FIRESTONE PLANTATIONS COMPANY, represented by its General manager, Appellant, v. **JOSEPH BERRY,** Appellee.

APPEAL FROM THE CIVIL LAW COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: December 8, 1982. Decided: February 4, 1983.

1. A cadet is a person who is employed on a permanent basis rendering partial services to his employer and spends part of his official time in academic pursuit with the full knowledge and consent of his employer.

2. An employee need not to remain glued to his desk for eight (8) hours in order to qualify for a full day's compensation. As long as his absence from duty or office is known and consented to by his employer, the employee has to all intents and purposes worked a full day; that is, an eight hour day as stipulated by the labor laws.

3. An employee who serves his/her employer for a period of at least two (2) years, is entitled to severance allowance in an aggregate amount representing one month for each of the years served up to termination.

4. Where an employee's services are terminated just a few steps away before receiving his or her legal retirement benefit, such termination should be treated as an attempt to evade the

payment of pension.

5. A cadet should not be confused with a "casual worker". A cadet is a permanent employee, and as such qualifies for the receipt of the basic legal rights and privileges that go with permanent employment as found in sections 1508, 1511, 700, 2500 and 3500 of the Labor Laws of Liberia.

6. A casual laborer, as defined by our Labour Laws, is an unskilled laborer employed for a period of less than a working day. A casual laborer is thus a person whose employment is temporary, seasonal, fortuitous, unfixed, uncertain and irregular. A casual laborer is not necessarily unskilled. The emphasis is not on the "unskilled" aspect of casual employment but rather the "uncertainty" aspect of such employment.

Appellee Joseph Berry was retired by appellant on medical grounds, after twenty one (21) years of employment with the appellant company. Appellant, contending that of the 21 years served by appellee, the first six (6) years were on a part-time basis as a student, serving only in the morning hours and using the balance of the day to go to school, paid Appellee Joseph Berry severance allowance only for 15 years of service. Appellee disagreed, and filed a complaint of unfair labor practice, claiming that he is entitled to severance allowance for the remaining six (6) years.

The hearing officer held that appellee was entitled to the balance payment representing the first six years. On appeal, the Board of General Appeals, upheld the ruling of the hearing officer of the Ministry of Labor. On a petition for judicial review, the ruling of the Board of

General Appeals was subsequently affirmed by Civil Law Court for the Sixth Judicial Circuit from which an appeal was announced to the Supreme Court.

The Supreme Court held that even though appellee was designated as a cadet, he was nonetheless a permanent employee, and like other permanent employees, he was entitled to full-time employment benefits as provided for under the labor law. Distinguishing between a cadet and a casual worker, the Court held that appellee, although a cadet with permission to attend school, was not a casual worker, and that an employee need not remain glued to his desk for eight (8) solid hours in order to qualify for a full day's compensation. As long as his absence from duty or office is known and consented to by his employer, the Supreme Court added, the cadet has to all intents and purposes, worked a full day, that is an eight-hour day, as stipulated by the labor laws.

The Supreme Court also declared that the present practice and policy of the Ministry of Labour that an employee who serves his or her employer for a long time should not have his or her services terminated by simply giving him or her, one month salary just to satisfy the provisions of section 1508 of the Labour Practices Laws of Liberia, but rather that the employer will have to pay his or her employee one month salary for each year he or she served his or her employer at the time of such termination is a sound policy and that this policy is fully supported by the Court. Finally, the Court held that in order for an employee to benefit under the principle of law just pronounced, upon termination, such employee must have served his or her employer for a minimum period of not less than two years, that is to say, twenty four (24) calendar months of unbroken services. Accordingly, the Supreme Court affirmed the judgment.

Victor Hne of the Carlor, Gordon, Hne & Teewia Law Offices appeared for appellant. Johnnie N. Lewis of the Banks, Lewis and Williams Associates appeared for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

This is an appeal by defendant, now appellant, Messrs. Firestone Plantations Company, from a judgment of the People's Civil Law Court, Montserrado County, in a petition for judicial review growing out of an industrial dispute heard in the Ministry of Labor. The appeal presents a case of first impression in this jurisdiction as evidenced from our case law and judicial history.

The plaintiff, now appellee, filed a complaint before the Ministry of Labor against the appellant for what he termed "unfair labor practices". In his complaint of unfair labor practices, the appellee alleged, among other things, that he was employed by the appellant on the 3rd March, 1958 at its Cavalla Plantation Branch, Maryland County, and that in 1967 the appellee was transferred to the Harbel Plantation, Marshall Territory, where he worked until the 19th of March, 1979, when he was retired on medical grounds. The records show that at the time of his retirement, the appellee was paid a severance allowance in the sum of $3,613.00 (Three Thousand Six Hundred Thirteen Dollars) representing the aggregate of one month's salary for each year of the 15 years he served the appellant. These are the basic facts as disclosed by the records as regards both parties.

However, we have deemed it necessary to outline the facts from the stand points of

appellant and appellee, respectively, to make this opinion clearer. On the other hand, the appellant, defendant in the court below, claims that while it is true that the appellee served it for a total period of twenty one (21) years, it is also true that only 15 years of the period were served on a full- time basis; the first 6 years having been served on a part-time basis by the appellee. The appellant claims further that during the first six years, the appellee was a student, serving the appellant in the morning hours only, and utilizing the balance of the day in educational pursuits, hence, unable to offer full-time services to the appellant as required by the Labor Practices Laws of Liberia.

The appellant also claims that at the end of the 15th year of service at Harbel, the appellee became medically incapacitated, with the result that not only did the appellee become unproductive, but also that he turned into a rude and insolent worker, thereby motivating the appellant to terminate his services with full severance benefits, notwithstanding. We observe from the appellant's bill of exceptions and brief that the appellee was compensated for his 15 years services in the sum of $3,613.00 as alleged and that the appellee refused to execute a release in favour of the appellant as previously contemplated.

On the other hand, the appellee states that he served the appellant for an unbroken period of twenty one (21) years from the 3rd of March, 1958 to the 19th of March, 1979 when he was retired from service on medical grounds. He states further that his retirement on medical grounds was at the instance of the appellant and that he was given a sum of $3,613.00 as his severance allowance, covering only fifteen (15) and not twenty-one (21) years of service rendered. He also claims that even though he accepted and took delivery of the amount, he decided not to execute a release as previously requested owing to partial

payment. Hence, he instituted legal proceedings at the Ministry of Labour to recover the balance of his compensation.

A perusal of the trial proceedings at the Ministry of Labour, indicates that the appellee's complaint was first investigated by a hearing officer who, after due investigation, ruled in favour of the appellee; thereby accepting appellee's contention that throughout the twenty-one years appellee served as a full-time employee and that as such the appellee was entitled to the balance payment representing the first six years. The records show that the appellant took exception to that ruling and appealed to the Board of General Appeals which sustained appellee's contention; thus, affirming the decision of the hearing officer. The records further show that the appellant once again registered its misgivings over the Board's ruling and consequently announced an appeal to the People's Civil Law Court for judicial review in accordance with the Labour Practices Law, 18-A: 7 & 8. On the 6th of August, 1981, the Civil Law Court, sitting in its June, A. D. 1981 Term, with His Honour M. Fulton W. Yancy, Jr., presiding, gave its findings over the controversy, in which he upheld the judgment of the Board of General Appeals, and from which findings the appellant once again excepted and appealed to this Honourable Court for a final judicial review and adjudication. Hence, this appeal is now before us.

From these sets of facts, the following issues present themselves for our final solution:

1. Who is a cadet under our Labor Practices Law?

a. Whether or not a cadet or a part-time worker is entitled to the same legal rights and

privileges as a fulltime employee?

2. What is a severance allowance and under what circumstances is it awarded?

The Black's Law Dictionary and Ballantine's Law Dictionary speak of a "cadet" as being "a youth under tuition and drill with a view to his becoming an army or navy officer". This is the traditional definition of

a "cadet" in the English history. The Labour Laws of this Republic are surprisingly silent on this issue; hence, we have to go by the conventional usage and import. The word "cadet", as used in this country, does not only apply to military officer recruits but strangely also to any person who is on a job training programme with the view of becoming an official or an employee of special skills to his employer. In most cases, the practice or tradition here requires that he puts in a certain number of hours in his job and then thereafter leaves for his academic or professional training. In other words, the cadet is normally engaged in a sandwich or wholesome courses at the discretion of the employer for a certain duration before assuming full scale duties.

A cadet, however, should not be confused with a "casual worker". A casual worker or "casual laborer", as defined by our Labour Laws is an unskilled laborer employed for a period of less than a working day. Labour Practices Law, 18A: 21(c). This definition, we regret to say, is too narrow and restrictive; a casual laborer is not necessarily unskilled. The emphasis is not on the "unskilled" aspect of casual employment but rather the "uncertainty" aspect of such employment. A casual laborer is thus a person whose employment is

temporary, seasonal, fortuitous, unfixed, uncertain and irregular. (BLACK'S LAW DICTIONARY, pp.275 (4th. Edition); BALLENTINE'S LAW DICTIONARY, pp. 180 (3rd. Edition). A casual laborer could be a Ph.D. holder but as long as his employment is by chance and irregular, he remains unfortunately a casual laborer in a conventional and practical sense.

Now, with this clarification in mind, we can safely answer issue number one. A cadet is a person who is employed on a permanent basis rendering partial services to his or her employer and spends part of his official time in academic pursuits with the full consent and knowledge of his employer. Such academic pursuits could be professional or simply academic and, more often than not, for the benefit of the employer. As the cadet is by operation of the law a fulltime employee like other employees who devote all their official hours on their jobs. Under our laws, he or she, of necessity, qualifies for the receipt of the basic legal rights and privileges that go with permanent employment as provided for under the Labor Practices Law, 18A: 1508, 1511, 700, 2500 and 3500. It must be mentioned here, nonetheless, that while the Labor Practices Laws of Liberia as directed in Section 701 (maximum hours), command the employers not to work their employees beyond eight (8) hours a day and that for the excess time the employees must be compensated as over-time allowance, there is no law that expressly or by necessary implication, commands employees to remain glued on their benches for eight solid hours in order to qualify for a full day's compensation. That would not be good common sense. How then would we have employees like cadets, management trainees and salesmen who have by virtue of their callings to be outdoors in order to get daily bread for their employment? As long as their absence from duty or office is known and consented to by their employers, they have, to all

intents and purposes, worked a full day; that is an eight-hour day as stipulated by our Labor Laws.

Now, applying this legal reasoning to the facts of this case, it is our considered opinion that the appellee, Joseph Berry, as a cadet, was a permanent employee of the appellant and as such he was entitled to full employment benefits like any other permanent employee. One important fact, however, must be observed here about Joseph Berry as a cadet. Unlike a standard cadet, who is basically a part time employee rendering part-time services to his employer and spending the rest of his time out of official premises for training, Joseph Berry used to complete all his work before leaving for school. Rubber tapping is by and large an employment of self-supervision and as such it does not call for an eight hour roll call-line up. Once a tapper (employee), full-time or casual, has completed tapping the trees allocated to him or has filled up the drums allocated to him, his day is over and he can retire to his home in peace. This fact in favor of the appellee, is conceded, though indirectly, by the appellant. The general principle of law holds true that he who maintains the positive view also sustains the burden of proof.

The appellant alleges that the appellee as a cadet, he was a part-time employee and not a fulltime permanent employee; but fails to prove this; it being the sole custodian of all employment records. Levin v. Juvico Supermarket, 24 LLR 187 (1975) and King v. King, 24 LLR 414 (1975). There is no showing any where in the records that appellee's services were part-time in the usual sense of the word as alleged by the appellant. In other words, there is not sufficient evidence to show, in a rebuttal sense, that the appellee used to do only half or part of what the other workers did. On the contrary, there is ample proof that he used to tap

all the trees allocated to him, before taking off for school in the afternoon.

A perusal of appellants bill of exceptions fails to reveal any specific legal errors the trial court is alleged to have committed in this regard. All that we see is that the appellant, in its bill of exceptions and brief, wants us to believe and accept the story that, by the very fact that he was a cadet, his services thereby became automatically part-time and that the status of his employment became also automatically identical to that of a casual laborer. To support this contention, the appellant quotes to us an employment card, # PL/762, alleged to indicate that the appellee was a casual laborer with inferior rights to those of permanent employees. Our view is that this card only had administrative significance for payroll purposes or for personal record identification. The card does not in any way show that the appellee never did his full job or that the appellee was not a permanent employee. We are, therefore, inclined to accept the story of the appellee that even though he was designated a cadet for administrative purposes, he was, to all intents and purposes, a full-time, permanent employee; judging from the length of time he served the appellant as a cadet.

The purpose of cadetship is to train the employees for the benefit of both the employer and employee. Such training is, generally speaking, short-lived in nature so as to bring the skills of the employee nearer the gates of his employer. What purpose would it serve an employer to place his employee on a six-year training program, as the records show in this case? Is six years not too long a time for cadetship, especially so where no advanced technical qualifications are envisaged, as in this case? There is something strange on the part of the appellant about this cadetship. The appellant, as employer, does not tell us for what purpose was the employee classified as a cadet and for what purpose was the appellee's cadetship.

The impression we get from the appellant's bill of exceptions and brief is that the appellee's cadetship was a one-way traffic, bringing fruits to the employee alone and no about-turn. The appellant is tempting us to come to this conclusion in view of the fact that the appellee's training was simply academic; that is to say, completing high school education only. Even granting that the cadetship of the appellee was just high school attendance for the betterment of his educational background, would not the appellee, in the long run, benefit his employer, the appellant, in one way or another as a high school graduate? Surely a rubber plantation worker with high school education or any good level of formal education is likely to offer better returns to the management. The management may end up utilizing his education in other fields as it was in this case. We, therefore, conclude that the appellee's education (cadetship) was for the benefit of both the appellee and the management.

Now having arrived at this conclusion, we must state here that the appellee as a cadet, alias part-time worker or management trainee, was a permanent employee and like other permanent employees, was entitled to full-time employment benefits as postulated in our Labor Laws now in force.

This Court, therefore, feels that time has now come for a definite rule to be laid down as a legal guidance in the disposition of labour disputes of this nature. This Court, now, therefore, declares that the present practice and policy of the Ministry of Labour that, "an employee who serves his or her employer for a long time, should not have his or her services terminated by simply giving him or her one month salary just to satisfy the provisions of the Labour Practices Laws, 18A: 1508, but rather that the employee should be compensated by receiving an aggregate sum representing one month for each of the years

served", is sound and fully supported by this Court as a means of bringing about social justice to the working masses of our nation. In other words, the yardstick from now onwards is that an employer will have to pay his or her employee one month salary for each year he or she served his or her employer at the time of such termination.

Along with this holding, this Court suggests that in order for an employee to benefit under the principle of law just pronounced, upon termination, such employee must have served his or her employer for a minimum period of not less than two years, that is to say, twenty four (24) calendar months of unbroken services. In laying down this rule, we are in no way assuming legislative functions but rather giving a fair and reasonable interpretation to the law as contemplated and anticipated by our law makers; which function constitutionally belongs to the judiciary.

Furthermore, it is also our view that, where an employee's services are terminated just a few steps away from receiving his or her legal retirement benefits, such termination should be treated as an attempt to evade pension payments. Therefore, where this is evident as judged from the prevailing circumstances and facts, the decision of this Court as declared in the case of Shannon v. Liberia Trading Corporation, 23 LLR 66 (1974), will prevail so as to protect our aged workers from unnecessary exploitation and potential social risks. We therefore once again fully support our decision as given in the Shannon case and we also fully support the policies and practices of the Ministry of Labour in this connection.

Notwithstanding, where an employee is a few months away from receiving his or her legal retirement benefits, the choice of receiving severance or redundancy or pension payments

should be entirely his or hers in so far as such employee has not actually attained the official pensionable age.

This type of compensation is variously called 'severance allowance" or "redundancy allowance" in our jurisdiction. The issue of severance allowance or redundancy allowance is, regrettably, not expressly covered by our Labour Laws. The laws are silent on this important issue. However, the position now in our labour practices, is that severance benefits are a subject of negotiation between the management and the employees through their union affiliation; in that severance or redundancy benefits inure to the employees only when the agreement is signed and thus becomes a binding contract on the employer.

How about those employees who did not include this issue in their union agreement with the management or those employees who are not unionized? Are they going to be thrown overboard and let to live in cold oblivion? No, our courts of law are courts of social justice; that is why our courts do not hesitate to come to the aid of the weak, downtrodden and those who cannot bargain at arm's length with their masters. Hence, our decision in this opinion is to solidify the policies and practices of the Ministry of Labour on this important issue. Doing otherwise, would encourage unscrupulous employers to dismiss their employees for dirty motives such as avoiding paying pension and severance allowances required under the Labour Practices Law, 18A: 2503. We observed from the records that the appellee in this case had at the time of his termination, served the appellant twenty one (21) years, just a few years away from his pension entitlement.

In conclusion, we hold that the appellee has established a prima facie case against the

appellant for a full premature pension allowance, alias severance allowance, for the twenty-one (21) years he served the appellant; that is, from March 3, 1958 to March 19, 1979. Since the appellee has already been duly compensated for the last 15 years, he therefore only deserves the balance for the disputed first six years, on the principle already outlined in this opinion.

Incidentally, a cursory look at the facts and circumstances surrounding this case reveals that the appellee easily qualified for pension benefits as stipulated in the Shannon case and our Labor Practices Laws. However, the appellee having received the consideration claimed at the time makes that point now a moot case. We would, therefore, prefer to let the sleeping dog lie as the saying goes. We feel that concluding the case this way will not only protect our youths from undue advantage over them by their masters, but also solidify the aspirations of our masses in their ardent drive to attain the maximum of social benefits in this country as in other countries.

Nonetheless, we are not oblivious of the side effects this decision might have on the part of our youth or those now engaged as cadets in our society. But we feel a servant needs more protection than does a master. Any fair minded master would therefore see this opinion in its right perspective.

Therefore, in view of the points of law and facts herein postulated and the circumstances prevailing, this appeal is dismissed with costs against the appellant. The clerk of this Court is hereby ordered to send a mandate to the trial court empowering it to resume jurisdiction over the matter and enforce the decision of the Board of General Appeals. And it is hereby

so ordered.

Judgement affirmed.