C. F. WILHELM JANTZEN, represented by and thru its General Manager, **HELGE G. BERNHARDT**, Appellant, v. **PEWEE JOHNSON** et al., Appellees.

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

Heard: June 13, 1983. Decided: July 8, 1983.

1. A bill of exceptions in a case on appeal must show with particularity the alleged errors committed by the trial court; otherwise, the counts making the allegations against the trial court will not be sustained.

2. Under the Labour Practices Law, an employer is vested with the right to dismiss an employee without payment of compensation for the dismissal if the employee absence himself for more than ten consecutive days or more than twenty days over a period of six months, if no good cause is shown for the absence, save in the case of vis major, the employee shall be required to notify the employer or his agent of the reason for his absence.

3. Public policy forbids the imputation to authorized official action of any motives other than legitimate ones, and the law presumes that acts of a public official within the sphere of his official duties are within the scope of his authority and in compliance with controlling statutory provisions.

4. A party claiming that a member of the Board of General Appeals who delivered the decision of the Board or who signed onto such decision did not participate in the hearing should file a motion before the Board for a reconsideration of its decision so as to provide the Board with the opportunity to address the issue, as provided by the Labour Practices Law. A failure to take such course deprives the party raising the issue of having the same passed upon by the appellate court.

The appellees, employees of the appellant company, were dismissed by the appellant for what the appellant characterized as `unexcused absence from work in excess of ten consecutive days". The appellant maintained that the employees, in absenting themselves from work for the period specified, had terminated their services with the appellant and that as such the appellant had the right, under the provisions of the Labour Practices Law, and that in accordance with the provisions of the said law, it had to dismiss the employees.

The appellees, not agreeing with the action taken by the appellant, filed a complaint for illegal dismissal against the appellant. The hearing officer at the Ministry of Labour ruled against the appellant, finding that the dismissal was illegal. On appeal, the Board of General Appeals affirmed the decision of the hearing officer. Appellant then petitioned the Circuit Court for the Sixth Judicial Circuit for a review of the Board's ruling. After hearing arguments on the petition and returns, the circuit court affirmed the ruling of the Board. From this judgment, a further appeal was prosecuted to the Supreme Court.

The Supreme Court affirmed the judgment of the trial court. On allegations made by the appellant that the trial judge had failed to pass upon issues raised in the petition, the Court ruled that the allegations could not be sustained since the appellant had failed to specifically state which points the trial court had failed to pass upon.

The Court also held that while the statute vests in management the right to regard the employees as having terminated their employment contract with the employer where they are absent from work without excuse for ten or more consecutive days, in the instant case, the absence of the appellees was for good cause, they having been told by the management 's authorized official not to return to work until they had apologized, even when a dispute between the employees and the management was being investigated by the Ministry of Labour. Under the circumstances, the Court opined, the dismissal of the employees was illegal.

On the issue that the member of the Board of General Appeals who delivered the decision for the Board had not participated in the hearing, and that therefore the decision of the Board was not in conformity with the law as she did not participate in the hearing of the case, the Court said that if the appellant felt that the member of the Board who delivered the Board's decision should not have been a part of the decision making process, it should have moved the Board for reconsideration of its decision, as provided for by the Labour Practices Law, so as to afford the Board the opportunity to pass upon the issue. The Court concluded that given the failure by the appellant to so move the Board and the fact that the Supreme Court could not take evidence, it had to assume that the official accused by the appellant had performed her function well. The Supreme Court therefore affirmed the judgment of the trial court.

Victor D. Hne appeared for appellant. J. Emmanuel R. Berry appeared for appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellees, former employees of the appellant company, were dismissed by appellant for what appellant term unexcused absence from work in excess often consecutive days, contrary to the Labor Practices Law of Liberia. As a consequence of the dismissal, appellees filed a complaint for illegal dismissal against appellant. The hearing officer who investigated the complaint ruled against the appellant. The Board of General Appeals, to which appellant had appealed from the ruling of the hearing officer, affirmed the hearing officer's decision. Appellant then petitioned the Circuit Court for the Sixth Judicial Circuit, Montserrado County, for a judicial review and requested that the court should set aside the ruling of the Board of General Appeals. The court, after a careful perusal of the petition and the returns, ruled affirming and confirming the decision of the Board of General Appeals. Appellant, feeling strongly that the judgment of the lower court affirming the ruling of the Board of

General Appeals was prejudicial to its interest, appealed to this Court of dernier resorton a seven-count bill of exceptions.

Count one of the bill of exceptions contended that the trial judge failed to pass upon any of the points raised, but it failed to state the points allegedly raised and which the judge had failed to pass upon. A bill of exceptions in a case on appeal must show with particularity the alleged errors of the lower court or the appellate court will not be passed upon. Quai v. Republic, 12 LLR 402 (1957). Count one of the bill of exceptions is therefore is not sustained.

Appellant's counts 2, 3, 4 and 5 referred to the absence of the appellees from work for over a period of ten days in contravention of section 1508 Subsection 2 (d) of the Labor Practices Law of Liberia. This is the pertinent and decisive issue in the case. We shall therefore pass upon these counts together. The Labor Practices Law referred to is hereunder set forth, word for word, for the benefit of this opinion, as follows:

"2. The following acts and violations shall be deemed to be gross breaches of duty (without limiting the generality of the term) within the meaning of section 1 of this chapter and shall dispense the employer from payment of compensation for dismissal under the provision of that section:

(d) Absence of an employee for more than ten consecutive days or more than 20 days over a period of six months) without good cause, in which case, the employee shall be deemed to have terminated his contract. Save in the case of vis major, an employee shall be required to notify the employer or his agent of the reason for his absence."

The records in the case disclosed that the appellees filed a complaint against the appellant company for unfair labor practices and that while the investigation into the appellees' complaint was being conducted by the Ministry of Labor, the appellant company wrote each of the appellees a letter of dismissal, one of which we recite hereunder, since all the letters carry the same contents except the names:

"Monrovia February 15, 1979 Mr. Unesco Kanteh Monrovia, Liberia Dear Mr. Kanteh:

From January 11, 1979, you have absented yourself from work without any excuse.

Under the Labor Law, an unexcused absence for more than ten (10) consecutive days warrants a termination of the employment.

Since you have been absent unexcused for a period far in excess of ten (10) consecutive days, this is to advise that your services with the company are terminated with immediate effect in keeping with the provision of the Labor Law, referred to above.

Very truly yours,

C. F. WILHELM JANTZEN (LIBERIA) Sgd. George K. Johnson PERSONNEL SUPERVISOR"

Mr. George K. Johnson who wrote the letters of dismissal to the appellees testified at the investigation on February 8, 1979 and February 13, 1979. In the letters of dismissal from Mr. Johnson to the appellees, he had intimated that the appellees had absented themselves from work from January 11, 1979 to the date of the letters of dismissal. The records, however, showed that the appellees, after filing their complaint of unfair labour practice against the appellant, had informed the management that they were prosecuting their complaint against management at the Ministry of Labor, and that management representatives had met them several times at the investigation. Appellees also asserted that Mr. George K. Johnson had informed them that unless they submitted a letter of apology, they should not return to work. Mr. George Johnson, in his testimony, admitted requesting a letter of apology from them, but denied making the presentation of the letter of apology a precondition for their return to work.

After our review of the records, we hold that the absence of the appellees from work was for a good cause as contemplated by the statute quoted hereinbefore. We further hold that the appellant, as the party defendant to the unfair labour practice suit, was duly notified of the reason for appellees' absence from work. This notice clearly met the test of the last sentence of the act quoted above. That sentence states that the employer be notified of the cause for the absence of the employees. The dismissal of the appellees, in the midst of the investigation, was therefore illegal. Accordingly, counts 2, 3, 4 and 5 of the bill of exceptions are overruled.

Appellant argued in count 6 of its bill of exceptions that when the case was called for hearing on July 3, 1979, Mrs. Margaret Warner, who delivered the decision of the Board did not participate in the hearing. Appellant asserted that for this reason, the Board's decision was bad and defective. Appellees' counsel, on the other hand, contended that Mrs. Margaret Warner did take part in the hearing, but that she had come in shortly after the hearing had commenced. The counsel emphasized that the clerk of the Board had inadvertently failed to note in the minutes the appearance of Mrs. Warner. The error of the clerk, the appellees observed, could not be used to the prejudice of any party's interest. The Labor Practices Law of Liberia, Lib. Code 18-A: 5(a), under the caption Board of General Appeals, provides for the reconsideration of the Board's decision on its own motion or on the motion of a party to the proceeding. We hold that if appellant felt that Mrs. Margaret Warner, who delivered the decision of the Board of General Appeals, had not participated in the hearing of the case, it should have moved the Board of General Appeals to reconsider its decision, so as to give the Board an opportunity to pass upon that issue, and thereby reserving for appellate review whatever ruling the Board might have made. Our position finds legal support among legal authorities. One of such legal authorities states as follows: "Public policy forbids the

imputation to authorized official action of any motives other than legitimate ones." 20 AM. JUR, Evidence, p.175, footnote 12. This authority further states, regarding the performance of official action, "all necessary prerequisites to the validity of official action are presumed to have been complied with; and where the contrary is asserted, it must be affirmatively proved." 20 AM. JUR., Evidence, p.177, footnote 17.

Law writers also maintain that "for the purpose of sustaining official acts of public officers, the law, in the absence of any circumstances or proof indicating the contrary, presumes not only that such public officers performed the duties of their office, but that acts within the sphere of their official duty and purporting to be exercise in an official capacity and by public authority were done rightfully and lawfully; or, as often expressed, regularly and legally or in a lawful manner, in due accordance with the law creating their authority and governing their actions and conduct. In other words, the law presumes that acts of a public official within the sphere of his official duties are within the scope of his authority and in compliance with controlling statutory provision." Ibid. § 170, p.176. If appellant had filed a motion requesting the Board of General Appeals to reconsider its decision, as provided by the Labor Practices Law, the Board would have made a ruling on the issue raised in count 6 of the bill of exceptions, thereby reserving said ruling for appellate review. In view of appellant's failure to move the Board and given the contention of appellees and the fact that this Court cannot take evidence, we have no alternative but to rely on the law just recited, relating to public officers performing well and legally their duties, and accordingly overrule count six of the bill of exceptions.

With regards to count seven of the bill of exceptions appellant contended that the ruling of the trial judge is indefinite and uncertain because it has failed to name a definite sum. Recourse to the ruling of the lower court revealed the following:

"Court's Ruling From a careful perusal of the petition, the returns as well as the records of the hearing officer and the decision of the Board of General Appeals in this case, this court hereby confirms and affirms the decision of the Board of General Appeals, which itself confirms the ruling of the hearing officer. Costs are hereby ruled against the plaintiff/ appellant in this case. And is hereby so ordered.

Given under my hand in open court this 3rd day of September, 1982 Sgd. E. S. Koroma ASSIGNED CIRCUIT JUDGE PRESIDING"

From the above ruling of the lower court, it is clear that the decision of the Board of General Appeals was confirmed and affirmed by said court. The decision of the Board of General Appeals provided, among other things, that:

" ....The appellant is therefore ordered to reinstate the appellees or in lieu of reinstatement, to pay each of the appellees one month wage for each year of service; 1,382.40 to appellee

Pewee Johnson, $1,094.40 to appellee Flomo Harris, $437.76 to Mohammed Kroma $437.76 to Unesco Randall, $176.64 to Momoh Berete, 176.64 to. John Davis and $76.80 to Momoh Kadieh."

From the above quotation, and adding up the amounts to be received by each of the appellees, the certainty of the judgment is clearly evidenced in the amount of $3,782.40. The judgment sum therefore is the sum total of the various amounts to be paid the appellees, which is $3,782.40." Count 7 is therefore not sustained.

In view of all we have said, and the law relied upon, it is our opinion, and we therefore so hold, that the judgment of the lower court affirming the decision of the Board of General Appeals is affirmed and confirmed, and that the appellant is to pay $3,782.40 to the appellees, to be divided in accordance with the decision of the Board of General Appeals supra. Costs are ruled against the appellant. The Clerk of this Court is hereby directed to send a mandate to the lower court commanding the judge therein presiding to resume jurisdiction over this case and to give effect to this opinion. And it is hereby so ordered.

Judgment affirmed.