The **Management of Inter-Con Security Systems** of the City of Monrovia, Liberia APPELLANT

Versus **Edwin Walters et. al.** of the City of Monrovia, Liberia APPELLEES

APPEAL. JUDGMENT REVERSED

Heard: March 24 2009 Decided: July 24, 2009

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

On February 27, 2004 nine former employees of Inter-Con Security Systems filed a complaint with the Ministry of Labor alleging that appellant wrongfully dismissed them under section 1508 (3) of the Liberia Labor Law without awarding them severance pay. The letter of complaint was received March 8, 2004. The first assignment was issued on April 7, 2004 for investigation into the matter. From that date onward, 39 other notices were issued before the investigation commenced on August 30, 2006 with both sides in attendance, surprisingly. We say surprisingly because most labor matters that have been brought before us for review have always been default judgments against management defendants. In this case, however, both parties remained in attendance and participated fully in the hearing, until final ruling was handed down on December 20, 2006 in favor of the complainants. The Hearing Officer sent copies of his findings to counsels for both parties. On December 21, 2006 counsel for management, upon receipt of the ruling, addressed a letter to the Hearing Officer noting his exception to the findings and announcing an appeal therefrom.

Eight days after the ruling had been made from which appellant/management noted exceptions and announced an appeal, the appellant filed a motion to rescind before the Hearing Officer, relying on 1 LCLR Section 4.7 (2). Section 4.7, Relief from judgment. Paragraph 2 states the grounds or reasons for granting relief from judgment. They are (a) Mistakes, inadvertence, surprise, or excusable neglect (b) Newly discovered evidence,(c) Fraud, (d) Voidness of the judgment (e)

Satisfaction, release, or discharge of the judgment or reversal. Appellant herein cited ground (a) for seeking relief from the ruling. The petitioner in his motion, relying on section 4.7.2 (a), said that the Hearing Officer made mistakes, inadvertently or otherwise, in his findings, and that said ruling should therefore be rescinded and the petitioner relieved from the judgment. Appellee filed resistance to the motion.

In the opinion of this Court, 1 LCLR, section 4.7 (2) is not intended for administrative hearings or decisions, but rather for court or judicial decisions. A Labor Hearing Officer is not a Labor Judge or any judge in the judicial sense. He is a fact finder. A Hearing Officer should therefore not be overwhelmed by legal issues and long lists of Supreme Court decided cases to decipher, interpret, or analyze legal memoranda and write exhaustive rulings commenting even on constitutional issues, as was done in this case. Because a Labor Hearing Officer's role mainly is to establish the facts in a labor dispute, and not to follow the procedural steps that obtain in a judicial proceeding, his mistakes, omissions, inadvertences, etc, should form the basis for a judicial review. His ruling can therefore not be reviewed by himself for correction and reversal, as was prayed for by the defendant. We have come to this conclusion because there is no provision under the administrative procedural law for a Hearing Officer to rescind a ruling and grant relief to a party. It is important to note that no court or administrative agency has the authority to inject procedures into the practice of law that have not been provided by law. We have already said that there is no procedure under the Labor Law for a Hearing Officer, after handing down a ruling, to rescind same and relieve the losing party on the basis of a post hearing motion.

The procedure for investigation and deciding a labor dispute in the Ministry of Labor is very simple. It begins with a letter of complaint to the Labor Minister against management by an employee(s). The Minister of Labor dispatches the letter to the Department of Labor Standards and a Hearing Officer is assigned who cites the parties to a conference, and if need be to a formal hearing. The

complainants/employees present their facts through testimonies and documentation to substantiate their allegations and then rest their case. Then the management presents its side of the matter with witnesses and documentations, where and if necessary. The Hearing Officer then reviews the facts presented and decides for or against the complainant(s). The losing party then notes exceptions and announces an appeal to the National Labor Court for review. This appeal process is not the same as is provided for under our Civil Procedure Law Rev. code Section 51.4. The requisites under this section do not apply in the labor appeal process; no bill of exceptions, no appeal bond, no notice of completion of appeal. The only requirement after announcing an appeal from the ruling of a Hearing Officer is the filing of a petition for judicial review before the National Labor Court Judge within 30 days after the ruling. No other procedure is indicated before the Hearing Officer after the taking of an appeal from his ruling.

Now while appellant/petitioner's motion to rescind the ruling and the resistance thereto were pending before the Hearing Officer, appellee/respondents on January 9, 2007, 20 days after the ruling had been made, filed a petition before the Judge of the Labor Court to enforce the ruling of the Hearing Officer for failure of the appellant to pursue his appeal by filing a petition for Judicial Review. In count 3 of the petition for enforcement of judgment, counsel for petitioner said in essence that he had obtained two certificates to support his averment that respondent had not filed a petition for Judicial Review and consequently the Hearing Officer's ruling had by operation of law become binding. The only determination we could make of his contention was that he also was basing his argument on the 10 days statutory provision under 1 LCLR Section 51.4. But the 10 days requisite for filing does not cover appeals from the ruling of Hearing Officers of the Ministry of Labor.

Appellant, in his resistence to the petition, as well as in his brief, that the ruling of the Hearing Officer was not final; that the 10 days period would commence as of the day the Hearing Officer would have heard and determined his motion to rescind the ruling because it is only then, according to him, that the administrative

process would have been exhausted; that only then would the judgment be final, and only then would he have appealed; that as long as the motion was pending undetermined, no appeal could be processed because the motion served as a stay to the appeal process. We seriously disagree with each of the appellant's conclusion of law. First of all, we hold that the Hearing Officer's ruling was a final judgment/ruling, because it brought a finality to the matter in controversy before him. We hold further that the Hearing Officer's final ruling was the final stage in the administrative process. The only other process thereafter was an appeal for judicial review, before the Judge of the National Labor Court. That is the law. We shall return to the issue of the finality of said ruling later in this opinion.

It has been said over and again that any party against whom a final judgment is rendered has the right to appeal. This right is not loosely applied. It has time limitations for its proper application. As soon as the right to appeal is granted the time allowed by statute for processing the appeal is set in motion, and no other procedures can stay the processing of an appeal after the right to appeal has been granted. This time constraint is the reason while post trial motions are to be timely filed for timely disposition in order not to miss the deadline for processing the appeal. For example, a motion to rescind a judgment must be filed before the Judge within a reasonable time after the judgment is rendered and before the Judge runs out of term time. It is not a proceeding which once filed lies in wait for time indefinite because it does not serve as a stay to the appeal process. So in order that the ruling in said motion can form part of the bill of exceptions it must be heard and disposed of before the time for filing the bill of exceptions lapses. In the case at bar Counsel for Appellant filed his motion to rescind 8 days after the ruling was handed down although in his mind he was operating on the basis of the Civil Procedure Law provision we have already referred to. On the basis of that provision of law he relied on, can it be said that the motion to rescind was timely filed? We hold no, for, on the basis of the 10 days time frame, filing the motion to rescind 8 days after the ruling, left only 2 days for completion of the appeal process. But in this labor matter however, the rule for processing an appeal for appellate review in the Labor court is different. It is not covered under LCLR

Section 51.4, which requires that an approved bill of exceptions be filed within 10 days after final judgment. INA Decree # 21 which governs the appeal process from a hearing officer's ruling provides a 30 days period for filing a Petition for Judicial Review. We must note here that there has been some confusion as to when a petition for Judicial Review should be filed. For quite some time, after the abolishment of the Labor Appeal Board, where appeals were first taken from the ruling of a Hearing Officer before proceeding to the Circuit Court, and even since the establishment of the National Labor Court, Section 51.4 of our Civil Procedure Law has been applied to labor cases on appeal as well. Fortunately, the record is now set straight to the effect that an appeal from the ruling of a labor Hearing Officer must be filed within 30 days. The above statement is a revelation to some practitioners, including counsel for appellant, because it was he who argued strenuously on the basis of the 10 days period within which to file his appeal before the Labor Court and that in fact said 10 days, he argued, would commence after the Hearing Officer had made a determination of his motion to rescind and not after the ruling in the main case. So according to his argument his motion to rescind could lie dormant and along with it, the ruling of the hearing officer, awaiting disposition of his motion to rescind.

But strangely, counsel for appellee who filed the petition for enforcement 20 days subsequent to the ruling, for failure of appellant to file a petition for Judicial Review said in count 3.4.3 of his brief the following:

"Additionally, it is provided that "any party dissatisfied with the Decision of the Hearing Officer may take an appeal by filing a Petition for Judicial Review with the National Labor Court within thirty days after receipt of the Hearing Officer's Decision. Copies of the petition shall be served promptly on the Hearing Officer who rendered the decision, and all parties on record." INA Decree No. 21." (Our emphasis)

Also in count 3. 4.5 he said: "Under INA Decree No. 21, appellant/defendant should have filed its Petition for Judicial Review on or before January 20, 2007 in

the National Labor Court, but instead, however, Appellant/Defendant filed a Motion to Rescind judgment on December 28, 2006, before the Hearing Officer. From that date up to and including the date of this brief, today October 6, 2008, the appellant/defendant has not made any attempt of done anything to have this Motion heard. Obviously, appellant/defendant did not pursue the appeal process. This shows that the Motion was only used as a delay measure and in bad faith for the purpose of baffling and frustrating the appellees/complainants. (Emphasis ours)

We are baffled that Counsel for appellee who cited INA Decree #21, proceeded to file a petition for enforcement of the Hearing Office's ruling just 20 days subsequent to the ruling and not after the 30 days allotted by the Decree he so aptly cited in support of his argument. We also wonder why the Labor Court Judge failed to take cognizant of the law but proceeded to hear a prematurely filed petition to enforce the ruling. Until the time allowed for completing an appeal lapses and the appellant fails to process the appeal, a judge before whom the appeal is taken does not yet have jurisdiction and therefore cannot proceed. In this case, the appellant under INA Decree No 21, still had ten (10) days remaining for filing his appeal before the National Labor Court. It was therefore error for the judge to have entertained the petition to enforce the judgment and also for counsel to obtain certificates, prematurely from the Clerk of the Trial Court indicating that the appellant had not filed a petition for Judicial Review. Nevertheless, appellant could have still filed his petition for Judicial Review upon receipt of the petition for enforcement when he was made aware of the provision under INA Decree #21 despite the fact that appellee prematurely filed for enforcement, on the principle of law that no procedure, including the petition for enforcement of the judgment could have been had while the appeal was properly before the said court. 1 LCLR Section 51.20.

We shall now address the question of the finality of the Hearing Officer's ruling. Counsel for appellant said during his argument before us and in his brief that the ruling of the Hearing Officer was not final. We hold that the ruling was final. The

Supreme Court, in Hunter v. Hunter, 22 LLR 87, 98 (1973), on the question of what constitutes a final judgment said, "As a general rule, the face of the judgment is the test of its finality. The fact that other proceedings before the court may be necessary to carry into effect the rights of the parties, or that other matters may be reserved for consideration, the decision of which one way or another cannot have the effect of altering the decree by which the rights of the parties have been declared, does not necessarily prevent the decree from being considered final unless there is some further judicial action contemplated by the court." See also Jones v. Hilton et al 36 LLR 191, 195 (1989). The Supreme Court has also defined final judgment in Butler-Abdullah v. Pearson et al, 36 LLR 592, 599 (1989). "A final judgment is one which disposes of the case, either by dismissing it before a hearing is had upon its merits or after trial by rendering judgment either in favor of plaintiff or defendant..." A final judgment is one that puts an end to a law suit. In the case at bar the ruling in the Labor Ministry put an end to the labor dispute brought before it by declaring management liable.

In view of the above definitions in the Supreme Court decided cases of what a final judgment is, we hold that the findings of the Hearing Officer, after he had conducted an investigation into the disputed labor matter, was a final ruling. Same was therefore appealable to the National Labor Court. We notice that when appellant argued this point he refrained from saying that the Hearing Officer's ruling was interlocutory. He only said that the ruling was not final. But there is no denying the fact that the ruling brought a finality to the matter that was being investigated. Nothing remained to be said or done on that matter at the time the ruling was made. Therefore any other matter that was brought subsequently could not change the fact that a decision in the case had been had. The rights of the parties had been declared, subsequent to which ruling the appellant noted his exceptions and announced an appeal.

We have not failed to notice that appellant has presented conflicting points of view in that, while he argued that the ruling was not a final judgment as long as his motion to rescind remained undetermined before the Hearing Officer, he was also

saying in the third paragraph of his brief that when he received the ruling he addressed a letter to the Hearing Officer in which he excepted to the ruling and announced an appeal... See paragraph 3, last sentence of appellant's brief. If there was no final judgment until his motion was determined, why then did he announce an appeal in a letter addressed to the Hearing Officer?

It is the ruling of this Court that the petition for enforcement of the Hearing Officer's ruling ought not to have been entertained by the Labor Court Judge because the petition was prematurely filed and therefore had no legal effect. When the petition to enforce the ruling was filed, appellant still had 10 days, having exhausted 20 of his 30 days, to file his petition for judicial review in said Labor Court.

In view of all the above, it is the opinion of this Court that the judgment be reversed and the case remanded to the National Labor Court to allow the appellant to file his petition for Judicial Review.

The Clerk of this Court is ordered to send a mandate to the National Labor Court Judge to resume jurisdiction, accept the appellant's petition for Judicial Review to be filed within 10 days as of the reading of this mandate in said Court. AND IT IS HEREBY SO ORDERED.
JUDGMENT REVERSED, CASE REMANDED

Counsellor Stephen D. Dunbar, Jr. of the Dunbar & Dunbar Law Office appeared for the appellant while Counsellor M. Wilkins Wright of the Wright, Jangaba and Associate Law Firm appeared for the appellees.