**Liberian Bank for Development and Investment**, by and through its President, Mr. Francis A. Dennis, Jr., of the City of Monrovia, Liberia Appellant versus Her Honor **Comfort S. Nett**, Judge of the National Labor Court, Monrovia, Liberia, Hon. **Philip G. Williams**, Director for Labor Standards and Labor Relations Officer, Hearing Officer and **Baysamah E. Seville**, also of the City of Monrovia, Liberia Appellees

APPEAL FROM THE NATIONAL LABOR COURT FOR MONTSERRADO COUNTY

Heard: 17 October 2006 Decided: 22 December 2006

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

On 20 September 1999, the Liberian Bank for Development and Investment, appellant, offered Baysamah E. Seville, co-appellee, employment as Internal Auditor for Western Union Bushrod Island Branch and Paynesville Redlight, P-1 Level, Internal Audits Department effective 1 October 1999, with a starting monthly salary of six hundred fifty Liberian dollars (L$600.00). The offer, signed by Johnette Hoff-Nelson, Supervisor/Personnel Section, and Mildred B. Reeves, General Manager, was accepted by co-appellee Seville.

The offer contained the following on benefits:

"You will be entitled to all employee's benefits, including life insurance, medical assistance, vacation, supra annuation fund, and when applicable our employee loan scheme. We also have a Provident Fund to which you and the Bank contribute. Special details can be obtained from the Personnel Section."

On 5 November 2004, Francis A. Dennis, Jr., the appellant's President and CEO, addressed the following letter to the co-appellee:

"We wish to inform you that the Management has decided to exercise its right under section 1508 of the Labor Practices Law of Liberia to sever the present employment relationship with you effective today's date and advise that you meet with the Personnel Section of the Bank to receive your entitlement.

"With reference to your claim relative to your memo of September 27, 2004 to the Grievance Committee, you are invited to meet with me in my office, on Monday the 8th instant at 3:00 p.m. to conclude the matter. . . ."

On 7 December 2004, Mr. Barclay S. Wollie, Sr., Labor Consultant, filed a complaint on behalf of co-appellee Seville against the appellant with the Ministry of Labor alleging Unfair Labor Practices. The matter was assigned to Philip G. Williams, Director for Labor Standards and Labor Relations Officer, who issued a citation to the appellant for a pre-trial conference. The appellant did not honor the citation; a regular notice of assignment was issued and served on the parties. Both parties appeared in response to the notice of assignment, and a conference was held into a possible out-ofcourt settlement. The appellant tendered two checks in the amounts of US$: , ,265.63 and L$8,537.10, respectively, as full settlement of co-appellee Seville's clairr3. Coappellee Seville disagreed that these amounts constituted full settlement of h s claims; he however agreed to accept the two checks and execute a release, but under protest, reserving unto himself the right to further pursue his claims. The appellant refused to co-appellee's execution of the release under protest, withdrew its offer and retrieved the two checks. As a consequence of the breakdown of the conference, a full scale investigation was had.

At its conclusion, the Hearing Officer entered a default judgment against the appellant. From this ruling, the appellant excepted and filed a nine-count Petition for Judicial Review before the National Labor Court, Montserrado County, alleging substantially as follows:

1. That on 17 June 2005, upon being served with a notice of assignment for hearing scheduled for 24 June 2005, counsel for appellant wrote a letter to the Hearing Officer requesting a change of the time from 1:00 p.m. to either 10:00 a.m. or 11:00 a.m. the same day; notwithstanding the request, the Hearing Officer entertained the matter at 1:00 p.m.

2. That the ruling is prejudicial and bias because of the Hearing Officer's holding that under section 1508 of the Labor Law, the appellant was under a duty to specify which subsection of that section was the basis of co-appellee's dismissal.

3. That the ruling is prejudicial and bias since it included an award for 1510 hours overtime allegedly worked by the co-appellee, and for calculating supra annuation benefit in United States Dollars rather than Liberian Dollars.

3. That the appellant had computed the just entitlement of the co-appellee to be US$10,135.49 and LD$24,037.83, respectively, which included all benefits; yet, the co-appellee adopted a different method of calculation with the sole purpose of cheating and defrauding the appellant.

The co-appellee filed an eight-count resistance substantially as follows:

1. That the notice of assignment dated 17 June 2005 scheduling the hearing for 24 June 2005 was served on both parties, and that at no time did the appellant serve the Hearing Officer with any communication requesting a change of the time from 1:00 p.m. to 10:00 a.m. or 11:00 a.m., and that had such service been made, counsel for appellant should have exhibited proof of service as required by law, rather than by an affidavit which is self-serving.

2. That the Hearing Officer correctly held that the appellant should have indicated which subsection of section 1508 was the basis of co-appellee's dismissal.

3. That all calculations made by the Hearing Officer were proper and legal.

The Petition for Judicial Review was heard by Her Honor Comfort S. Natt, Judge, National Labor Court, who, by judgment dated 16 November 2005, confirmed and affirmed the default judgment of Hearing Officer Williams. The appellant excepted to the judgment of the National Labor Judge, and has brought this case up on a six-count bill of exceptions.

We shall address three issues in the determination of this case:

1. Whether the Hearing Officer was justified in granting the co-appellee's application for a default judgment?

2. Whether an employer, who relies upon section 1508 of the Labor Law to dismiss an employee, is required to specify which subsection is the basis for the dismissal?

3. What is the scope of judicial review of an administrative decision?

We agree with the Judge of the National Labor Court that Hearing Officer Williams was justified in granting co-appellee Seville's application for a default judgment.

The record certified to this Court is replete with instances of counsel for the appellant not attending upon assignments. Hearing of this case before the Hearing Officer began on 21 February 2005, with co-appellee Seville taking the stand. Hearing continued on 2 March 2005, with co-appellee Seville resuming the stand on the direct examination. Having rested on the direct, counsel for appellant requested a postponement of the trial "to enable it to adequately prepare to cross-examine the co-appellee and to undertake a critical review of the co-appellee's breakdown of his claims which were being analyzed by competent personnel at LBDI, the appellant, to justify whether or not the entire claims testified to by the co-appellee and expressed on the record should be honored by the appellant." Counsel for co-appellee Seville interposed no objections, and the Hearing Officer, on the minutes of the investigation, suspended and postponed the hearing to resume on Wednesday, 16 March 2005, at 1:00 p.m.

At the call of the hearing on 16 March 2005, co-appellee Seville was represented in person and by his counsel; neither the appellant nor its counsel was present. On representations of counsel for the co-appellee, the Hearing Officer made the following ruling:

"This investigation notes the absence of the defendant/management for the trial of this case today, 16 March 2005, as was scheduled. We further note the submission of counsel for complainant and accordingly, the defendant/management is warned to desist from the act of staying away from the hearing of this case when duly cited, as their next failure will leave us with no alternative but to grant any request of the complainant that will be made during the next hearing. At the same time, the clerk of this investigation is ordered to prepare a written notice of assignment and have same served on both parties, and that copies of the minutes of today's hearing be attached to the defendant's copy as requested by the counsel for the complainant. . . . It is so ordered."

In obedience to the above ruling, the clerk of the investigation issued a notice of assignment on 31 March 2005 for hearing to resume on 12 April 2005. The notice of assignment was served on counsels for both parties, who appeared on 12 April 2005 with resumption of the cross-examination of co-appellee Seville. At the end of the day's hearing, with co-appellee Seville still on the stand being cross-examined, the matter was postponed to Wednesday, 20 April 2005, at 1:00 p.m. The Hearing Officer noted on the minutes of the investigation that 141 parties being present, the minutes will serve sufficiently as a regular notice of assignment for the transaction of normal business."

When the hearing resumed on 20 April 2005, co-appellee Seville was represented in person and by counsel; again, neither the appellant nor its counsel was present. On representations of counsel for co-appellee Seville, the Hearing Officer made yet another ruling:

"The submission made by counsel for the complainant is noted and the defendant is hereby seriously warned to desist from their non-appearance attitude whenever they are duly cited. In view of this fact, hearing stands suspended to resume upon the issuance of a regular notice of assignment to which these minutes should be attached which will indicate the day, date and time of the next sitting. It is so ordered."

The hearing resumed on 28 April 2005, with counsels for both parties present, and co-appellee Seville resuming the stand on the cross-examination. In response to a question that he provide a breakdown of his claims, counsel for co-appellee Seville requested the investigation to allow the co-appellee to present the breakdown at the next sitting of the hearing. The request was granted, and the "trial was suspended pending the issuance of a regular notice of assignment."

In obedience to the above ruling, the clerk of the investigation issued a notice of assignment on 17 June 2005 for continuation of the hearing on 24 June 2005 at 1:00 p.m. The records show that at the call of the case on 24 June 2005, neither the appellant nor its counsel was present. Counsel for co-appellee Seville thereupon applied for a default judgment, which was granted.

Counsel for appellant has argued that on 17 June 2005, upon being served with the notice of assignment for hearing scheduled for 24 June 2005, he wrote a letter to the Hearing Officer requesting a change of the time from 1:00 p.m. to either 10:00 a.m. or 11:00 a.m. the same day, and that notwithstanding the request, the Hearing Officer resumed the investigation at 1:00 p.m.

The certified records in this case are devoid of proof of service upon the Hearing Officer or his office of the letter allegedly written by counsel for the appellant. We hold that proof of service of the letter should have been evidenced by a receipt from the Hearing Officer or a staff of his office.

We should like to make an observation just here. It appears that lawyers are under the belief that once a letter is written to a Judge or the clerk of court, or a Hearing Officer or the clerk of the investigation that a lawyer is unable to attend upon an

assignment, that letter is sufficient, and the Judge or the Hearing Officer is under a duty to grant the request. That is not true.

We hold that merely addressing a letter to a Judge or filing a letter with the clerk of court, or addressing a letter to a Hearing Officer or filing a letter with the clerk of an investigation, in the case of the Ministry of Labor, that counsel cannot attend upon an assignment is not *ipso facto* an excuse. Only after the Judge or the Hearing Officer has acted upon the request, and granted the excuse, that it is an act binding on the Judge or the Hearing Officer. In the absence of action by the Judge or the Hearing Officer granting the request, the letter is not an excuse.

The next issue is whether an employer, who relies upon section 1508 of the Labor Law to dismiss an employee, is required to specify which subsection of the section is the basis for the dismissal?

Section 1508 of the Labor Law, on Dismissal of Employees, contains six subsections. Subsections 1508 (3) thru (6) cover employee with whom the employer is bound by a contract of employment for an indefinite period. The subsections provide:

"3. Where the contract is concluded between the employer and the employee for an indefinite period, the employer shall have the right to dismiss the employee on condition that he gives him two weeks written notice in the case of non-salaried employee and four weeks written notice in the case of salaried employee or payment in lieu of such notice.

"4. The period of notice shall begin to run on the first day of the pay period next following that in which the notice was served.

"5. Notwithstanding the provision of section 1508 of this chapter, an employer may dismiss an employee engaged for an indefinite period without notice, subject to payment only of wages due, where it is shown that the employee has been guilty of a serious breach of duty.

"6. The following acts and violations shall be deemed to be serious breaches of duty within the meaning of the preceding section entitling the employer to terminate without notice, or pay in lieu of notice contracts of employment for an indefinite period:

"(a) any of the acts or violations specifically set in subsection 2 of this section;

"(b) lack of skill or manifest inefficiency of the employee which makes impossible the fulfilment of his duties under the contract:

"(c) if the employee commits any other serious offense against his obligation under the contract."

Two scenarios obtain under these subsections: dismissal without cause, and dismissal with cause. We agree that an employer may dismiss an employee with or without cause, but we hold that where the employer relies upon section 1508 of the Labor Law, he is under a duty to specifically state which subsection he relies upon, that the employee, should he disagree with his dismissal, may be able to adequately and intelligently prepare his challenge.

We address lastly the issue what is the scope of judicial review of an administrative decision?

This is an issue which was raised before this Court in 1984, and which seemed not to have been raised and decided by the Court before then.

In *Johnson and the Board of General Appeals v. LAMCO J. V. Operating Company,* 31 LLR 735, 745 (1984), this Court held *inter alia:*

"Questions of fact involved in a proceeding before an administrative agency are to be determined, at least primarily, by the agency, rather than by a court; and in the absence of fraud, lack of jurisdiction, or arbitrary or capricious action constituting a denial of the process of law, the agency's finding of fact, or decision of a question of fact, is to be accepted as final, binding and conclusive, and may not be reviewed by a court except to the extent that a constitutional or statutory provision makes it reviewable. 73 C.J.S. *Public Administrative Law and Procedure, §* 216."

The principle was confirmed in *The Management of Liberia Katopas Fishing Company v. Meyers and Orellana,* 37 LLR 850, 855 (1995):

"An administrative agency's findings as to the facts which are supported by substantial evidence are binding and conclusive on, and may not be disturbed or set aside by a court in the absence of fraud or bias, where a hearing complying with the requirements of the process of law was accorded, the agency acted within its jurisdiction and authority, and the findings were made in compliance with law and

were the result of fair determination. In such case, the court must accept the findings as final and true, and may not substitute its own judgment or findings of fact for that of the agency. 73 C.J.S. *Public Administrative Law and Procedure,* § 223, *Substantial Evidence."*

The Hearing Officer, in an exhaustive default judgment dated 15 July 2005, made findings of fact, and concluded:

"After a careful examination of the records, evidence adduced during trial, coupled with the facts and surrounding circumstances, it is evident that the dismissal of the complainant was and is predicated upon malice and hatred which cannot be sanctioned by § 1508, while at the same time denying him the right to be heard by the Grievance Committee headed by the General Manager who is charged with the responsibility to hear all grievances arising at the work place after he had lodged a formal complaint through a memorandum as alluded to by the President/Chief Executive Officer's letter terminating his services.

"It is therefore our candid and considered opinion that Defendant/Bank pays the complainant the balance of his benefits which it has commenced payment in the amount of US$7,051.44 plus L$25,131.04 (US$3,265.63 & L$8,537.10 representing checks issued but seized and still in the custody of Defendant/Bank and US$3,785.81 plus L$25,131.04 representing the understatement of what was due complainant) as well as the 1510 excess hours worked at a rate of time and a half to include amounts deducted unauthorizedly in the amount of US$449.00, inclusive in the US$7,051.44 that was also being contested by the complainant; and thereafter unconditionally reinstates him and restore his status as if to say such unwarranted action has never ever occurred in the life span of their employment relationship. And act to the contrary, Defendant/Bank should stand in readiness to avail itself to § 9 (a) (I) and (a) (ii) of 19-A of the Labor Practices Law of Liberia by awarding him nine (9) months' salary in addition to the above mentioned amount in lieu of reinstatement.

"That is to say, in accordance with the below tabulations:

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| "1 Balance in Benefits in USD | $7,051.44 |
| "2 Balance in Benefits in LD | $25,131.04 |
| "3 Accrued overtime = 1510 hrs. x US$3.79 (time and a half) | $5,722.90 |
| "4 Accrued overtime = 1510 hrs. x L$8.08 (time and a half) | $12,200.00 |
| "5 Nine months' salary in lieu of re-instatement x US$526.00 | $4,752.00 |
| "6 Nine months' salary in lieu of re-instatement x L$1,000.00 | $9,000.00 |

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| "7 Balance salary for November 2004 in USD | $358.95 |
| "8 Balance salary for November 2004 in LD | $814.95 |
| "TOTAL USD | $17,885.29 |
| "TOTAL LD | $47,145.99 |

"(United States Dollars Seventeen Thousand, Eight Hundred and Eighty-five 29/100 and Liberian Dollars Forty-seven Thousand, One Hundred and Forty-five 99/100)."

These were findings of fact which were binding and conclusive on the National Labor Court and could not be disturbed or set aside in the absence of fraud or bias, where a hearing complying with the requirements of the process of law was accorded, the agency acted within its jurisdiction and authority, and the findings were made in compliance with law and were the result of fair determination.

We hold that except for merely alleging in its Petition for Judicial Review that the ruling of the Hearing Officer was prejudicial and bias, the appellant has not proven prejudice or bias. We hold, also, that the investigation complied with the requirements of due process of law, the agency acted within its jurisdiction and authority, and that the findings were made in compliance with law and were the result of a fair determination of the issues of fact.

In view of the foregoing, the final judgment of the National Labor Court is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the National Labor Court for Montserrado County to resume jurisdiction over this case and to give effect to this judgment. It is so ordered.

*Judgment affirmed.*