ROBERTSFIELD HOTEL, Appellant, v. **MOSES PAYE,** Appellee.

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

Heard: March 16, 1983. Decided: July 6, 1983.

1. Courts of justice will not raise issues but rather will pass upon only those issues that are joined between the parties and specifically set forth in their pleadings.

2. Hearing officers are obligated by statutes to record all proceedings in labour matters before them, and to forward all such records to the higher court on appeal, including exhibits.

3. Where a matter has been decided upon its merits by a court of competent jurisdiction, the principle of res judicata will bar a subsequent proceeding involving the identical subject matter and parties.

4. Parties will be estopped from arguing for a trial de novo where exhibits of proceedings of a lower court hearing are attached to their appeal papers as exhibits.

5. The exhibits to a pleading is part of the pleading and should be considered as such.

Appellee Moses Paye was dismissed from employment with the appellant corporation for breach of duty. Upon review of his complaint lodged with the Ministry of Labour, the hearing officer ordered appellant to reinstate appellee or to pay him $16,000, the equivalent of two years' salary. On appeal, the Board of General Appeals affirmed the ruling but reduced the amount to $11,900 representing 17 months' salary for the 17 years served with appellant. The Civil Law Court affirmed the ruling of the Board from which appellant appealed to the Supreme Court. On appeal to the Supreme Court, the Court observed that the appellant provided no proof of appellee's alleged misconduct to warrant his dismissal for gross breach of duty. The Court also determined that there was no basis for the reduction of the award by the circuit court. The Court therefore affirmed the judgment but with the modification that the award be increased to the level as effectively restored the ruling of the hearing officer as to the amount of the award.

E. Wade Appleton for appellant. John T. Teewia for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

According to the certified records forwarded by the trial court and the histories of the case submitted by both parties, the following facts are gathered therefrom as the basis for these controversies.

Moses Paye, a dismissed employee of Robertsfield Hotel, Marshall Territory, Montserrado County, the Appellee, was on the 31 s` of July 1962 employed by the Hotel initially as a receptionist/cashier.

Appellee was subsequently promoted to the following positions, namely, chief accountant, personnel manager and credit manager, respectively. While serving as Personnel Manager, on the 15t h of August 1978, the workers of the hotel complained to the management that the appellee was depriving them of medical benefits to which the employees felt they and their families were lawfully entitled in accordance with the union agreement between the management and the workers. Upon receipt of the complaint, the management communicated with the appellee to this effect, and requested clarification, but,

Without furnishing him a copy of the complaint to enable him to clarify his position as requested.

Thereafter, the management reported the matter to the labor, inspector of Harbel, Firestone Plantations, and after due investigation, on the 4t h of May, 1979, the labor inspector found no magnitude in the complaint. Consequently, the case was terminated in favour of Mr. Paye and no appeal was taken in that case by either party. It is further observed, that pending the investigation into the complaint, the management transferred Mr. Paye to its account department and made him credit manager with the responsibilities, inter alia, to collect all outstanding bills and deposit the funds to the account of the management.

Subsequently, the management of the hotel terminated the services of appellee on the grounds that he had refused to perform the duties of his new appointment, and as a result, the management could not pay its bills, which placed it in an embarrassing position. Another reason assigned for the dismissal of appellee was that he failed to extend free medical benefits to the workers of the hotel and therefore, the workers threatened to strike at a crucial moment when the hotel had guests who were attending the OAU Conference in 1979 for which the management had to lose a huge sum of money paid to the workers to avoid the strike. Mr. Paye felt that he was mistreated; therefore, he filed his grievances before the labor inspector in Harbel. The labor court probed the matter and rendered a ruling in favour of Mr. Paye on the 6th of June 1980. The substance of the ruling is that the dismissal was wrongful. Hence, management should reinstate appellee and pay him six (6) months of his salary for the injustice he suffered; or in lieu thereof, management should pay him two years of his salary which was $700.00 per month, aggregating $16,800.00. The decision of the hearing officer was excepted to and an appeal announced to the Board of General Appeals. On the 12 th day of August, 1980, the Board of General Appeals, after a hearing, modified the ruling of the hearing officer to the effect that, Moses Paye should be reinstated or in lieu thereof be paid one month for each year of service, which is 17 months at the monthly salary of $700.00 equal $11,900.00. The judgment of the Board of General Appeals was again

appealed from to the Sixth Judicial Circuit, Montserrado County, for a judicial review. The Civil Law Court after reviewing the records confirmed the modified ruling of the Board of General Appeals. The management was again dissatisfied with the confirmation and therefore appealed to this Forum of last resort for adjudication.

When this case was called before us for hearing, we discovered a motion for diminution of records together with a resistance. Arguments were entertained from both counsels and thereafter the Court granted the motion. Thus the Marshal of this Court was ordered to fetch the original case file and accordingly the entire records are now before us for our perusal.

While going through the records, one significant phase was unearthed, that is, the conspicuous absence of minutes of the court of the second hearing officer, showing the testimony of the witnesses who appeared and testified before the court. We only saw (a) document dated May 4, 1979, signed by E. Kruah Jones, labor hearing officer who investigated and decided in favour of Appellee the first complaint that was filed by the workers of the hotel against appellee; and (b) document dated June 6, 1980, signed by Francis Wesseh, labor inspector and second hearing officer who again ruled in favour of appellee from which ruling this appeal was taken.

According to our trial procedure, all the testimonies of the witnesses who appeared and deposed before a hearing officer are recorded verbatim in the minutes, are all physical evidence and documents offered, whether admitted or not, together with the decision of the court are certified and sent forward for appellate review. Labor Practices Law, Lib. Code 18-A:2, 3.

Strangely in this case, there are no minutes of court in the records before us showing the testimony of the witnesses in the second case in keeping with the procedure outlined and the statute cited supra. Apart from the wanton violation of the trial method, there are lots of evils which litigants will suffer thereby, and the tendency to misguide the court as to what is the actual evidence in a given case. For, it is humanly improbably, if not impossible, for a hearing tribunal in a court of record, after conducting a trial to remember and reduce to writing all the testimonies of the witnesses who testified at the trial, including documentary evidence, sum up the evidence and render a decision according to the best interest of the parties and justice. The judge is a human being and what is relevant to him is only to support his view and may not be pertinent to the reviewing court, nor may it be the only ground for defense or prosecution in a given case.

This novel practice also certainly restricts the appellate court to the summary of the hearing officer and his judgment alone, without affording the appellate court an opportunity to look beyond the veil and examine the entire evidence with the view to determining whether the

weight and credibility that support the finding and the decisions reached in the case by the lower courts are reasonable, logical and supported by the evidence and law.

However, since the authenticity of the summaries of the facts and evidence made by the hearing officer are not denied by either party, we have analyzed this case under the theory that courts of justice do not raise issues but rather decide issues that are joined between the parties, specifically set forth in their written pleadings. Clark v. Barbour, 2 LLR15 (1909); and 20 AM JUR. 2d., Courts, § 81.

Nevertheless, we seriously deprecate the flagrant disregard of the statute regulating trial procedure before a hearing officer that we have outlined above, and sound this as a strong warning against such strange and dangerous conduct of cases at the hearing officer level. We shall now focus our attention on the facts together with the evidence, not challenged by either party, as they are condensed by the hearing officers only to determine whether the summaries of the facts and evidence are in harmony with the decisions of the lower tribunals.

In the "Case History," dated May 4, 1979, the first hearing officer observed thus:

1. "That employee Joe Smith's salary was reduced by $47.00 by the defendant when he (Joe Smith) was rehired after he overstayed the one month permission granted him without further permission for two months additional time;

2. "That complainant stated that employee Smith was reinstated instead of rehired, and that Mr. Smith did not receive his full month's salary of $147.00 for the first month he was reinstated, but there was no evidence to show the investigation to sustain the allegation made by him against the defendant;

3. "That the defendant recommended and/or ordered the deduction of $180.00 from employee Weedor's salary at the rate of $20.00 per month until the full amount of $180.00 was paid for a bill book containing 18 sheets which he, employee Weedor misplaced while on duty, but they showed no further document in evidence to establish that the order and/or recommendation was honored by management;

4. That in his testimony, Mr. Weedor admitted that the Chief Accountant at that time, Mr. R. Liberty, refused to honor defendant Paye's recommendation, but defendant Paye himself took the amount of $20.00 from his pay envelops every month during pay time and paid, but he failed to bring in any witness or produce evidence to prove his allegation against the defendant that the amount was actually deducted.

5. That all acts done by Mr. Paye when he was personnel manager was done in the interest of and with the consent of the management of Robertsfield Hotel Corporation as its agent;

6. That the Union (complainant) failed to produce any evidence in support of the charges made against the then personnel manager that he recommended that sick employees should take hot water bath in place of their medication;

7. That the Union failed and/or neglected to report to any authority that portion of the contract signed between it and management in 1974 that it had been violated by management or her agent during the life span of that contract, but rather condoned that act up to and until that contract expired and a new contract signed between them before bringing the violation of denying them of their medical facilities to our attention;

8. "That failure on the part of both management and the union to furnish defendant with copy of the complaint filed against him creates doubts and suspicion in our minds of some conspiracy against that employee."

These findings of the hearing officer enumerated above, are in principle, the identical findings and the basis of the decision of the second hearing officer dated June 6, 1980, in the wrongful dismissal case, which ruling was confirmed by the Board of General Appeals and later upheld by the circuit judge; except the modification of the award and the second ground for the dismissal, which we shall comment on later in this opinion.

In order to pass upon the undisputed summaries of the lower courts in a chronological sequence, it is vital to reiterate the touchstones, that is, the grounds for dismissal of appellee by the appellant and they are: (1) alleged failure of appellee to give the workers of the hotel management and their families free medical facilities in accordance with the union agreement between the hotel management and its employees which, according to appellant, caused the management to lose huge sum of money paid to the workers to avoid the threatened strike by the workers, and (2) alleged failure of appellee to collect bills from the customers of the hotel and make deposits in the account of the hotel, and as a result, the hotel could not meet its legitimate obligations and the hotel management termed the latter serious breach of duties.

Appellant was a party to the first item of the complaint in re: the alleged failure of appellee to extend free medical benefits to the workers of the hotel which was decided on the merits by the labour court and no appeal was announced. The Labour Court has competent jurisdiction over all labor disputes and since no appeal was taken from the ruling of the first hearing officer quoted supra, the same is final. Therefore, we do not hesitate to hold that where a matter has been decided upon its merits by a court of competent jurisdiction, the principle of res judicata will bar a subsequent proceeding involving the identical subject matter and parties. Coming now to the second reason for the dismissal of appellee, this is what the hearing officer found:

"According to the records, defendant alleged that after the complainant was transferred from his position of personnel manager to the account department as manager, he failed to bill customers and in fact never collected any funds which resulted in negative cash flow. Although complainant denied the allegation made by defendant, the defendant offered into evidence no proof to substantiate the allegation."

Appellant claimed that the conclusion of the hearing officer is not supported by the evidence, yet it has not shown us what evidence was introduced by it which does not support the decision. In the absence of any showing in all the records to prove the allegation of the negligent failure of the appellee to perform his duties, we have no choice but to uphold the findings and decision of the hearing officer in this respect for lack of proof.

The Board of General Appeals and the circuit judge modified the award of the hearing officer from $16,800.00 to $11,900.00 without stating any reason for the modification. The counsel for appellee has requested confirmation of the award of the hearing officer and relied on the same statute cited by the hearing officer. We reproduce hereinunder the relevant portion of the statute controlling compensation in cases of this nature:

(a) (i) Reasonable expectations in the case of dismissal in ii) a contract of indefinite duration; 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... Labour Practices Law, 18-A, 9 (a) (i)(ii)(iii) The basis of the employer and employee relationship that existed between the hotel management and the appellee was predicated upon an oral contract of an indefinite duration, the length of service was 17 years 11 months and 6 days and the salary received 6 months immediately prior to the termination was $700.00 per month. These are important factors that should be taken into consideration in computing the amount recoverable in accordance with the Labor Practices Law, 18A:9, which we have quoted hereinabove. The question of the choice of the employer to either pay the employee or reinstate him is not at issue in this case.

We are therefore of the considered opinion that the reduction of the award from $16,800.00 to $11,900.00 by the Board of General Appeals and circuit court, was unreasonable and not supported by the facts, circumstances or the law in this case. We shall now address ourselves to the next major issue raised.

Appellant has contended in count one of its brief that the judgment of the circuit judge is not based on the entire records from the Ministry of Labor. It has further contended that the circuit judge should have heard the case de novo.

Earlier in this opinion, we discussed the trial procedure before a hearing officer in a labor case and cited the statute controlling, therefore, for the sake of brevity, we shall only comment on the inconsistency in the argument. For, assuming that the statute requires a

judicial review by the circuit judge to be heard anew, we observed that attached to the petition filed by the appellant for judicial review are records from the hearing officer's office, including his judgment together with the decision of the Board of General Appeals.

We wonder why the documents were proferted if, according to appellant, the case should have been heard de novo? The exhibit to a pleading is part of the pleading and should be considered as such.

Counsel for appellant also contended that the law requires an appeal bond to be filed by the losing party who seeks a judicial review. This is another strange assertion for which we have no law in support thereof.

The statute extant only provides that within ten (10) days after the receipt of a decision of the Board of General Appeals, the aggrieved party should petition the circuit or debt court in the county where the case was decided with notice to the Board of General Appeals and the parties concerned. Thud, §7.

Appellant has complied with this requirement when he filed his petition in the circuit court, praying for a judicial review. The case Kobina, Quassia and Francis v. Abraham, reported in 15 LLR 502 (1964), cited by appellant in support of his contention, regarding appeal bond, is prior to the statute outlining judicial review that we have cited above; therefore, the holding of this Court in that case is not applicable in this case. Count one of the appellant's brief is therefore overruled.

The points that are covered in this opinion are the issues raised by the parties which we considered relevant for the final and fair determination of this case. The other contention of the parties not passed upon in this opinion, in our view, are not salient.

Accordingly, the rulings of the Board of General Appeals and that of the circuit judge, modifying the award from $16,800.00 to $11,900.00 are modified.

The ruling of the Court of origin awarding $16,800.00 to appellee is hereby confirmed and affirmed. The Clerk of this Court is instructed to send a mandate to the circuit court for the Sixth Judicial Circuit, Montserrado County, ordering the judge presiding therein to resume jurisdiction over this case and enforce the ruling of the hearing officer aforesaid. The Costs in this case to be paid by appellant. And it is so ordered.

Affirmed with Modification.