Under our statute extant, matters of industrial nature are cognizable before the Labor Ministry where there is established an industrial relations division in charge of industrial matters, as well as a Board of General Appeals to review all such proceedings on appeal from the hearing officer level. The law provides that such matters of administrative nature may be appealed from to courts of justice for judicial review of the administrative decisions of the Board of General Appeals. The law also provides the procedure as to how and when to remove such matters from the administrative forum to the courts for judicial review, and the procedure must be strictly adhered to. When the statute in this respect is not strictly followed, courts of justice have no authority to open the records and conduct judicial reviews, except to enforce the administrative decisions of the Board. Here is the relevant portion of the Labor Practices Law on the point:

"The decision of the Board of General Appeals shall be final and conclusive upon the expiration of the tenth day after copies of its decision have been served on the parties to the proceeding unless prior to that day:

The decision of the Appeals Board upon a reconsideration of the matter shall become final and conclusive as to all matters reconsidered upon expiration of the tenth day after copies of its decision have been served on the parties to the proceeding, unless prior to that day a party shall seek judicial review of the decision" Labor Practices Law, Rev. Code 19-A: 5.

The Labor Practices Law further provides, and we quote:

"Sec. 7. Judicial review of decision of Board of General Appeals: A party aggrieved by a decision made by the Board of General Appeals may appeal from such decision or any part thereof to the circuit court or debt court in the county in which the Board held its proceeding by filing a petition to the circuit court or debt court within 10 days after receipt by the aggrieved party of a copy of the administrative decision. Copies of the petition shall be served promptly upon the Board of General Appeals which rendered the decision, and upon all parties of record. Within 10 days after service of the petition, or within further time allowed by the court, the Ministry of Labor and Youth shall file with the clerk of the circuit court or debt court a certified copy of the entire record of the proceeding under review, together with a copy of the administrative decision. It shall not be necessary to file exceptions to the rulings of the Board of General Appeals."

The records before us show that the appellee made a complaint to the Ministry of Labor against the appellant for illegally dismissing him at the time when appellee's contract of employment with the appellant had not expired. The complaint was heard by the hearing officer, who ruled that appellant pay the appellee for the unexpired period of eight months or that he be reinstated. Appellant appealed from this ruling of the hearing officer to the Board of General Appeals. The Board heard the appeal and, on the 1st day of October, 1981, gave its decision confirming the ruling of the hearing officer with modification that the appellant pay to the appellee the amount of \$4,900.00 for the unexpired contractual period of seven

1981, that is to say, thirteen days after the Board's decision was rendered, appellant petitioned the Board for reconsideration of its decision. And on January 18, 1982, the Board entered ruling that it could not reconsider its decision because the application therefor was not made to the Board within the statutory period of ten days. Appellant having received copy of the Board's ruling denying the rehearing, on the 19th day of January, 1982, addressed a letter to the Board indicating that it was appealing from the Board's decision to the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County.

Following the said letter of January 19, 1982, announcing the taking of appeal, on the 1st day of February, 1982, that is to say thirteen days after announcing appeal, appellant filed a petition in the office of the clerk of the People's Civil Law Court for the Sixth Judicial Circuit entitled: "petition to set aside ruling". Appellee filed returns to the said petition on February 9, 1982, attacking appellant for late filing. Appellant having been served with the returns filed a motion to court on March 16, 1982, for enlargement of time, which was resisted on March 25, 1982. During the March Term of the Civil Law Court, 1982, His Honor Frederick K. Tulay called up the case and, after arguments pro et con, entered final judgment to the effect that there was no petition before the court for judicial review of the administrative decision of the Board of General Appeals, and therefore, ordered the enforcement of the Board's decision. It is from this final judgment of the court below that the appellant has appealed to this Court for final review.

The issue involved and argued by both counsel is, whether the petition of the appellant was filed without the statutory time in support of the judgment of the court below and the court's failure to take cognizance of appellant's petition to set aside the ruling or decision of the Board of General Appeals? But before commencing to pass upon this issue, we would like to mention just in passing that the procedural steps provided for by statute for taking a case from any administrative agency to the courts, is by filing of petition for judicial review of the administrative decision of such agency concerned, and not a "petition to set aside ruling." However, be it as it may, the question is whether or not the petition was filed within the ten day period as required by statute.

date on which the petition was presented by counsel to the bailiff; instead he filed the petition out of statutory time. An affidavit alleged to have been sworn to by Bailiff George Sherman was annexed to the motion made to the court below for enlargement of time, in which it is stated that on the 19th day of January, 1982, Counselor McDonald M. Perry, counsel for appellant, left with him (Bailiff George Sherman) the petition in question to be delivered to the clerk for filing, but the clerk finally accepted same from him on the 1st of February, 1982, and had it filed for that date. From this affidavit, it has been sufficiently established that after appellant had on the 19th day of January, 1982, indicated its intention to appeal from the judgment, it was not until the 1st day of February, 1982, that is to say, thirteen days thereafter, that its petition was filed. At this point, one wonders whether counsel for appellant is saying that from January 19 to February 1, 1982, he had not gone back to the clerk's office to check as to whether his petition, which he alleged to have left with Bailiff Sherman, had been duly filed within time until he was attacked for late filing, or that the clerk and his assistant were still absent from their office, which made it impossible for him to have superintended and seen to it that his petition was filed within the time allowed by statute. In our opinion, if the counsel for appellant stood by as he did, and permitted the statutory period to elapse before the filing of his petition, he cannot benefit from his own negligence. Francis v. Pynches et al.[1963] LRSC 6; , 15 LLR 224(1963).

It is also our considered opinion that the clerk of the Civil Law Court could not have filed the petition prior to February 1, 1982, the date on which it was delivered to him, or any other date for that matter, without breaching public interest, and Bailiff George Sherman was not the proper officer of court with whom to entrust legal papers for filing by the clerk.

More than this, if appellant had filed his petition within the time allowed by statute, thereby bringing his case before the court for judicial review, why then did he elect to file a motion for enlargement of time on the ground stated in the affidavit sworn to by Bailiff Sherman, among others? A motion for enlargement of time may be granted by court where excusable neglect to act within statutory time is shown and established. Civil Procedure Law, Rev. Code 1: 1.7(2). Could it be excusable neglect when counsel for appellant left his pleading with a bailiff for

alternative, but to rule the petition out of court and to order the enforcement of the decision of the Board of General Appeals.

In view of the foregoing and the legal authority relied upon hereinabove, it is our holding that the judgment of the court below be, and the same is hereby confirmed and affirmed with costs against the appellant. And it is hereby so ordered.

Judgment affirmed