Liberia Katopas Fishing Company, by and Thru its General Manager, and all Corporate officers, all of the city of APPEAL Monrovia, Liberia APPELLANTS VERSUS Her Honor **Comfort S. Natt** Resident Judge National Labor Court, Montserrado. Co. His Honor **Philip Williams**, Hearing Officer Ministry of Labor, and **Patrick Kamara,** et. al, of the City of Monrovia APPELLEES

APPEAL. JUDGMENT AFFIRMED WITH MODIFICATION

HEARD: MARCH 19, 2008 DECIDED: MAY 2, 2008

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

The subject matter of this opinion is an appeal from a final judgment rendered by Her Honor Comfort S. Natt, Judge of the National Labor Court. Her ruling affirmed the judgment by Mr. Philip G. Williams, Director for Labor Standards and Labor Relations Officer, Ministry of Labor, in favor of the appellees.

Affirming the judgment of the Hearing Officer, Judge Natt by her ruling dated April 27, 2007, awarded the amounts of **LD$968,034.18** (Nine Hundred and Sixty-eight thousand, thirty four dollars eighteen cents) plus **US$300.00** (Three Hundred United States Dollars) and seventy-two sacks of fish for sailors or the equivalent to the appellees.

Appellants have contended that the Labor Court's ruling is a reversible error, and have therefore filed a five-count bill of exceptions for review by this Court.

Examination of the certified records before us shows that on January 26, 2005, Patrick Kamara, for himself and fellow co-appellees, complained to the Minister of Labor against the Management of Katopas Fishing Company, appellants in these proceedings. Co-appellee Patrick Kamara claimed that six of them as crew men were accused by appellants of stealing and selling fish at sea on March 10, 1999. Following said accusation, the six accused crew men requested appellants to have the police investigate the said accusation or be taken to court. This request was however turned down by appellants who, according to the complaint, dismissed the appellees. The appellees quoted the appellants as saying on their dismissal that *"...if we were not satisfied, we can carry them anywhere within this Republic, after all, the union and the Liberian Government officials were in their pockets. Nothing will come out of our complaints."*

The complaint also averred that co-appellees served appellants between nine months and six years, and were dismissed without payment of any just benefits to them contrary to the collective bargaining agreement between their union and appellants.

The letter of complaint detailed various attempts at the levels of the union as well as the Ministry of Labor to resolve this labor dispute without success. One such letter dated May 20, 1999 and addressed to the Minister of Labor by a union's official, in part reads:

"Dear Mr. Minister:
We wish to draw your attention to the unwholesome tactics of the Katopas management regarding the payment of six men crew, who were gainfully employed by the management to perform sea duty in various fishing vessels. In March 1999 the crew was dismissed without justifiable reasons.

In our preliminary investigation, the Union discovered the act of wrongful dismissal against the workers/members of the union. Despite verbal and written request made to management to bring the situation under control in full settlement of the crew benefits without delay, management willfully, intentionally, unprofessionally and without having the due respect of our entity, failed to reason with us..."

The referenced letter above, in conclusion, requested the Minister to intervene and have the full benefits paid to the dismissed workers.

Further complaining in their January 26, 2005 letter, co-appellees also claimed

...It is well over six months ago I have continued to pay for notice of assignment signed by Minister Mulbah himself but there is no day we have sat down in court to continue this case; [but] when hearing dates are set, if Minister Mulbah appears, defendant lawyer will not appear; also when the Minister is not around, no minutes will be spread on records. I have spent well over LD$42,000.00 for the past five years and nine months [the period] we have been on this case with no end in sight... "

On receiving the latest complaint of January 26, 2005, Minister J. Laveli Supuwood assigned the matter to Philip G. Williams, Director of Labor Standards, who on January 31, 2005 issued and caused a citation to be served along with copy of the complaint to appellants to appear on February 4, 2005 for a conference.

On February 23, 2005, appellees' counsel made application for default judgment on failure by appellants to appear following issuance of several notices of assignment

served and returned served on appellants. The application was granted and a default judgment entered in favor of the appellees.

To perfect the default judgment as required by law, co-appellees Patrick Kamara and Abdul Bangura testified at the hearing. For his part, witness Patrick Kamara said that they were dismissed in March 1999 on the mere allegation of theft of fish and shrimps; that they complained to officials of the United Seamen Ports and General Workers' Union of Liberia, who investigated and determined that their dismissal was wrongful but that appellant management has remained adamant in their refusal to have them reinstated; that appellants have also refused to pay them their benefits, which they recounted to include overtime, national holidays and two years backlog of sailor's fish as well as accrued allowance of US$10.00 per day for thirty days when they served in Guinea at the dry-dock, all of which are consistent with an agreement signed between the union representing the appellees and the appellants. Witness Kamara also told the hearing that their complaint, along with the detailed attachment of their benefits, was forwarded to the appellant management by the Minister of Labor upon which this hearing was being had.

The second witness, Co-appellee Abdul Bangura, testified corroborating the complaint and general testimony of the first witness. He also confirmed that they worked twelve hours daily, Mondays through Sundays as well as on holidays. He also told the hearing that their case had been delayed and baffled repeatedly from 1999 until this hearing in 2005.

At the close of the hearing, a number of instruments detailing appellees' salaries, overtime pay, annual leave and other benefits were admitted into evidence. One of such instruments dated January 1, 1996, was a contract executed between co-appellees represented by their union and the appellant management.

On August 19, 2005, the Hearing Officer entered a default judgment against the appellants. The relevant part of said judgment as quoted, reads:-

RULING

"Having carefully reviewed and analyzed the testimonies of witnesses paraded by the complainants, the evidence adduced during trial, the facts and surrounding circumstances in these proceedings, it is well established that the Katopas management violated the rights of six of its employees thereby orally discharging the employment relationship contrary to provisions of the Labor Practices Law of Liberia; because the Labor Ministry is an institution that does not fit in any employer's pocket, a reliance for which an employer should dismiss its employees with impunity".

We also note that Liberia Katopas Fishing Company violated in its entirety provisions of chapter 8, section 700; chapter 9, section 800; chapter 10, section 900 [of the Labor Practices Law]; for which the complainants are entitled to recover compensation under the provisions of these laws in the amount of seven hundred ninety-five thousand two hundred fifty-six Liberian dollars and seventy-four cents (L$795,256.74) representing accrued overtime; accrued annual leave; accrued holidays; salary balances for March 1999, plus seventy two (72) sacks of fish or the equivalent in the currency in which it is sold with three hundred (US$300.00) United States dollars in favor of Patrick Kamara to be followed by their unconditional reinstatement. Any act to the contrary, Defendant/Katopas should stand in readiness to avail itself to section 9 (a) (i) and (a) (ii) of Title 19-A of the Labor Practices Law of Liberia by awarding them in addition to the above mentioned amount, a sum certain of one hundred seventy-four thousand Liberian dollars (174,000.00) making the total to nine hundred sixty-nine thousand, two hundred fifty-six Liberian dollars and seventy-four cents (LD969,256.74) in accordance with the below tabulations:

[See pdf for Tables]

(Nine hundred sixty-nine thousand, two hundred fifty-six Liberian dollars and seventy-four cents plus seventy two sacks of fish or its equivalent in the currency in which it is sold with three hundred United States dollars)

Through their counsels, Nagbe & Associates, appellants on August 30, 2005, filed a thirteen (13) count petition for judicial review before the National Labor Court for Montserrado County. The petition substantially avers as follows:

1. That the petitioners received copy of the default judgment without having their day in court because on the date set for the hearing, petitioners' counsel through his office assistant, notified the Hearing Officer that the counsel's wife was sick and hospitalized and therefore would be unable to appear for the conference; that the matter was subsequently transferred and assigned before Assistant Minister Mulbah and thereafter re-transferred and assigned for hearing before Mr. Philip G. Williams, based on a written complaint to the Minister of Labor dated January 26, 2005, while the same subject matter was pending before Assistant Minister George Mulbah. Counsel for petitioners therefore contends that Hearing Officer Philip G. Williams proceeded in violation of fundamental principle of notice and due process of law by resuming jurisdiction and hearing the said case. Counsel argued vehemently that by this violation, petitioners having not been brought under the jurisdiction of the court cannot be bound by judgment of the trial or hearing to which they were never a party.

Petitioners also contend that the default judgment rendered in favor of the appellees was not consistent with INA Decree 21 Article 11(8) which requires the applicant to file proof of service of the

summons and complaint and give proof of the facts constituting the claim. The petitioners therefore submit that the granting of default judgment by the Hearing Officer should crumble and be dismissed as a matter of law.

On September 9, 2005, respondents filed an eleven-count resistance substantially stating:

1. That the petitioners' contention that they did not have their day in court was misleading because, after several notices of assignment, acknowledged by all parties, petitioners' counsel, Counselor Joseph N Nagbe, again signed for and received a notice of assignment dated February 16, 2005 for the hearing of the said case on Wednesday, February 23, 2005; that a statement on said notice of assignment notified the petitioners that: "upon defendants' failure to appear for hearing plaintiffs' counsel shall pray for default judgment". Petitioners having failed to appear on February 23, 2005 as scheduled, respondents prayed for and were granted default judgment. Therefore, the petitioners cannot legally argue that they were not given their day in court.

2. Respondents also argued that the Ministry of Labor did write and inform petitioners of a complaint filed against petitioners and attached copy therewith and requested their appearance before it and show cause why they should not be held liable. That the said communication along with the complaint, constitutes summons and same brought the petitioners under the jurisdiction of the Ministry of Labor; said Ministry being an administrative tribunal and not a court where the technical rules of summons are applied: hence the entire petition is a fit subject for dismissal.

The petition for judicial review and the resistance thereto were heard by the Judge of the National Labor Court, Her Honor Comfort S. Natt. By a ruling dated April 23, 2007, Judge Natt affirmed the Hearing Officer's ruling of August 19, 2005, and held the appellants liable to the appellees, Patrick Kamara et. al in the total sum of L$968,034.18 and US$300.00, plus (72) seventy two sacks of fish or its equivalent.

It is to this judgment appellants have excepted and fled to this court of last resort with a five-count bill of exceptions, substantially arguing that the Judge of the Labor Court committed reversible error when she reaffirmed the ruling of the Hearing Officer.

The two issues determinative of this case are:

1. Whether there was legal justification for the Hearing Officer to grant application for the default judgment.

2. Whether the judgment of the Labor Court affirming that of the Hearing Officer was supported by the weight of the evidence adduced at the hearing.

In addressing the first question on the legal justification for the Hearing Officer to grant the application for default judgment, we hold that the Hearing Officer was justified in sustaining said application.

Certified records in this case indicate that a series of investigations of this matter commenced as far back as March 1999. The records support the finding that from 1999, when this matter was first reported, concrete steps were taken by the Ministry of Labor in resolution of same in January 2005. Following many baffling tactics, a regular notice of assignment was issued, served and returned served on counsels for both parties to appear before the Hearing Officer on February 4, 2005. Appellants' counsel requested continuance which was granted and new notice of assignment was issued on February 15, 2005 served, and returned served for hearing of the complaint on February 23, 2005. At the scheduled hearing on February 23, 2005, neither the appellants nor their counsel appeared. It was at this stage that appellees' counsel applied for default judgment and same was properly granted by the Hearing Officer.

In the case, Konnah and Tiawon versus Carver, *36LLR 319, 325 (1989)* this Court affirmed the holding of Reeves versus Spiller, found in *1LLR 298 (1897)* that when a party to a suit before a court of competent jurisdiction fails to appear, either in person or by counsel, on a day assigned for the hearing of said case, such failure is sufficient cause for the opponent to ask for a default judgment." Consistent with the above holding, this Court also held in: *Davye et. al. versus Badio, Jones et. al. 38LLR 241, 244 (1996):*

"Where a party has failed to appear in accordance with the notice of assignment issued, the appearing party may, under Rule 7 of the Revised Rules of the Circuit Court, demand a default judgment against the non-appearing party. Upon entry of the default judgment, the court may permit the appearing party to proceed ex-parte *to produce evidence to support his part of the case."*

The Court also held:

"The right to a day in court simply means the right to notice that an action has been filed against a party or that an assignment has been made for hearing of a pending case and a reasonable opportunity to be heard. Where notice has been duly given to a party, (as was done in this case), the requirement for day in court is certified. [The right to day in court] does not grant unto a party the unlimited power to postpone cases perpetually for the purpose of frustrating justice." Ibid. 245.

Clearly, the records in this case support the conclusion that the appellants neglected to appear when they were duly cited for hearing. The notice of assignment having been duly served on the appellants, not only the legal requirement that a party be afforded an opportunity to appear and defend their interest, as was done in this case, had been adequately satisfied; but the essential elements of due process being notice, and an opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case, as opined by this Court in Wolo versus Wolo 5 LLR 423, 428 (1937), had also been adequately met.

We therefore hold that the granting of appellees' application for default judgment by the Hearing Officer in the case at bar, was consistent with the practice, procedure and laws controlling in this jurisdiction.

We now address the second issue whether the appellants perfected the default judgment by producing evidence to justify a finding in their favor as required by law.

We have already indicated in this opinion that upon application for, and granting of the default judgment, two witnesses testified under oath for appellees seeking to perfect the default judgment as required by law. The witnesses testified that when appellees returned from sea in March 1999, they were shortly thereafter dismissed on the allegation that they stole fish and shrimps and sold same at sea. The witness further told the hearing that they were never prosecuted in a court of law; that the union investigated and determined that their dismissal was wrongful and recommended their reinstatement; but that the appellant management refused to do so; that appellants have also consistently refused to pay them their just benefits, as stipulated in a contract between the appellants and the union of which appellees are members; that their benefits being wrongfully withheld by appellants without any legal justifications include their overtime pay, pay for working on national holidays as well as two years arrears of sacks of sailor's fish. Following their oral testimonies, various instruments were admitted into evidence. These included appellees' complaint along with copy of appellants' detailed indebtedness and obligations to the appellees, as well as a contract document dated January 1, 1996, executed between appellees represented by their union and the appellants. This Court has observed that the said contract document was a month-to-month employment contract although appellants kept appellees as employees on the strength of this very contract for periods ranging between nine and seventy-two moths before terminating their services. The said contract document also obligates appellants to provide their employees, working equipment such as raincoats, boots and cool-room gears; the document further

confirms appellees' entitlement to two days vacation pay at the end of each month; that appellees are entitled to "extra pay" for Liberian national holidays; that appellees will be fed three times daily; and most importantly the contract also entitled the appellees to half sacks of fish at the end of each trip.

This Court observes that all these instruments clearly showing serious breaches on the part of appellants were either sent to appellants as notice, or forwarded to them for their appropriate defense. Throughout this long episode, not only did the appellants neglect and refuse to appear at the hearing, but they submitted no evidence to undermine appellees' corroborated testimonies and documentary evidence.

In the face of these compelling oral testimonies and documentary evidence adduced at the hearing, the Hearing Officer determined that the appellees had produced preponderance of evidence in perfecting the default judgment. In the absence of any evidence to the contrary, the National Labor Court also affirmed the Hearing Officer's finding. It is clear that standing un-refuted, this fact tends to shift the burden of proof to appellants as the negative averment obviously lies within the peculiar knowledge of the appellants.

Our Civil Procedure Law, 1LCL Rev. Title 1 section 25.5 (1) and (2) (1973) provide:

"Burden of proof.

1. Party having burden. The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party.

2. Quantum of evidence. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence.

In the case: The Management of the Forestry Development Authority (FDA), versus Walters & The Board of General Appeals, 34 LLR, 777, 785, (1988), this Court speaking through Mr. Justice Junius, held:

"One having the burden of proof must establish the facts alleged by evidence at the trial, sufficient to destroy the equilibrium and over balance any weight of the evidence to be produced by the other party. On the other hand, preponderance of the evidence is not dependent upon the number of witnesses testifying on either side, but rather upon the credibility which, in the light of all the evidence the case,

the trier of facts attributes to their testimony and the effect of that testimony in inducing beliefs in its truth."

During argument of this appeal before this Court, counsel for appellants attempted to impress upon this Court that the appellees were not employees of appellants because there was no employment letter admitted into evidence throughout the hearing. But when questioned on the employment contract executed between the union representing crew-men including appellees, appellants' counsel became glaringly dodging. Appellants' counsel became further evasive when a question was also put to him as to why the appellees were summarily dismissed by appellants on a mere accusation of theft without according the accused due process of law, consistent with practice and procedure in this jurisdiction.

Under the rules of our practice, appellants were under a duty to show the inconsistency and contradiction in the decision of the Hearing Officer as affirmed by the National Labor Court. In the absence of such showing, a court reviewing an administrative determination has a duty not to disturb the finding of facts by the agency. This is because the finding and determination of fact questions is conclusive within the province of the administrative agency; hence, such finding is final and binding except under certain situations. For reliance, see: National Port Authority (NPA) versus Duopu et. al 34 LLR 665, 675 (1988). In the case: The Management of Liberia Katopas Fishing Company versus Meyers and Orellana 37 LLR 850, 854-5 (1995), this Court clearly identified those situations to be fraud, lack of jurisdiction, or arbitrary or capricious action constituting a denial of due process of law. Ibid 854.

From the facts and evidence adduced in this case, it is crystal clear that the six appellees were wrongfully dismissed. By appellants' act of wrongful dismissal, appellees were deprived of employment and associated benefits from March 1996 to the date of rendition of this opinion without just compensation. To the mind of this Court, appellants' act not only violated the rights of the appellee employees but subjected them to inhumane treatment. Such violation raises the legitimate question of just and adequate compensation.

In Constance et. al versus Ajavon et. al, 40 LLR 295, 307 (2000), this Court attached responsibility for the failure of an insurance company to repair a vehicle which collided with an insured car by the insurance company. The failure of the insurance company to repair the damaged vehicle in keeping with the insurance contract resulted in inconvenience, embarrassment and detriment, much to the injury of the plaintiff.

Speaking for this Court on the extent of the insurance company's liability/compensation for its failure, Mr. Justice Wright said:

"From the day of the accident, and even up to the date of this opinion, which by calculations is about two years and six months.... the co-appellee has been deprived of the use of his vehicle because the co-appellant insurance company has failed to have the said vehicle repaired." Ibid 307.

The Court held:

"...the liability of co-appellant Continental General extends and attaches from the date of the accident up to and including today's date. Accordingly, the amount of the special damages as it relates to loss income from the use of [the] pick-up has to be calculated and adjusted to also cover the period inclusive of the date of the final judgment up to the rendition of this opinion..."

Although this is not a damages suit, the opinion above cited provides a reasonable basis in determining the extent of deprivation of income and benefits as suffered by appellees in the case at bar, as a consequence of wrongful dismissal. This Court shall therefore mirror the trend of thought in the Constance et. al versus Ajavon et. al case, guided by the Labor Law.

"Where wrongful dismissal is alleged, the [Labor Court] shall have power to order re-instatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of re-instatement. The party against whom the order is made shall have the right of election to re-instate or pay such compensation. In assessing the amount of such compensation, the [Labor Court] shall have regard to: (a) (i) reasonable expectations in the case of dismissal in a contract of indefinite duration, (ii) length of service; but in no case shall the amount awarded be more than the aggregate of two years salary or wages of the employee computed on the basis of the average rate of salary received six months immediately preceding the dismissal... "

As the Court of Last Resort, we are vested with the authority to modify, reverse, remand, affirm and make that judgment which the lower court ought to have made.

Wherefore, and in view of the facts and circumstances of this case, we hold and affirm the judgment of the National Labor Court with the modification however, that the amount in lieu of re-instatement, be increased to twenty-four months for each of the six appellees.

The Clerk of this Court is hereby ordered to send a mandate to the National Labor Court commanding the judge presiding therein to resume jurisdiction and give full effect to this judgment without any further delay. Costs ruled against appellants**.** IT IS SO ORDERED.