NATIONAL PORT AUTHORITY, by and thru its Managing Director, MOSES P. HARRIS, JR., appellant, v. **GAYE WILSON** and THE BOARD OF GENERAL APPEALS, Ministry of Labour, Appellees.

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

Heard: April 22, 1986. Decided: May

1. When an employee voluntarily resigns from his employment after lengthy services, accepts benefits, issues a release and subsequently returns to the employer for employment, the act of rehiring the employee is categorized as "reemployment" and not a "reinstatement".
2. The court has determined that the term "reinstatement" will automatically imply continuous service of a former employee who returns to his employer; whereas re-employment is interpreted to mean new employment of a former employee.
3. Even though our laws require that fraud is proven with particularity, in circumstances where fraud is so blatant it will be inferred or reasonably presumed.
4. Since the retirement age under the Liberian Labor Laws is 60 years, no retirement for old age can be legally effected before an employee reaches that age.
5. To be entitled to pension or other retirement benefits upon reaching the age of sixty (60), an employee must have completed at least fifteen (15) years of continuous services for the same employer.
6. An employee is said to have been illegally dismissed if his/her services are terminated for old age prior to age 60 years.
7. When an employee has been illegally dismissed, he/she is entitled to not more than the aggregate of two years salary or wages computed on the basis of the average rate of salary received six months immediately preceding the dismissal.

Appellee was employed by the National Port Authority (N.P.A.), then Monrovia Port

signed a release in favor of N.P.A. and the American Life Insurance Company. Subsequently, appellee filed suit with the Ministry of Labour for wrongful dismissal, contending that N.P.A. had terminated his services to avoid payment of pension for continuous service since 1949. The hearing officer at the Ministry of Labour ruled that the dismissal was wrongful and ordered that the company pays $23,364.00, representing one month for each year served at $708.00 per year for 33 years. The company excepted and appealed to the Board of General Appeals where the finding of wrongful dismissal was confirmed with modification to adjust the amount of the award downward from $23,364.00 to $19,741.00 to reflect the $3,738.63 which was paid by the company in 1982.

Subsequently, the Civil Law Court affirmed the Board's decision and award; whereupon, the defendant/appellant' appealed to the Supreme Court. The Supreme Court essentially found that the dismissal was not wrongful and it was not done to avoid payment of pension since appellee was terminated after only six years (1976-1982) of continuous service. Apparently, the Supreme Court viewed appellee's voluntary resignation on November 11, 1976 as a break in employment, and his return to the company later that month did not cure the break in continuity of employment from 1949. The Court distinguished between "re-employment" and "reinstatement", concluding that re-employment, which had occurred in the case of appellee, is basically new employment whereas reinstatement is a continuation of former employment. However the court did find that the dismissal was illegal since the appellee's services were terminated due to old age when he had not even reached the age of 60 years, the pensionable age under the Liberian Labor Laws. Consequently the decision of the lower court judge, imputing liability to N. P. A. was upheld, with modification to the effect that the appellee receives payment for six months instead of payment for two years.

John T. Teewia of the Carlor, Gordon, Hne and Teewia Law Offices appeared for appellant. *Charles W. Brumskine* of Brumskine and Associates appeared for appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

contributed. However, he subsequently withdrew his letter of resignation in a letter to management dated November 27, 1976. On December 1, 1976, he was "reinstated" by the N.P.A. Management as a senior Tug Captain with all his previous remunerations and benefits.

Then on October 29, 1982, the N.P.A. terminated the services of appellee for alleged old age and paid him benefits in the amount $3,738.63, representing retirement and gratuity benefits. Mr. Gaye accordingly executed a release in favor of the N.P.A. and the American Life Insurance Company (ALICO), on October 21, 1983.

Subsequently, appellee filed a complaint with the hearing officer at the Ministry of Labour in Monrovia claiming that he was wrongfully dismissed by the N.P.A. to avoid payment of pension benefits after continuous services since 1949.

The management of N.P.A. filed its returns to the complaint contending, among other things, that Mr. Gaye Wilson was the company's retired employee who was in fact employed on November 14, 1962, instead of 1949 as he claimed. It maintained that the employee was briefly suspended in 1975. Subsequently, on November 11, 1976, he voluntarily resigned, allegedly to assist his aging father up country. Accordingly he was paid full pension and retirement benefits for his past services. However, management claimed that it re-employed Mr. Wilson on December 1, 1976, in his previous position of senior Tug Captain. The N.P.A. argued that the "reinstatement", as the company's action is referred to in its own records, was actually an entirely new employment although with the same terms as the old position. The company concluded that thereafter it became necessary to relieve Mr. Wilson of his services and that its action against the complainant was in fact consistent with the Labor Laws of Liberia.

In a reply, counsel for appellee maintained, on the basis of certain N.P.A. employment documents, that in fact the N.P.A. had committed a fraud on Mr. Wilson by tampering with his employment records, deleting and substituting information without the knowledge and approval of appellee. Specifically, appellee's counsel pointed out that on one of the proferted employment records, Mr. Wilson's original employment date, February 15, 1949, was crossed out in ink and changed to November 14, 1962, which change management admitted and attributed to certain mistakes committed by the administrative staff necessitating change to the proper date. Counsel for appellee further maintained that the payments he received in 1976 were from premiums payable on pension plans for company employees, and not benefits due

The case was investigated by a hearing officer at the Labour Ministry who ruled that the National Port Authority was liable to the complainant for wrongful dismissal and, consequently, owed the appellee benefits in the total amount of $23,364.00, representing one month salary for each year served with said company for a period of 33 years, at the monthly salary of $708.00.

The N.P.A. excepted to the ruling and announced an appeal to the Board of General Appeals. Upon review of the case on its records, the Board upheld the hearing officer's ruling. However, the Board subsequently reconsidered its ruling upon evidence that appellee was paid $3,738.63 in 1982 when he was retired. Therefore, the Board modified its award against N.P.A. to the sum of $19,741.00, being the remaining balance after the $3,738.63 previously paid is subtracted from the $23,364.00 awarded.

Being further dissatisfied, the N.P.A. filed a petition with the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The circuit court also found management liable and affirmed the final decision and award of the Board of General Appeals.

Appellant has come on this appeal claiming, among other things, that the trial judge had failed to read the records before him and had instead relied on presumptions over the findings of the Board which he had affirmed subsequently. It alleged that the trial judge had failed to take a clear-cut position in the matter, not being of sufficient knowledge of it, even with the records before him. On the question of the change in appellee's date of employment, N.P.A. management maintained it should not be blamed for mere human error or adjudged guilty of fraud in the circumstances since, as a matter of fact, fraud has to be pleaded with every particularity and proven, which has not been done in this case.

Returning to appellee's arguments of continuous employment after his re-employment in 1976 following his own voluntary resignation, the N.P.A. management contended that in appellee's circumstances the ordinary dictionary definition of "reinstatement" cannot be applicable to mean a return to a former position and, hence, continuation of employment as if he had never resigned. It concluded that "reinstatement" as used in the context of appellee's case meant that he was employed anew to do the same job he did before his own voluntary resignation. Appellant therefore prayed this Court to reverse the judgment of the lower court with costs against the appellee.

he had never resigned, and then claim benefits due for continuous employment for the aggregate time spent with the employer?

2. Whether or not an employer who records vital information on an employee which is witnessed and signed by both said employee and employer can thereafter make changes therein without the knowledge and approval of employee, and then turn round to successfully deny the truth of the original record?

3. Whether or not under our laws, an employee born in 1930 could have been legally retired in 1982? And

4. Whether or not appellee was in any way illegally or wrongfully dismissed, and if lawfully dismissed, whether or not he was given his due entitlements by appellant?

The answer to the first issue on "reinstatement" is no. English words or words in general in all languages are equivocal. Consequently words have to be understood against the background in which they are used. It is a rather elementary fact that "reinstatement" means to be brought back into a former place or position. But it further remains to be found out in which context it is used for the purpose of benefits. Was the reinstated employee previously dismissed and ordered reinstated, or was he previously suspended? Did the reinstated employee previously resign of his own free will and receive benefits in connection therewith and then is brought back, or was he reinstated or reemployed because his services have been found indispensable?

The answer in this case is that appellee resigned of his own accord. He was paid benefits and he issued a release therefor without complaint. Later he determined that he wanted to return and beg his previous employer to give him back his job. His former employer, being grateful for his prior services and a benevolent decided to re-employ its former employee. Hence, the former employer reinstated him to the former position in which he had served so well in the past. Of course the former employee so employed could not have been reinstated by any stretch of the imagination as though he had never resigned unless it had been specifically clarified in the new contract of employment.

The records in this case speak of the appellee's own voluntary resignation and of the release he gave his employer, the appellant. The records also show the letter appellee wrote asking to be re-employed since the alleged story about his father for which he resigned was false. In the

The answer to the second issue is also in the negative. An employer who makes changes in employment records in the presence of an employee cannot thereafter make unilateral changes to the same records and avoid a strong suspicion of fraud from the employee or anyone else. That is, even though fraud should be proven with every particularity, in a case such as this, fraud will be inferred or reasonably presumed from the surrounding circumstances. *Harmon v. Republic*, [1975] LRSC 11; 24 LLR 176 (1975).

We next consider whether or not a person born in 1930 could have been legally retired in 1982 for old age under our laws. In other words, can an employer legally dismiss a 52-year-old employee under our law on account of old age? The answer to this issue is also in the negative. According to Liberian Labor Law, retirement of employees for old age alone can legally be effected only at the age of sixty (60) years or older, but no retirement for old age can be legally effected before the employee reaches that age. Labor Practices Law, Lib. Code 18-A: 2501. Considering however that the said employee was dismissed only after six (6) years of continuous employment, from 1976 to 1982, he cannot be said to have been dismissed to avoid the payment of pension. To be entitled to pension or other retirement benefits upon reaching the age of sixty (60), an employee must have completed at least fifteen (15) years of continuous services for the same employer. *Ibid.*

When appellee resigned in 1976, allegedly after 27 years of continuous services from 1949, he was entitled to pension and retirement benefits since the law also requires said benefits to be paid after 25 years of continuous services with the same employer. Appellee signed a release for said benefits at that time and had raised no further contentions therefor.

Coming to the fourth and final issue in this case we will consider whether or not appellee was in any way wrongfully or illegally dismissed by N.P.A. If he was lawfully dismissed, we will consider whether or not he received adequate. compensations.

Having held supra that appellee was not dismissed to avoid the payment of pension, we can safely say that he was not wrongfully dismissed. However, considering that said appellee was dismissed for old age before he reached the age of (60), he was illegally dismissed in the absence of other cause or causes acceptable to our laws. Consequently, said appellee is entitled

Therefore, in view of all we have related above, the judgment of the lower court is hereby upheld with modifications to the effect that the appellee be paid the aggregate of six (6) months salary calculated on the basis of his salary six months previous to his dismissal.

The Clerk of this Court is therefore ordered to send a mandate to the court below to resume jurisdiction and enforce the judgment in this opinion. Costs against appellant. And it is hereby so ordered.

Judgment affirmed with modification.