

**THE MANAGEMENT OF THE LIBERIAN OPPORTUNITIES
INDUSTRIALIZATION CENTER, INC. (LOIC),** Petitioner/Appellant, *v.*
PHILIP G. WILLIAMS, Director, Hearing Officer, Ministry of Labour, and
A'DMENTUS B. ZINNAH, Respondents/Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT FOR MONTSERRADO
COUNTY.

Heard: November 30, 2004. Decided: February 28, 2005

1. The failure of the clerk of the National Labour Court to forward the writ of summons to the sheriff's office for service on the respondents of the petition for judicial review of a hearing officer's ruling, as ordered by the National Labour Court Judge, cannot be imputed solely to the fault of appellant or appellant's counsel, but also to the failure of the clerk of court.
2. Once the documents submitted to the clerk of National Labour Court were marked "filed" and the National Labour Court Judge had ordered the service of the summons and other documents, the said documents, for all intents and purposes, were filed and should have been served on the respondents.
3. No act or omission of a judge or any officer of court shall affect the validity of an appeal, but such act, mistake or negligence shall be remedied by some appropriate order of the appellate court so as to promote substantial justice.
4. Administrative agency means any ministry, board, commission, or officer of the Central Government of Liberia, who is authorized by law to determine the legal rights, duties, or privileges of a person.
5. The Ministry of Labour and its hearing officers are acting as an administrative agency during the hearing and adjudication of disputes between employers and employees.
6. Although the statute creating the National Labour Court states that the procedure of the Labour Court shall be the same as those of the debt court, it is clear that the debt court has original jurisdiction in debt cases (when it is not exercising its labour appellate jurisdiction) whereas the Labour Court has mainly appellate jurisdiction in labour matters.
7. In the National Labour Court, if the petition for judicial review, the first pleading filed, is not served, and if the failure to serve same is handled strictly as a procedural matter, the consequence of a refusal to hear the petition would be to agree to enforcement of the ruling of the hearing officer of Labour Ministry. The aggrieved party who appealed to the Labour Court will therefore not have had his day in court.

8. The marking of the document “filed” by the clerk of the National Labour Court creates a presumption that the necessary fees has been paid.
9. It is the intention of the Legislature that except other statute provides otherwise, or the exigency of a matter requires a different approach, review of action of administrative agencies must not disregard the provisions of the Administrative Procedure Act.
10. The court shall grant or refuse enforcement of the ruling of a hearing officer on the basis of the records or such part thereof as was filed with the court or on the basis of oral argument on issues within the allowable scope of the proceedings, unless the court finds that such order was void or invalid for fraud or that compliance has occurred.
11. The findings made by an administrative agency with respect to questions of fact shall ordinarily be conclusive on the court.
12. The National Labour Court should review the findings of the hearing officer and his conclusion of law in order to determine whether the substantial right of the appellant had been prejudiced because the administrative findings, inferences, conclusions and decisions were improper, unreasonable or unfair.
13. If upon a review, the administrative findings, inferences, conclusions or decisions are found to be in violation of the law or clearly erroneous, in view of the substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, then the court is not duty bound to enforce such findings but to instead reverse or modify same.
14. When in a labour case, the reason for the none service of the petition for judicial review can be traced not only to lack of supervision of the lawyer but also to other related causes in the court, the judge of the Labour Court must of necessity allow the petition to be served so that the petitioner can have his day in court and the court can have the benefit of the arguments of the petitioner in reaching a decision on the merits of the case.
15. The judge or court on its own, must show on the record that it has reviewed the records from the hearing officer and found that the findings of facts are based on sufficient evidence on the record considered as a whole, and that the conclusions of law are sound in keeping with the standard for review set out in both the Labour Law and the Administrative Procedure Act.
16. If upon review of the findings of the hearing officer and his conclusion of law, the Labour Court finds faults in the hearing officer’s rulings, the Labour Court Judge is bound to remand the case to the hearing officer for more hearing.

17. The Labour Court Judge errs in ordering the enforcement of the ruling of a hearing officer against a party on whom the writ of summons and other pertinent documents were not served as ordered by the Labour Court Judge.

The appellant, against whom the hearing officer at the Ministry of Labour had entered a decision, petitioned the National Labour Court for a judicial review of the decision. Although the petition for judicial review was filed and a judge's order issued commanding the clerk to prepare a writ of summons and deliver same to the sheriff for service on the respondents/appellees, and the summons was prepared, it was never given to the sheriff for service and was therefore never served. As a result, the respondents/appellees petitioned the National Labour Court for enforcement of the judgment of the hearing officer. The lack of service of the summons was substantiated by a clerk's certificate from the clerk of the National Labour Court to the effect that no service was made.

Although the judge of the National Labour Court conducted an investigation into the reason why the service of the summons had not been made, she concluded that it was due to fault of the appellant's counsel who had failed to superintend the service as the acting clerk had indicated the counsel had promised. The judge therefore determined that the appellees had not been brought under the jurisdiction of the court and ordered that the ruling of the hearing officer be enforced.

On appeal to the Supreme Court, the ruling of the National Labour Court was reversed. The Supreme Court held that the failure of the clerk of the National Labour Court to forward the writ of summons to the sheriff for service of the petition for judicial review on the appellees, as ordered by the judge, could not be imputed solely to the fault of the appellant's counsel but also to the clerk of the lower court. The Court opined that no act or omission of the judge or other officer of the court should affect the validity of the appeal taken by the appellant, but that such act, mistake, or negligence should be remedied by an appropriate order of the appellate court to promote substantive justice. The Supreme Court further opined that the National Labour Court Judge should have allowed service of the summons to be made and that she should thereafter have conducted a review of the hearing officer's ruling; and, that discovering that errors were made as to the findings of fact and the conclusions of law, she should have remanded the case for more hearing.

The Court therefore concluded that the National Labour Court Judge was in error in ordering the enforcement of the hearing officer's ruling because of the failure of the court's officer to effect the service of summons on the appellees, as directed by the judge. Accordingly, the Court ordered that the writ of summons be served on the appellees and the hearing of the petition for judicial review be proceeded with by the National Labour Court.

Benedict Holt of Kemp and Associates Legal Chambers, Inc. appeared for the appellant. *James C. R. Flomo* of The Henries Law Firm appeared for the appellees.

MR. CHIEF JUSTICE COOPER delivered the opinion of the Court.

This matter is on appeal from the National Labour Court for Montserrado County. The case was commenced by a letter of complaint dated January 25, 2000, from the counsel for appellee Zinnah and addressed to the Minister of Labour. A hearing commenced on October 12, 2001, and the hearing officer eventually ruled against the appellant, the Management of Liberian Opportunities Industrialization Center, Inc. (LOIC), finding that appellant LOIC committed “unfair labor practice.” The appellant duly excepted to the ruling and on October 22, 2001, ten days after excepting to the ruling of the hearing officer, petitioned the National Labour Court for Montserrado County for a judicial review. The appellant’s petition for judicial review was filed and marked “filed” by the acting clerk of the National Labour Court on October 22, 2001, and the judge’s order was signed by the judge on the same day, October 22, 2001, requiring the acting clerk to docket the case for November 1, 2001. The judge’s order also instructed the clerk to issue a writ of summons directing the hearing officer to appear before the court and to order the sheriff to have returns filed by November 1, 2001.

The writ of summons was prepared on the same day, with a copy of the petition attached thereto, to be served on the respondents. But no service of summons, together with the petition, was effected on any of the respondents. Thereafter, appellee obtained a clerk’s certificate from the National Labour Court, dated February 15, 2002, certifying that the writ of summons had not been served as had been ordered by the judge. On May 24, 2002, the hearing officer, in a letter to the National Labour Court, petitioned the judge to enforce the hearing officer’s ruling of October 12, 2001 since, according to his letter, he considered that no appeal had been taken from his ruling.

When on April 20, 2004, a petition for enforcement of the hearing officer’s ruling of October 12, 2001 was called for hearing, the appellant’s counsel pointed out to the court that a petition for judicial review had been filed within statutory time and requested the court to dismiss the petition to enforce the said ruling and instead conduct the judicial review. The judge conducted an investigation involving the acting clerk, as to the reason why the summons had not been served, as ordered. The case papers were all found in the possession of the acting clerk and they had not been put in the proper court files, in keeping with regular court practice.

In the ruling of the judge, she noted that according to the acting clerk, “appellant’s counsel told him to hold [the petition for judicial review] as he was going to come back to superintend same for service”. The judge concluded that service had not been effected due to fault of appellant’s counsel who was under a duty to superintend his case. The judge also ruled that the opposing parties, i.e., respondents hearing officer and Zinnah, were therefore not brought under the jurisdiction of the court up to the time of her ruling. On April 23, 2004, the National Labour Court refused to dismiss the enforcement of the petition. The Court therefore affirmed the ruling of the hearing officer. The appellant excepted to the National Labour Court’s ruling, filed a bill of exceptions and perfected this appeal.

In our opinion, there is but one salient point or important issue to be considered in this matter, which is as follows: Whether or not the trial judge erred when she refused to hear the petition for judicial review and instead ordered the enforcement of the ruling of the hearing officer?

Before this Court, the appellant questioned, amongst others things, the transferability to an employer of responsibility for alleged criminal acts of an employee whose actions were clearly not taken in the conduct of the employer’s business; the right of an employer to dismiss his employee who absents himself from work for more than ten consecutive working days without a good cause shown; and whether the final ruling of the hearing officer was supported by the weight of the evidence adduced at the trial.

The appellee’s arguments related to the question of whether the petition was or was not before the National Labour Court Judge in view of the non service of the writ of summons and petition for judicial review by the court officers; and whether the National Labour Court Judge erred in ordering the enforcement of the hearing officer’s ruling.

As stated before, the records presented before this Court reveal that the petition for judicial review was filed with the clerk of the National Labour Court for Montserrat County within statutory time; that the judge had in fact ordered the issuance of the writ of summons and the service of the writ of summons and other pertinent documents on the respondents named therein; and that the clerk neglected to forward the writ of summons and the petition to the sheriff’s office for service on the respondents up to the date of the hearing of the petition to enforce the ruling of the hearing officer. It is clear that the acting clerk disobeyed the order signed by the judge, yet she disregarded that fact. Counsel for appellant, in his argument before this Court, recalled that during the investigation the acting clerk of court apologized for his action, after admitting that he had indeed received and marked “filed” the petition for judicial review. It appears that he may have forgotten to carry out his duties or that he might have been waiting for the appellant’s counsel to pay more fees or

charges. In this regard, it is the considered opinion of this Court that failure of the clerk to forward the documents to the sheriff's office for service on the respondents of the petition for judicial review of a hearing officer's ruling, as ordered by the National Labour Court Judge, cannot be imputed solely to the fault of the appellant or the appellant's counsel, but also to the failure of the acting clerk of court to properly file the petition and have it served, as was ordered. Once the documents were marked "filed" and the National Labour Court Judge had ordered the service of the summons and other documents, the said documents, for all intents and purposes, were filed and should have been served on the respondents.

On the question raised by the appellees as to whether or not the appellant was ever under the court's jurisdiction, one wonders how the court could act to enforce a ruling involving the same parties, if some of them were not under its jurisdiction. Does this mean that the parties are under the court's jurisdiction for enforcement, but not for review?

This Court decided long ago that no act or omission of a judge or any officer of court shall affect the validity of an appeal, but such act, mistake or negligence shall be remedied by some appropriate order of the appellate court so as to promote substantial justice. *Fazḡah v. Rogers Shoe Company*, 12 LLR 214 (1955). In our opinion, the application of this principle of law is very appropriate in matters coming on appeal before the National Labour Court, due to the nature of that court, which is not one of the ordinary courts, but a specialized court.

This Court deems it necessary, at this time, to say a few words about the nature of cases that arise under the Labour Law of Liberia. It is clear that the Ministry of Labour and its hearing officers are acting as an administrative agency during the hearing and adjudication of disputes between employers and employees. Our law provides, in this regard, that an administrative agency means any ministry, board, commission, or officer of the Central Government of Liberia, etc., who is authorized by law to determine the legal rights, duties, or privileges of a person. Administrative Procedure Act, Executive Law, Rev. Code 12:82.1 (a).

Clearly discernable in all of the labour statutes of Liberia is the clear intention of the Legislature to assign all private sector labour cases and related matters to a specialized administrative agency, in this case the Ministry of Labour. This Labour Ministry has therefore been given the power to fine persons who fail to respond to its citations, impose imprisonment, hold hearings, issue necessary regulations, compel witnesses to appear, administer oaths and conduct contempt proceedings against persons who resists any process or order. Article II, Sections 2 and 4, Labor Law, as contained in the Liberian Codes Revised, Vol. IV, at p. 364. In opting for the administrative law process in matters relating to labour and employment, the Legislature also saw fit to create a special court - the Labour Court or the Debt

Court, acting in labour law jurisdiction, to handle appeals emanating from hearing officers of the Labour Ministry.

The Legislature also mandated that labour disputes be handled expeditiously and by persons who are presumably equipped and informed by experience to deal with a specialized field of knowledge in realization of the fact that labour matters are different from those that usually come before the regular courts. As such, the rules of evidence and procedures applicable to labour matters have been somewhat relaxed. Labour Law, 1956 Code 18:200, as contained in the Liberian Codes Revised, Vol. IV, at p. 203. In the same vein, the legislature wisely set out some objectives to be achieved through the administrative process of the Ministry of Labour, including the promotion, administration, development, regulation, and control of the Labor Law and Labor Practices Law of the Republic, by regulating relations between employers and employees; providing employment services in pursuit of development and exploitation of all resources and the furtherance of commerce; providing for the classification, registration, and licensing of tradesmen and craftsmen; and conducting manpower studies. The Legislature set the policy of the Government to be “to achieve the establishment of a sound system of labour relations, based on the recognition that the Government, employers and workers are complementary partners for economic progress, and social justice;...[That] Government’s major goals in the development of sound labour relations are to maintain balance of power in the interplay between employers and workers, or their organizations, and to accommodate the interests of the Government and those of employers and workers, and, [that] Government’s intention [is] to provide the basic framework for harmonious labour relations, being aware that unless there are adequate measures governing the settlement of labour disputes such disputes could result in unfavorable repercussions, and that labour disputes require a suitable method for their speedy settlement which is an important prerequisite for promoting harmonious labour relations essential to increased productivity and overall economic and social development.” Labor Law, 1956 Code et seq., 18:34.2, as contained in the Liberian Codes Revised, Vol. IV, page 363.

Although the statute creating the National Labour Court says that the procedure of the Labour Court shall be the same as those of the debt court, (and the procedure in the debt court is borrowed from the circuit court and has been subsequently modified (Section 4.2, *Jurisdiction and Procedure*, New Judiciary Law, as amended (1985)), it is clear that the debt court has original jurisdiction in debt cases (when it is not exercising its labour appellate jurisdiction) whereas the National Labour Court has mainly appellate jurisdiction in labour matters. If the same incident occurred in a debt court, i.e. complaint and summons were forgotten by the clerk and not served, nothing would be lost, in that upon discovery of the deed or misdeed of the clerk, the

court order would be implemented, service effected, and the defendant would respond to the complaint within 10 days, in keeping with law. In the National Labour Court, however, if the petition for judicial review, the first pleading filed, be not served as here, and if we were to agree with the judge that this is strictly a procedural matter, as she appeared to handle it, the consequence of a refusal to hear the petition would be to agree to enforcement of the ruling of the Labour Ministry's hearing officer. The aggrieved party who appealed to the National Labour Court will not have had his day in court, due mainly to the negligence of his lawyer who did not supervise his case and the refusal of the clerk to carry out the order of the judge to forward the documents to the sheriff's office after he had received same and marked them "filed." (The marking of the document "filed" created a presumption that the necessary fees had been paid.) The aggrieved party will have lost his day in court, also in part due to other events which should not have occurred. In our opinion, such results would not be in keeping with the clear intention of the lawmakers to treat such matters less formally and in a special manner so that each party will have a fair hearing. It should be made clear that this is not any approval by this Court of any acts of negligence by any lawyer to follow the rules of the Labour Court, which rules should be as strictly as possible adhered to by all parties until they be properly changed.

We believe that certain minimum standards for review of hearings which are set out in the Administrative Procedure Act (APA) of Liberia must also be taken into consideration by the Labour Court, more especially where it concerns the granting of an order to enforce the ruling of a hearing officer. In this connection, we hold the view that it is the intention of the Legislature that except other statute provides otherwise, or the exigency of a matter would require a different approach, review of action of administrative agencies must not disregard the provisions of the Administrative Procedure Act. The court shall grant or refuse enforcement on the basis of the records or such part thereof as was filed with the court or on the basis of oral argument on issues within the allowable scope of the proceedings, unless the court finds that such order was void or invalid for fraud or that compliance has occurred. The findings which were made by the agency with respect to questions of fact shall be conclusive on the court. Executive Law, Rev. Code 82:82.9(2).

The case under consideration was, however, not the usual enforcement case. In this case, the record shows that appellant LOIC did in fact except to the ruling of the hearing officer and filed the petition for judicial review, which the court considered not having been properly filed due to a strict application of the rule, and which appears to work counter to the legislative intent as mentioned above. We are of the opinion that in this case, the National Labour Court should have reviewed the findings of the hearing officer and his conclusion of law in order to determine whether the substantial rights of the appellant had been prejudiced because the

administrative findings, inferences, conclusions and decisions were improper, unreasonable or unfair. It appears clear to us that if upon such review, the administrative findings, inferences, conclusions or decisions were found to be in violation of law or clearly erroneous in view of the substantial evidence on the whole record, or was arbitrary or capricious or characterized by abuse of discretion, or clearly an unwarranted exercise of discretion, then the court is not duty bound to enforce such findings but to instead reverse or modify same. It is for these reasons that the Labour Court is expected to forgo or relax the strict application of general rules of procedures and evidence in labour cases.

It is our opinion that when, in a Labour case as this, the reason for the none service of the petition for judicial review can be traced not only to lack of supervision of the lawyer but also to other related causes in the court, the judge of the Labour Court must of necessity allow the petition to be served so that petitioner can have his day in court and the court can have the benefit of the arguments of the petitioner in reaching a decision on the merits of the case, or the judge or court on its own, must show on the record that it has reviewed the records from the hearing officer and found that the findings of facts are based on sufficient evidence on the record considered as a whole, and that the conclusions of law are sound in keeping with the standard for review set out in both the Labour Law and the Administrative Procedure Act. For instance, if upon such review the National Labour Court finds faults in the hearing officer's rulings, the Labour Court Judge will be bound to remand the case to the hearing officer for more hearing. Executive Law, Rev. Code 82:82.8; Section 23.3(1) of the Civil Procedure Law, Rev. Code 1, applicable to a judge sitting without a jury and part of the law creating the National Labour Court, also include certain procedural provisions which the Labour Court should take into consideration when reviewing a labour case on appeal.

We are of the opinion that the failure to serve the summons and the petition could not be solely attributed to the negligence of the counsel for appellant, and therefore should not be allowed to affect the substantive rights of the appellant. In view of the foregoing, the circumstances of the case, and the laws cited and quoted herein, it is the considered opinion of this Court that the Judge of National Labour Court should permit the service of the summons and the other pertinent documents filed by appellant to be served on appellee so as to afford appellant the fair opportunity to be heard in full in this matter.

Wherefore, and in view of the laws we have cited, this Court holds that the judgment granting the order to enforce the ruling of the hearing officer, upon which this case was appealed, be and the same is hereby ordered reversed. The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over the case order the writ of summons and

petition served on the appellees and proceed with the hearing of the petition for judicial review in keeping with law. Costs are disallowed. And it is hereby so ordered.

Judgment reversed.