FIRESTONE PLANTATIONS COMPANY, by and through its Representative, Appellant, v. **SOLOMON FORTUNE** and **THE BOARD OF GENERAL APPEALS, MINISTRY OF LABOUR**, Appellees.

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

Heard: November 2 & 3. Decided: February 3, 1983.

1. While it is a general principle of law that the burden of proof rests on the party who maintains the affirmative, yet where the fact lies peculiarly within the knowledge of a party to a cause, he should be held to prove the negative.

2. The trial court must pass upon all issues of law raised in the pleadings before issues of fact.

3. Issues of law not raised in the trial court cannot be raised on appeal.

4. On appeal from the Ministry of Labour, the trial court's jurisdiction is confined only to the record certified to it by the Ministry of Labour.

5. Allegations of fact in the pleadings not denied, are deemed admitted.

6. The pleader must either admit or deny every material fact in the pleadings of his opponent and he must make it absolutely clear which facts he admits of and which he denies.

7. Intellectual property and talents must be protected and courts should neither permit their exploitation nor breaches of contracts.

Appellant introduced a "suggestion award system policy", which provided for an award of 10% of the first year's annual gross savings or increased profits excluding all overhead and fringe benefits, up to a maximum award of $10,000.00 to any employee who gives a suggestion that results into an operating benefit to the management. Co-appellee Fortune made a suggestion that was accepted by management and subsequently found to be effective in cost savings. When appellant failed to make the award available, Co-appellee Fortune instituted an action for unfair labor practices. The hearing officer awarded appellee $99,000.00 but on appeal to the Board of General Appeals, the award was reduced to $10,000.00. From this ruling, appellant filed a petition for judicial review in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The Civil Law Court affirmed the ruling of the Board of General Appeals, from which appellant again announced an appeal to the Supreme Court. The Supreme Court, holding that the trial court was correct in its determination of the liability of the appellant, affirmed the judgment.

Carlor, Gordon, Hne and Teewia, appeared for appellant. Julius Adighibe appeared for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

This appeal grows out of an industrial dispute between the Firestone Plantations Company, now appellant, and one Solomon Fortune, appellee herein. From the records certified to us for review and final determination, the following facts have been established constituting the subject matter of this controversy.

During the later part of 1976, the appellant introduced and implemented in Liberia a "suggestion award system policy", a world-wide corporate program first instituted in 1969 by its parent Company, M/S Firestone Rubber and Tire Company of Akron, Ohio, U.S.A. The introductory paragraph which is found on page 1 of the 13-page document, spells out the purpose of the program verbatim: "Firestone suggestion award system is designed to provide a medium for improvement to the attention of the management and to enable them to receive recognition for their efforts." One of the most important points mentioned in the document is the payment of an award amounting to a maximum sum of $10,000.00 (Ten Thousand Dollars) to any employee who would give a suggestion that would be of operating benefit to the management.

Immediately following the introduction of their policy, the appellant on 15th of October, 1976 issued a memorandum letter to some Firestone employees working at the Extruder plant, inviting them to a formal meeting in the following words:

"EXTRUDER: SUPERVISOR October 15, 1976 OVERSEER J. E. Chapman

P.I.P. AND SUGGESTION AWARD SYSTEM "As discussed at our meeting last week, we will be having "our first P.I.P. and suggestion award system meeting on Friday, 22nd October at 2:p.m.

You should bring along suggestions you have received from your people and any that you may have thought of. Remember no idea is so small that it cannot be discussed." J. E. Chapman"

Consequently, the appellee, a long time employee of Fire-stone then serving at the Extruder plant as overseer and acting supervisor, attended the meeting in response to the memorandum and made a suggestion to the effect that ordinary water be used to cool the plant machinery parts instead of SOAPSTORM, a costly whining chemical imported from the United States of America. The suggestion was accepted and implemented and later found to be effective in cost savings.

Two years later, that is 1979, the appellee approached the appellant formally for the reward, but received no positive response. As a result, the appellee decided to file an industrial suit against the appellant for what he termed "unfair labor practice." to recover the award promised in the suggestion award policy. This suit was first heard during the early part of 1981 by the resident labor officer stationed at Firestone, Harbel, and after a full investigation, the labor officer found for the appellee, awarding him the sum of $99,000.00. The appellee took exceptions and appealed to the Board of General Appeals, Ministry of Labor, Monrovia, where after due investigation the ruling of the labor officer was affirmed. However, the award of $99,000.00 was reduced to $10, 000,00 as the sum of $99,000.00 was found to be unrealistic. Again the appellant took exceptions and perfected its appeal to the Civil Law Court in Montserrado County for judicial review, but failed to appear and prosecute the appeal despite several notices of assignments from the Civil Law Court. The Civil Law Court Judge, His Honour Frederick K. Tulay, then assigned resident judge, reviewed the case and found the appellant, Firestone, again liable and thus upheld the decision of the Board of General

Appeals, awarding the appellee $10,000.00 plus a 6% interest, bringing the total award to the sum of $12,700.00. The appellant once again took exceptions to the judgment and appealed to this Court for a final review and determination. Hence, this appeal is now before us.

The appellant has, in its ten-count bill of exceptions, charged the trial Court judge with a number of legal errors alleged to have been committed during the trial and determination of this case in the Court below. We have read the bill of exceptions with great care and interest but regrettably found it to be of little help to us as it begs the question and tends to concentrate on issues that have little bearing to the substance of this controversy. Therefore, we have discussed this case in the light of what we considered material in the disposition of this case and touched on the bill of exceptions in passing whenever necessary.

It is significant to note here that the questions of whether (1) the adopted suggestion was made by appellee and if the suggestion benefitted appellant company; and (2) the maximum amount payable to an employee as consideration in accordance with the policy is $10,000.00, as conceded in Count 5 of appellant's Grounds of Appeal, dated July 8, 1982 and addressed to the Board of General Appeals, are clearly established in the records before us? Therefore, the only issues we consider pivotal for final determination of this appeal are (1) whether from the facts given and evidence adduced, the appellee qualified for the suggestion award? (2) whether the amount of $10,000.00 awarded to the appellee was incorrect? (3) whether the trial court judge committed any reversible error in the trial and disposition of this matter?

For the sake of clarity and logical analysis, these issues will be treated seriatim.

In order to resolve the contentions, we will quote applicable exclusionary provision of the suggestion award policy, relied upon by both parties and it reads as follows:

"EMPLOYEE ELIGIBILITY

All personnel are invited to participate in the suggestion system and most of the personnel are ligible to receive cash awards. Some are not eligible for awards, while others are eligible only under certain conditions. The employees not considered eligible or having partial eligibility are as follows:

Members of the various management echelons are not eligible for awards.

Person connected with the administration of the suggestion system are deemed to be ineligible.

Factory and general office personnel on the level of department manager and above are not eligible.

Members of supervision below the rank of general foreman are not eligible to receive for ideas pertaining to their own department or areas of responsibility. They may receive awards for suggestions which do not apply to their own areas of responsibility pertain to departments other than their own or are considered over and above the expectations of their classification in the performance of their normal duties.

No supervisory personnel is eligible to receive awards for suggestions pertaining to safety, except in the event that the idea presented is of unusual merit and/or is over and above what would normally

be expected of the employee in the performance of his duties and then only in the case of supervisory personnel below the level of department manager.

Technical personnel, inspectors and others whose duties include the initiation of improvements in routine design manufacturing methods, etc. are eligible only for suggestions outside their own particular line of duty. Non-exempt employees whose regular duties include working out improvements and developments or improving products, method within, and procedure, are eligible for awards for adopted suggestions within the scope of the employee's job provided it is of exceptions merits and required the suggestion to exercise inventiveness and resourcefulness beyond that required of the suggestion in full and competently performing his job requirements.

Retread Shop managers shall be eligible for award only for suggestions having application at shops or locations other than their own.

Police and Fire Department personnel are not considered eligible for award for regular duties. They include:

Fire & Safety hazards and their correction Regulation of Traffic Parking Facilities Fences, including all openings Lighting, including Traffic Signals Repairs & improvements in Roadways, Traffic lanes,

Trucking all aisles, Stairways, Floors, etc. Questions pertaining to eligibility shall be decided jointly by the suggestion Coordinator and the suggestion board according to company policy. In the event that a decision is not reached, the question shall be referred to the corporate suggestion manager."

As we have observed earlier, appellee was an overseer and was acting supervisor of Extruder plants when he was invited and when he made the suggestion, therefore, co-appellee does not fall within the ranks of employees or officers of appellant company hereinabove referred to who are not qualified and it was not within the scope of co-appellee's job performance to make the suggestions. Hence, co-appellee is qualified to receive the award.

The next crucial argument of appellant is that under the provision of the policy, where an accepted or approved suggestion results in actual tangible saving or increased profits, the suggestion award payable to the employee, will be 10% of the first year's annual gross savings or increased profits excluding all overheads and fringe benefits, or the maximum award of $10,000.00 whichever is smaller. Therefore, it said, it was erroneous for the trial judge to use only the oral evidence of co-appellee and his witnesses to determine the suggestion award payable to co-appellee in disregard of the written provision of the policy. Therefore, it said, we should reverse the judgment.

It is well to observe here that appellant company is the only custodian of its own record which contains the relevant data that the appellant contended should have been produced and used by the trial court as a guide in computing the amount payable to the appellee.

"While it is a general principle of law that the burden of proof rests on the party who maintains the affirmative, yet where the facts lie peculiarly within the knowledge of a party to a cause, he should be held to prove the negative." Simpson v. Republic, 3 LLR 300 (1932) and the Civil Procedure Law, Rev. Code 1: 25.5 (1).

Appellant, not having produced a single documentary or oral evidence to show the average annual earnings at the local plant where appellee was working, or any data that should have been used to arrive at the exact overhead expenditure in order to determine the monetary award payable to the appellee, it is our opinion, that the trial court did not err in awarding appellee the $10,000.00 maximum amount as provided by the policy.

Another major argument of appellant is that the suggestion award system has not been implemented because, according to the policy under the caption "GENERAL POLICY", it is written, among other things, that:

a) The policy award system shall be formulated by suggestion manager and staff with the approval of the management;

b) A suggestion coordinator shall be appointed by the local plant manager at each participating installation. The coordinator shall be responsible for the operation of the suggestion system at the local plant level with the suggestion and advice of the corporate suggestion office and the international plant employee development department shall make monthly reports to that effect;

c) The coordinator and the committee are responsible for the evaluation of all suggestions received at each plant with authority to approve awards up to the amount $749.00 of the average annual earnings subject to the approval of the local plant manager and plant Authorities.

Appellant claimed that these conditions enumerated supra, are prerequisites to the full implementation of the suggestion award system, which in point of fact, have not been established.

It is our opinion that as administrator/employer, it was incumbent upon the appellant company to have fully performed its side of the contract by setting up all of the offices and appointing the ppropriate officers and personnel thereof. Consequently, the negligent failure of appellant to fully live up to its side of the contract, without any fault attributed to the appellee, should not bar the recovery of appellee under the agreement.

At this stage, we are, therefore, in a better position to answer count one of appellant's bill of exceptions in which it is alleged, inter alia, that the trial court judge committed a reversible error when he failed to pass on all the issues of law raised in the pleadings. We submit here that while it is true that the trial court must pass upon all issues of law before issues of fact, Williams v. Allen et al., 1 LLR 259 (1894), Board of Trustees of Monrovia College and Industrial Training School v. Coleman, 3 LLR 404 (1933), Wolo v. Wolo, 8 LLR 36 (1942), it is also true that the trial court will not pass upon issues of law if not raised (Williams v. Allen, 1 LLR 259; Elliott v. Dent, 3 LLR 111 (1929), Dennis v. Reffell, 9 LLR 26 (1945), or raised but improperly raised as when what are termed issues of law are actually issues of fact. Flood v. Alpha, 15 LLR 331 (1963); William v. Allen et al., 1 LLR 259 (1894). It is also an elementary principle of law in the Common Law jurisdiction that issues of law not raised in the trial court cannot be raised on appeal. Johns v. Republic, 13 LLR 143 (1958).

Now, applying these principles of law to the appellant's count one of its bill of exceptions, it is difficult for us to see how this Court could sustain this count when a simple look at the bill of exceptions clearly reveals no issue of law as contended by the appellant. All the issues outlined in the bill of exceptions are of a factual nature; thus calling for evidence, written or otherwise. Hence,

count one of appellant's bill of exceptions is also overruled, in toto, for lack of legal merits. Whether the appellee qualifies for the award is a question of fact to be ascertained for the evidence available. Similarly, whether an award of $10,000.00 was promised in the policy is a question of fact and not of law.

At this stage, we feel it is time that we give definite answer to all the issues raised in this opinion. After a thorough scrutiny of the evidence certified to us, we, have no hesitation in saying that in the month of October 1976 the appellant introduced and implemented a scheme, known world-wide as "A suggestion award system policy" in its plants located at Harbel, Republic of Liberia, and that the appellee actually participated in the scheme; that on the facts given and evidence adduced in the lower tribunals, the appellee certainly qualified for the award as outlined in the policy document; that the amount of $10,000.00 (Ten Thousand Dollars) awarded to appellee as his compensation for his suggestion was correct as it is the maximum sum provided under the policy; that the trial court judge committed no reversible errors in the trial and determination of this case, in that, there were no legal issues to be tried by him as alleged; and that this case being an industrial dispute on appeal from the Ministry of Labor, the trial court judge's jurisdiction was confined only to the records certified to the trial court by the Ministry of Labor.

As observed earlier on during the trial of this case before the resident labor officer, Harbel, the appellee, then plaintiff, made a number of allegations against the appellant. One of the major allegations made by the appellee against the appellant was that under the suggestion award system policy, the appellee was entitled to the sum of $99,000.00, representing 1/3 of 5 (five) years profits allegedly realized by the appellant company from the adoption of the suggestion of appellee by the appellant in conformity with the suggestion award policy.

To support his claim the appellee produced a calculation indicating how he had arrived at the sum of $99,000.00 as his award. We must mention here, however, that under the suggestion award policy, the award was to represent 1/3 of the profits benefits) realized in 2 (two) years. The appellee carried his calculation up to 5 (five) years, because his claim against the appellant was lodged after a period of five years. We are quoting below herewith the calculation in question made by the appellee and tendered in evidence at the resident labor officer's office, Harbel.

"6 bags whitting x 55 1 bs…….	330 x .05 - $165 per day
30 days x $165 per day …….	$49950 per month
12 months x $4,950 ……..	$59,400 per year
5 years x $59,400 ……..	$297,000.00
1/3x $279,000 …….	$99,000.11

Under these circumstances, one would have expected the appellant to have specifically contested the correctness of appellee's calculation with specific, clear and rebutting evidence instead of giving general denials that the existence of the suggestion award system policy and the subsequent adoption of appellee's suggestion had been admitted by the appellant at the labor office.

In the face of this hard fact, it is hard for us to accept appellant's denials even granted that the calculation given by appellee to the resident labor officer was correct, as it represented 1/3 of the total profits (cost) realized by the appellant in 5 (five) years, judging from the appellee's stand point, as clearly evident in the suggestion award policy.

Nonetheless, this Court has decided to set aside the award of $99,000.00 and implement that of $10,000.00 as doing otherwise will transgress the terms of the award policy, in that, the award of $99,000.00 is certainly higher than the award of $10,000.00 which is provided as the maximum sum to be given as an award. Under the relevant terms of the award policy, the award is supposed to be 10% of two years' profits or $10,000.00 whichever is less and that the award shall not exceed the sum of $10,000.00. Hence, the sum of $99,000.00 is not only higher than the maximum award allowable under the terms of the policy but also exorbitant and speculative even granting that the appellee's figures given in his calculation were correct. We have been compelled to spell out this fact because the lower tribunals failed to bring out this issue specifically for the benefit of the parties, particularly the appellant who appears to have admitted these facts in its testimony and pleadings.

At Common Law and in keeping with statute, allegations of fact not denied are admitted in the pleadings; the pleader must either admit or deny every material fact in the pleadings of his opponent and he must make it absolutely clear which facts he admits of and which he denies (High Court of England, Pleading and Practice, pages 14 8; the Cavalla River Company, Ltd, v. Pepple, 3 LLR 436 (1933). Hence, and in the absence of concrete proof on the part of the appellant to the contrary, it is difficult for us to see how the trial court judge committed reversible error when he sustained the ruling of the Board of General Appeals, coupled with the certified labor records now also before us for judicial review and examination.

It is interesting to observe that while the appellant has taken this case seriously at this Appellate level, it did not show the same degree of interest in the trial court and at the labor office, in Harbel. We wonder why? This would have saved not only much time for both the appellant and the appellee but would have also afforded the appellant an opportunity to plan its case so that there was consistency in its presentation and argument. The appellant has not told us why he failed to attend the hearing of this case in the Civil Law Court when the court's notices of assignment that were duly served and returned.

In view of the foregoing facts and points of law, this Court is therefore satisfied that the appellee is qualified to receive the suggestion award under the contract made between the Fire-stone Company and its employees, in the sum of $10,000.00 as it is a sum conveniently certain and reasonable in contrast to the sum of $99,000.00 (Ninety Nine Thousand Dollars) which sum sounds exorbitant and highly speculative. Holding otherwise would encourage employers to an endless exploitation of the intellectual property and talents of their employees, not to mention the attendant breaches of contract. It is also the considered view of this Court that the trial court judge did not commit any reversible error in both the trial and the determination of the case. Accordingly, the judgment of the trial court is fully affirmed and confirmed.

The Clerk of this Court is therefore, hereby instructed to send a mandate to the lower court ordering it to resume jurisdiction over this matter and enforce its judgment in the sum of $12,700.00. The costs of these proceedings are ruled against the appellant. And it is hereby so ordered.

Judgment affirmed