

**The Management of National Social Security & Welfare Corporation
(NASSCORP), Monrovia, Liberia APPELLANT Versus His Honour Sam K.
Mayson, Senior Hearing Officer, Director of Labour Standards of the Ministry
Labour, R.L. and Lucia K. Doe Monrovia, Liberia APPELLEES**

LRSC 6 (2011)

PETITION FOR JUDICIAL REVIEW

HEARD: MARCH 17, 2010 DECIDED: JANUARY 21, 2011

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On May 22, 2007, Mrs. Lucia K. Doe, appellee, filed a complaint with the Ministry of Labour against the National Social Security and Welfare Corporation (NASSCORP), appellant. The appellee alleged in her complaint that she was wrongfully dismissed by the appellant after continuously working with appellant for more than twenty-one (21) years.

The complaint was assigned to Sam. K. Mayson, Hearing Officer at the Ministry of Labour, who cited the parties to a conference in an effort to effect resolution of the matter between them, but the parties could not reach amicable agreement among themselves. The matter was therefore submitted to full-scale investigation.

During investigation, the appellee narrated that she was employed on September 2, 1985 under a contract of indefinite duration and dismissed on May 21, 2007 without investigation or prosecution in court. She said that during her employment with the appellant, she did not receive any warning for any act unbecoming. She further said that her monthly salary, immediately prior to the termination of her services, was One Hundred and Seventy-Five United States dollars (US\$175.00).

Three persons testified for the appellant. A. B. Kamokai, Assistant Director General of the appellant corporation was the first to testify. He informed the investigation that in March 2007, the Deputy Director General of NASSCORP told him to tell all inspectors not to go in the field during the morning hours; that all inspectors should instead assemble in the conference room. The witness also said that when they got in the conference room, the Deputy Director General brought a Social Security receipt issued to AEP Consultants, passed the receipt around, and wanted to know who issued the receipt, and if there was anyone in their mist who had knowledge of the receipt. He maintained that everyone in the conference room looked at the receipt and denied having any knowledge of it. According to the witness, the Deputy Director General told them to sit and wait; he went into his office and brought into the conference room a lady from AEP Consultants and asked her to identify all the people who went to the AEP Consultants office, collected money and issued the receipt. He told the

investigation that the lady looked among them and identified Lucia K. Doe and Nixon Gaylah and said that the third person was not in the conference room.

He said the Deputy Director General went into his office again and brought in another lady from AEP Consultants office and also asked her to identify the people who went to their office, collected money and issued receipt. The second lady, according to the witness, also identified Lucia K. Doe and Nixon Gaylah as those who went to their office, collected money and issued receipt on behalf of NASSCORP. The witness said that the Deputy Director General asked Lucia K. Doe and Nixon Gaylah "you heard what the two ladies said", and at that point, they both denied. He said that the Deputy Director General then went into the Director General's office and brought him into the matter; that the Director General went in the conference room and asked the two ladies from AEP Consultants office to again identify the people who collected money from the AEP Consultants office on behalf of NASSCORP and the two ladies again identified Lucia K. Doe and Nixon Gaylah in the presence of the Director General and others. The witness further said that the Director General asked Lucia K. Doe and Nixon Gaylah to say the truth concerning the matter. According to the witness, Lucia K. Doe told the Director General that she went along with Nixon Gaylah and one Jacob Yeah to the AEP Consultants office, but she did not receive money and did not issue receipt on behalf of NASSCORP. At that point, according to the witness, the Director General ordered that Lucia K. Doe and Nixon Gaylah should be suspended and investigated, and they were turned over to the department of administration at NASSCORP and everyone left the conference room.

The second witness for the appellant was Willimina H. Moore, who testified that sometime in 2006, three persons, two males and one female went to the AEP Consultants office to collect NASSCORP contribution and she made payment to them. She said that sometime early 2007, one of the three persons, a male, to whom she had made payment, went to her office and she asked him: "with the GMAP business, are you still collecting contributions in the field?" And he said, no, he was only there to do the billing and she should go to the head office to pay. According to the witness, when she went to NASSCORP head office to make payment, she was asked to produce the last payment receipt; when she produced the last payment receipt, the gentleman she was dealing with told her that that particular receipt was no longer in use so, he took her upstairs to one of his bosses who, in turn, took her to the Director General. She said that the Director General asked if she could identify those who issued the receipt and she answered yes. The witness further testified that the Director General arranged for her to meet them the next morning; that the next morning, she was called in the conference room at NASSCORP to identify the inspectors who issued the receipt to

her and she identified Lucia K. Doe and Nixon Gaylah. After that, according to the witness, they were sent downstairs for investigation and the two of them from the AEP Consultants office wrote statements and left.

The third and last witness who testified for the appellant was Debbie Hare. She said that in the past employees of NASSCORP were sent at the AEP Consultants office to collect NASSCORP contribution for employees' salaries and her assistant, Willimina H. Moore interacted with them by paying and collecting receipts from them. She said that sometime 2007 after her office made payment and obtained receipt, her assistant brought the receipt to her and said that she noticed certain communication and attitude amongst the inspectors from NASSCORP that led her to suspect that maybe that particular amount collected would not be reported to NASSCORP. The witness said when she asked her assistant why she thought that way her assistant told her that two gentlemen came and collected the money from her and after they left, a lady came asking for them; that based on the telephone conversation that went on between the lady and the two men, she became suspicious. According to the witness, she told her assistant to take particular note of the receipt and make sure it was filed along with other receipts from NASSCORP. She said that few months later, Cllr. Samuel Nyanzegbuo, legal counsel for NASSCORP at the time, went to their office and carried a letter from NASSCORP asking them to serve as witnesses in the matter.

At the close of the investigation on April 18, 2008, the hearing officer concluded that the appellee was wrongfully dismissed and ruled that she be reinstated, or in lieu of reinstatement, be paid the aggregate of her monthly salary of US175.00, for 55 months, a month's salary for in lieu of notice, and all accrued entitlements in the total sum of US9, 800.00 plus a rebate of her provident fund.

The appellant excepted to the ruling and on April 28, 2008 filed a petition for judicial review before the National Labor Court, Temple of Justice. The appellee filed returns. After hearing arguments pro et con from the lawyers representing both parties, the Judge of the National Labor Court, Her Honor Comfort S. Natt, ruled confirming the ruling of the hearing officer at the Ministry of Labor. This case has come to us on a regular appeal announced by the appellant from the ruling of the National Labor Court.

During argument before us, the counsel representing the appellant essentially contended that the appellee abandoned her area of assignment and went with other co-workers to an area not assigned to her, and without the knowledge and consent of the appellant corporation, she, along with her co-workers, collected money in the name of the appellant corporation and converted same to their personal use. This "ugly act"

according to appellant's counsel was tantamount to gross breach of duty and dishonesty for which an employer may summarily dismiss an employee under the Labor Practices Law of Liberia.

The counsel for the appellee, on the other hand, argued that terminating the appellee's services on account of alleged act which partakes of crime without first establishing her guilt was an infringement of the appellee's right under the Constitution and statutory laws of Liberia.

It is important, at this juncture, that we quote the letter terminating the services of the appellant.

"March 12, 2007-

Ms. Lucia K. Doe

Inspection Assistant

Inspectorate Division NASSCORP

Dear Ms. Doe:

The Management of the National Social Security & Welfare Corporation (NASSCORP) is constrained to draw your attention to an unauthorized act committed by you, which is not only inimical to the interest of the Corporation but resulted into loss sustained by the entity.

Generally, you are fully aware that as an inspector of the Inspectorate Division, you are authorized to carry out inspection of employers' records in regard to compliance with NASSCORP's contribution *payments and* regulations.

Moreover, no inspector is allowed to leave his/her area of assignment and perform any function in an area to which he/she is not assigned. On the contrary, you left your assigned area (Zone-V), joined with two other employees who were also assigned to different zones and went into the Zone-II area and collected monies on behalf of NASSCORP, which were not reported to the Corporation; and also unauthorizedly issued receipt in the names of NASSCORP's two cashiers. This act of dishonesty was confirmed by two representatives of AEP Consultants, the entity concerned, who identified you along with the two others involved with the breach of duty. You, yourself, also confirmed going along with the two other inspectors to the offices of AEP Consultants, who collected contribution payments from that entity.

This act is in clear violation of *Section 1508, Sub-section 6(c) of the Labour Practices Law of*

Liberia, which states that an employee under a contract of indefinite period may be dismissed "if the employee commits any other serious offense against his obligations under the Contract", as well as *Section VII, Subsection (B)(b) of the NASSCORP Revised Personnel Manual (1999)*, which also states that "...dishonesty..." is amongst the summary of major offenses for which an employee may be recommended for immediate termination and/or shall be summarily dismissed by Management.

Management therefore considers your act as a Gross Serious Breach of duty as enshrined within the Labour Practices Law of Liberia and NASSCORP Revised Personnel Manual (1999).

Consequently, Management herewith terminates your services with immediate effect. You are hereby requested to turn over all of the Corporation's properties in your possession along with your NASSCORP's Staff Identification Card. And you are accordingly advised to contact the Department of Human Resource for remuneration due you under the period and other entitlement(s).

Regards.

Sincerely yours,

Francis N. Carbah

DIRECTOR-GENERAL"

The single salient issue we must address in this case is, whether or not the termination of the appellant's services was in consonance with the Labor Practices Law of Liberia. In other words, was the termination of the appellee's services justified under section 1508(6) (c) relied on by the appellant, given the facts and circumstances of this case?

We hold that the termination of the appellant was not in consonance with the Labor Practices Law of Liberia. For the benefit of this opinion we quote parts of Section 1508 of the Labour Practices Law of Liberia that are relevant to the issue at hand. Section 1508(3) as amended provides:

"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/her two weeks written notice in the case of non-salaried employee or four weeks written notice in the case of salaried employee or payment in lieu of such notice provided however, that the employer shall also pay to the employee as follows:

(a) Non-salaried Employee: In the case of non-salaried employee, the employer shall pay six weeks for each year of service, including any accrued wages and all unpaid benefits.

(b) In the case of salaried employee, the employer shall pay one and the half month salary for each completed year of service, including any unpaid accrued salaries and benefits.

(c) That an employee who has worked for not less than ten (10) years under the same employer, shall not be dismissed without cause as defined in Sub-Section Two (2) of Section 1508 of the Labour Practices Law of Liberia."

Section 1508 (5) provides: "that 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".

Section 1508(6) provides:

"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 out in Sub-section 2 of this section;
- (b) lack of skill or manifest inefficiency of the employee which makes impossible the fulfillment of his duties under the contract;
- (c) if the employee commits any other serious offense against his obligations under the contract."

Section 1508(2) lists acts or violations which entitles an employer to terminate without notice or pay in lieu of notice contracts of employment for an indefinite period as follows:

- (a) Any unprovoked assault by an employee upon the employer or his agents in the course of or arising out of employment.
- (b) Persistent disregard by any employee of the technical measures for safety of the staff of the undertakings, provided that the said measures have been in rules posted as

required by law and the employer or his agent has ordered the employee in writing to comply with the said rules;

(c) Disclosure by an employee of the working secrets of the employer's undertaking;

(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".

As clearly seen, under section 1508(6) (c) of the Labor Practices Law of Liberia, an employer may dismiss an employee employed under a contract of indefinite duration if the employee commits any serious offence against his/her obligations under the contract. But there must be a showing that the employee indeed committed a serious offence classified as gross breach of duty. The question is, was there a showing in the case before us that the appellee committed a serious offence or gross breach of duty? We see nothing in the certified records to establish that the appellee committed gross breach of duty.

While the appellee admitted going with other employees of NASSCORP to the AEP Consultants office, she denied receiving any money on behalf of NASSCORP and issuing receipt. And no evidence was provided to show that she received money and issued receipt. To the contrary, it appears that the appellee was not even present when the money in question was received.

Debbie Hare, the appellant's own witness, testified that her assistant told her two gentlemen went to their office and collected the money and after they left a lady came asking for them. We presume that the lady referred to in Debbie Hare's testimony is Lucia K. Doe, since she is said to be the only lady among the three accused. This testimony is not in harmony with, and does not support the testimony of her assistant, Willimina H. Moore, who told the investigation that sometime in 2006, three persons, two males and one female went to the AEP Consultants office to collect NASSCORP contribution and she made payment to them. It seems that Willimina H. Moore told her boss one story and told another story to the investigation. Further, in an answer to a question on the cross examination during the investigation at the Ministry of Labour, Willimina Moore said that she gave the money in question to Nixon Gaylah.

It was based on these inconsistent statements provided by employees from the AEP Consultants office that the appellant chose to dismiss the appellee without showing

that she was guilty of gross breach of duty in the contemplation of the Labour Practices Law of Liberia to warrant her dismissal. If anything, the appellee may have been wrong for leaving her place of work to go along with her co-workers in an area in which she was not assigned. This is what the records before us show she did, and this is what the appellee herself admitted doing. In an answer to a question during argument before us, the appellee's counsel said that his client went to see her co-workers during her lunch hour. We must note that leaving one's place of work without authorization especially during lunch hour is not an offence and does not classify as gross breach of duty. It cannot, therefore, constitute a ground for summary dismissal under the Labour Practices Law of Liberia.

When the issue of the money in question was raised and all inspectors were assembled in the conference room of NASSCORP, the Director General of NASSCORP specifically ordered that the employees involved be suspended and investigated. But there is no indication that such investigation was ever carried out. Perhaps had the investigation ordered by the Director General been conducted, the inconsistent statements of the AEP Consultants employees based upon which the appellee was dismissed would have been noticed and the appellee's dismissal would have been avoided. As it stands, the appellee was accused of committing a criminal offence by her employer constituting gross breach of duty which she denied. Under the law, her words were as good as the words of her accuser. There was need for her accuser to establish proof of the allegation against her before she could be dismissed. The inconsistent and uncorroborated testimonies of the appellant's witness did not provide such proof. The controlling law in this jurisdiction is that before an employee accused of criminal offence is dismissed, he/she must be tried and found guilty. In the case: *Bong Mining Co. vs. Willie Regland et al.*, 36 LLR 677 (1990) this Court held that where an employee is dismissed for an alleged criminal conduct without trial, his dismissal is an absolute violation of the due process of law guaranteed by our Constitution.

We are in full agreement with the counsel of the appellee when he argued that terminating the appellee's services on account of alleged act which partakes of crime without first establishing her guilt was an infringement of the appellee's right under the Constitution and statutory laws of Liberia.

Article 20(a) of the Liberian Constitution (1986) provides in part:

"No person shall be deprived of life, liberty, security of the person, property, privilege, or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this constitution and in accordance with due process of law"

The due process of law concept enshrined in our constitution has been interpreted by this Court in many cases to mean that before an accused person can be adjudged guilty, he/she must be confronted with the accuser at a tribunal competent to pass on the subject matter, notice actual or constructive must be given to the parties to appear and produce evidence and be heard in person or by counsel or both, after which the tribunal can make a decision. And these fundamental constitutional rights extend to every governmental proceeding which may involve the right of an accused, whether the proceeding is legislative, judicial, administrative or executive. This important standard of fair trial was laid down more than seven decades ago in the landmark case: *Wolo Vs. Wolo*, 5 LLR, 423 (1937). We hold that the appellee was never accorded due process of law.

Based on the foregoing, it is our opinion that the appellee's dismissal was not in consonance with the Constitution as well as the statutory laws of Liberia, particularly Section 1508(6)(c) relied on by the appellant.

We hold, also, that *Section VII, Sub-section (B)(b) of the NASSCORP Revised Personnel Manual (1999)*, cannot be used to dismiss the appellee, in the absence of due process.

WHEREFORE, the judgment appealed from is confirmed. The Clerk of this Court is ordered to send a mandate to the National Labour Court to resume jurisdiction over this case and enforce its judgment. Costs are ruled against the appellant. IT IS SO A/ORDERED.

Judgment confirmed

COUNSELLOR MOLLEY N. GRAY, SR. OF JONES & JONES LAW FIRM APPEARED FOR APPELLANT. COUNSELLOR JOHN N. NENWON OF TIALA LAW ASSOCIATES, INC. APPEARED FOR APPELLEES.