The **Management of the United States Trading Company** (U.S.T.C.) PETITIONER/APPELLANT Vs. Honourable **Stephen G. Scott**, Hearing Officer, Ministry of Labour and the **United States Trading Company Coco Cola Bottling Plant Workers Union** RESPONDENTS/APPELLEES

PETITION FOR JUDICIAL REVIEW

HEARD: April 14, 2005 DECIDED: September 15, 2005

MR. JUSTICE CAMPBELL DELIVERED THE OPINION OF THE COURT

This case is before us on appeal from the Ruling of the National Labour Court Judge for Montserrado County in favor of the Respondents/Appellees, Coco Cola Bottling Plant Workers Union of the United States Trading Company (USTC), in a Petition for Judicial Review.

The records reveal that Respondents/Appellees, United States Trading Company Coco-Cola Bottling Plant Workers Union, filed a complaint of Unfair Labour Practices against the Petitioner/Appellant, United States Trading Company (USTC), with the Ministry of Labour on July 28, 1999. The complaint was referred to Mr. Stephen G. Scott, Hearing Officer of the Ministry of Labour, for an investigation/hearing.

The records further show that on November 2, .1999,, the Coco-Cola Bottling Plant Workers Union of USTC by and through its Secretary General, Joseph G. Sanfakpeh, sent a follow up letter of complaint to the Director of Trade Union Affaires/Hearing Officer in connection with their earlier complaint of July 28, 1999 against USTC.

In the complaint Respondents/Appellees alleged, among other things, that Petitioner/Appellant failed to compensate them for day-off (rest day) for the period covering January 1998 to June 1999; that Petitioner/Appellant refused to pay Respondents/Appellees their fringe benefits which include three crates of soft drinks for each of the Respondents/Appellees; that Petitioner/Appellant refused to pay them their hardship allowance in the amount of Seven Hundred Fifty Liberian Dollars (L$750.00); that USTC refused to pay Respondents/Appellees who worked on third shift; that USTC refused to supply them safety equipment; that U.S.T.C. converted their fringe benefits and treated same as salaries thereby subjecting said benefits to tax deduction; that USTC eliminated the tuition paid program.

The records also show that when the parties could not reach an understanding in resolving the issues between them during a conference before the Hearing Officer, a notice of assignment was issued out for the formal hearing of the complaint.

During the investigation/hearing, two witnesses testified on behalf of the Respondents/Appellees and two witnesses also testified for the Petitioner/Appellant. In their testimonies before the Hearing Officer, Respondents/Appellees' witnesses testified, among other things, that initially while they were in the employ of USTC, Saturday was their regular day-off and that Respondents/Appellees were only required to work on their day-off through special arrangements, and that this continued until July 1997 when a memorandum was issued by the Petitioner/Appellant requiring the Respondents/Appellees to report to work on Saturdays; that this requirement to work on Saturdays caused problem between the Respondents/Appellees and the Petitioner/Appellant which resulted to the institution of a go-slow action by the Union that based on the intervention of the Ministry of Labour and the' workers Union, Respondents/Appellees agreed to stop the go-slow and continued to work up to June 1, 1999, when Petitioner/Appellant issued a memorandum discontinuing Saturdays' work and that work on Saturday will be based on a special arrangement. Hence, they are therefore claiming payment for their day-off (rest day) for the period January 1998 to June 1999, totaling (18) eighteen months.

The Petitioner/Appellant through its witnesses denied the allegations and alleged, among other things, that upon the re-activation of former employees, a memorandum of understanding with a complete employment package including all fringe benefits to the employees was signed by the General Manager and accepted by the employees that 1996 the workers Union on behalf of the employees, appealed to the management to improve their living standard, and as a result their salaries/wages were changed from Liberian Dollars to United States Dollars and that all their fringe benefits as per the Union Management Agreement, were incorporated in their salaries/wages that whenever an employee was required to work in excess of the working schedule, said employee was paid for overtime which payment was reflected on the payslip; that management also introduced an insurance scheme which covers medical, accident and death benefits that from time to time Sunday has been the day-off (rest day) for which workers were paid and that said amounts were included in their base pay.

After listening to the testimonies and arguments and after reviewing the documentary evidences of the parties, the Hearing Officer rendered Final Ruling on March 13,

2000. He ruled, among other things, that "predicated upon the above and in harmony with the Union Management Agreement now in force, couple with the labour Practices Laws, we find Defendant Management liable to the workers for their day-off for the period of January 1998-June 1999, same being eighteen (18) months or seventy two weeks which amounts to five hundred seventy six hours (576) times their respective salaries/wages totaling US$70,249.64 (Seventy Thousand Two Hundred Forty Nine Dollars Sixty Four Cents) as calculated and hereto attached."

Upon the receipt of the Ruling, Petitioner/Appellant not being satisfied with said Ruling of the Hearing Officer, filed a 31 count Petition for Judicial Review with the National Labour Court of Montserrado County on March 20, 2000.

For the benefit of the this Opinion, we deem it necessary to quote verbatim counts 2,11,14,17,19,21,25,28 and the prayer of the Petition.

"2. That on March 13, 2000, Co-Respondent Honourable Stephen C Scott, without notice to the Petitioner, rendered Final Ruling in the aforesaid proceeding and fOrwarded copy of said Final Ruling, to Counsel for Petitioner; copy of which Final Ruling is FAH !BIT "R.' I " hereto".

"11. Petitioner says that the claim for day-off (rest day) covers the period, January 1998 to June 1999. Petitioner says that assuming. without admitting that said claims were legitimate, it is astounding that the same parity of reasoning used by the Co-Respondent Hearing Officer to deny the claim for fringe benefits was not used to deny the claim for day-011 (rest clay). That is, one of the reasons used by the Co-Respondent Hearing Officer to deny the claim for fringe benefits was waiver since the issue was never brought up for negotiations and inclusion in the Collective Bargaining Agreement of November, 1998. Similarly, there was no evidence that any claim for day-off(rest day) during 1998 was brought up for negotiations and inclusion in the Collective Bargaining Agreement of November, 1998 and if waiver is applicable to the claim for Cringe benefits then waiver is also applicable to the claim for day-off (rest day). And Petitioner prays Your Honour to so rule".

"14. Unlike public holidays, Petitioner submits that there is no law which requires the employer to give extra compensation to the employee for work done on Saturday; and the reason for this is that Saturday and Sunday are considered under the law to be normal working days for employees in the private sector, particularly the manufacturing and production industries of our economy. More than that, the tact that die National Legislature provided a law for extra compensation for work done on public holidays (Section 803, Labor Practices I ,aw) bat provided no law for work

done on Saturday or Sunday, clearly means that the National Legislature did not consider Saturday or Sunday outside of the work week. This parity of reasoning is supported by two (2) canons of statutory interpretation: in pari materia (Black's Law Dictionary, Sixth Edition, page 791) and expression unius est exclusion alterius (Black's Law Dictionary, Sixth Edition, page 581).

17. Petitioner now takes the attention of Your Honor to Section 801 of the Labor Practices Law, which provides that in every week the employee should grant the employee an uninterrupted rest period (day-off or rest day) of not less than twenty four hours. Now since there are 7 days in a week and since the employee is required by law to work a maximum of 6 days of that week to cover for the 48 hours of work a week at the rate of 8 hours per day, then the only rest day or day of is the seventh (7th) day. And Petitioner prays Your Honor to so rule.

19. In the case of Petitioner's business, Petitioner elected to have its work week commence on Monday and end on Sunday (seven days). This means that Sunday being the 7th day, that is, the rest day (rest period) for Petitioner's employees, since the employees would normally be required to work for six days to cover for the maximum of forty-eight (48) hours a week at the rate of a maximum of eight (8) hours day. when Petitioner, based on its own business strategy, decided before January, 1998 that it will required its employee to work only on Monday to Friday (five days), instead of Monday to Saturday (six days provided by law), this was Petitioner's prerogative since Petitioner was requiring its employees to work one day less than the total number of days provided by law."

"21. Petitioner concedes that from January 1998 to June 1999 its business strategy and volume of production was such that it prepared work schedule of its employees, which provides for work on Monday through Saturday, with Sunday being the rest day. The evidence adduced at the hearing clearly shows that for that entire period, the worked for a maximum of 45 hours a week, which is consistent with Section 701 of the Labor Practice Law, providing that the employee may be required to work for a maximum of forty-eight (48) hours a week.

"25. Petitioner now says that when it decided in June, 1999 to implement a live (5) day work week instead of the six (6) day work week, as anticipated and provided for by Article 4, subparagraph 4 of the Collective Bargaining Agreement, Petitioner's obligation is merely to pay overtime when the total number of hours for the work *week is* in excess of 45. Petitioner is under no obligation to pay any money or compensation for the sixth day on which the workers worked during the period,

January 1998 to June 1999 since they are still working for a maximum of 45 hours for the work week even during that tune and considering that Petitioner was still within the law providing for a maximum of six (6) days of work plus one day of rest."

"28. Petitioner says that the Co-Respondent Hearing Officer also erred when he concluded without evidence, that the mere change of the work week from six (6) days to five (5) days was admission that Petitioner is liable to the workers for rest day pay. The evidence adduced at the investigation, the Collective Bargaining Agreement and the controlling law, as already discussed in other counts of this Petitioner, clearly shows that this conclusion of the Co-Respondent Hearing Officer has no basis in law or in fact. As such, Petitioner prays that such conclusion be set aside."

"Wherefore, and in view of the foregoing, Petitioner prays Your Honor that the Co-Respondent Hearing Officer's Ruling should be modified by reversing his finding of fact on the claim of rest day pay and by also denying his award of US$ 70,249.64 for rest day pay for the workers, and thereupon deny and dismiss the entire complaint, and grant unto Petitioner any other and further relief as in such cases is made and provided by law, with costs against the Co-Respondent Union".

To this Petition for Judicial Review, Respondents/Appellees filed a fifteen (15) count Returns on March 28, 2000 with the National Labour Court wherein they prayed court to dismiss the Petition for Judicial Review and further prayed that the Ruling of the-Hearing Officer be confirmed.

We deem it necessary to also quote counts 1,8,10,13 of Respondents/Appellees' Returns for the benefit of this opinion.

"1. Because Respondents say as to counts one, two, three and four, it is unfortunate that the Petitioner has no knowledge of hearing proceedings adopted in this jurisdiction under which labor grievances are conducted and the fact that labor cases being facts findingS; the procedures are not conducted as regular court proceedings. A decision made by a hearing officer, may be transmitted to the parties if the hearing officer, elects to do so without citing the parties to appear for the reading of ruling. Petitioner's contention for the issuance of notice of assignment to lead ruling in the case is unfounded and legally unsound."

"8. Section 801 of the labor law is emphatically cleared as it states employees who are required to work 48 hours are entitled to a day rest. The law makers were fully aware that Sundays are not working days and employees are not expected to provide

services to their employers. To suggest a day-rest of an employee which is not paid for by the employer is contrary to the labor practices law. Rest period, annual leave, and day-off are all rest periods which the management is required to pay while the employee is not at work."

"10. As to count 25 of the Petition, Respondents submit that the laws and regulations which govern the relationship between .employer and employees are made by the Legislature and the Ministry of Labor and are not subject as to how a management feels how such laws should be interpreted. The erroneous interpretation of the labor practices law by Petitioner is the problem. During the hearing of the case at bar, one of Petitioner's main witnesses in person of A. T. Okujagu informed the Hearing that management sets aside Sundays as day-off for the employee. See sheet 23 of the 3rd day sitting of February 3rd 2000. This is an indication of wrong interpretation of the labor law by the management. Under the labor law, employees are to work for 26 days and not 31 days. Moreover, management produced no evidence of paying the employees for resting on Sunday."

"13. As to count 30, Respondents maintain that the Hearing Officer did not err when he ruled that Petitioner pays to the employees the amount of USS70,249.64. This amount is the correct calculation of the complainants to which a calculation of their claim and document was attached to their complaint which they offered into evidence which was marked and confirmed by the Hearing. See exhibit C/5. This document bears the correct calculation and therefore the Hearing Officer needed no other calculation to arrive at the employees'

Having listened to the arguments of the parties in the Petition for Judicial Review and the Returns thereto, the Judge of the National Labour Court confirmed and affirmed the Ruling of the Hearing Officer thereby awarding the sum of US$70,249.64, as well as Respondents/Appellees' prayer for six percent (6%) interest of (US$4,214.98) Four Thousand Two Hundred Fourteen United States Dollars Ninety Eight cents.

Relevant portions of the Ruling of the National Labour Court Judge are quoted below:

"Looking at these two memorandums "mentioned above, it is the considered opinion of this Court that in as much as the employees were working six (6) days a week prior to these memorandums, that is, from Monday to Saturday then it is obvious that they get a day of rest in keeping with the labor law which they are now claiming. It is

noted by this Court that management has the prerogative according to Article 4(3) of the Collective Bargaining Agreement, to schedule her own hours and work days (above or below the work day and week day), which power and authority have caused management to reduce its work days from Monday to Friday. All that the Court is requiring of management is to have the employees paid for the time they worked without a day of rest from January 1998 to June 1999,"

"Management, on its own, has reduced employees' working hours to 45 hours per week, which we do not deem should affect the employees who are entitled to their day off rest. Therefore, having worked from Monday to Friday, the employees have Saturday as their day-off, as management cannot eat her cake & have it at the same time. If management has reduced its weekly hours from Monday to Friday, and expect employees to work 45 (forty-five) hours within a week, then it is obvious that the employees were working at 9 (nine) hours a day to meet with the required time of 45 hours a week.

In paragraph 21, of its Petition,-Petitioner has conceded that from January 1998 to June 1999, its business strategy and volume of production was such that it prepared a work schedule of its employee's, which provided for work on Monday through Sunday, with Sunday being the rest day. The evidence adduced at the hearing clearly shows that for that entire period, the workers worked for a maximum of 45 hours a week, which is consistent with section 701 of the Labour Practices of Law, providing that the employees may be required to work for a maximum of forty-eight (48) hours a week. The Court has no problem with management setting its days and hours for work once it is in line with the labour laws of the land. Management has the prerogative to increase or reduced its working hours. All that the Court is concerned with is that the hours worked must conform to the Labour Law or Management work hours provided, and the employees must be paid for excess hours worked. The employees must have his day of rest. If he must work on his day or rest then he must be paid in keeping with the Labour Law."

From this Ruling of the Judge of the National Labour Cowl, Petitioner/ Appellant excepted and announced an appeal to the Honourable Supreme Court which appeal was granted.

On March 9, 2001, Petitioner/Appellant filed a Bill of Exceptions consisting of 19 counts, an approved Bond on April 18, 2001 and a notice of Completion or an appeal was served on the Respondents/Appellees' Counsel on April 25, 2001.

The Bill of Exceptions filed by the Petitioner/Appellant alleged, among other things, that unlike public holidays, there is no law which require the employer to give extra compensation to the employee, for work done on Saturday or Sunday on ground that Saturday and Sunday are considered normal working days for employers in private sector under the law. That from January 1998 to June 1999, its business strategy and volume of production was such that it prepared a work schedule tor its employees, which required them to work Monday through Saturday, with Sunday being their day-off (rest day); that evidence adduced at the hearing clearly shows that for that entire period the workers worked for the maximum of forty-five (45) hours a week which is not only consistent with law, but is also three (3) hours less than the maximum of forty-eight hours per week as required by law; that Respondents/Appellees were paid for all hourly work between the period January 1990, to June 1999 and therefore, We Judge erred when she confirmed and affirmed the ruling of the Hearing Officer, that in November 1998, the Petitioner/Appellant and the Respondents/Appellees negotiated and signed a Collective Bargaining Agreement which provides, at ARTICLE 4, SUBPARAGRAPH 1 thereof, that the normal work week for employees shall be forty five (45) hours.

This Court says from the facts summarized- above, the only issue for the, determination of this matter is: whether or not the Ruling of the National Labour Court' for Montserrado County confirming and affirming the ruling of the Hearing Officer is proper?

The records in the case file show that a Collective Bargaining Agreement was entered into between the Petitioner/Appellant and the Coca Cola Bottling Plant Workers' Union on November 27, 1998. After the signing of the Agreement by the parties' representatives, the Agreement was probated on December 3, 1998 and recorded in volume 57 through 98 and pages 190-198.

Article 4 "Hours of work" as found on page three of the Collective Bargaining Agreement provides the following:

"1. The normal work week for employees shall be forty-five (45) hours. A paid for thirty (30) minutes rest period will be included for each hour worked in excess of five (5) hours".

"2. The normal work day shall be a twenty-four (24) hours period commencing when the employees regular shift starts to work, and the normal work week shall commence with the employees' shift beginning after 12:01 a.m. Monday".

"3. The company has the right to schedule hours and work days (above or below the work day and work week) to meet work requirements of the company or sections of the company in accordance with applicable statutes".

"4. When the company finds it necessary to implement in full or in part a five (5) day work week, overtime shall be calculated on a weekly basis and overtime shall be paid for any hours worked in excess of forty-Five (45) hours per week".

The records show that prior to the signing of this agreement on November 27. 1998, Respondents/Appellees work hours were froth 8 a.m. to 4 'p.m. from tvtonday through Friday and from 8 a.m. to 12 noon on Saturday, with a rest day on Sunday. This was confirmed by one of the Respondents/Appellees' witnesses while on the cross as found on Page 8 of December 14,1999 of the records from the Ministry ofs I .abour. For the benefit of' this Opinion we quote the questions put to the witness and the answers thereof.

"Q. Mr. Witness, please tell us what was the worked scheduled during that time, that is, what was the days and hours the employees generaly worked'?"

A. days of work and hours were from Monday, 8:00 a.m. to 4.00 p.m. thru Friday, then Saturday, from 8:00 a.m. to 12:00 noon. Any time after that was considered overtime."

Q. Mr. Witness, with that answered, I am correct to say that employees worked from Monday to Saturday making a total of 44 hours a week and if any employee worked in excess of 44 hours per week, he or she is paid for overtime?"

A. Yes'.

"Q. Mr. Witness, during a week, that is, from Monday through Sunday, (7 days period) did all employees get Sunday as day off plus half-day's work for Saturday?"

A. Sunday is not within the 6 working days according to section 801 of the Labour Law.

From a careful analysis of the questions and answers quoted above, it is clear that the Respondents/Appellees worked eight (8) hours a day from Monday through Friday and four (4) hours on Saturday of every week thereby making a total of (44) forty

four hours a week, less than the forty-eight (48) hours in each work week as required by Section 107 of the Labour Practices Law of Liberia.

More besides, the records show that the above work schedule was in keeping with a Memorandum of Understanding made and signed by the representatives of the parties in April 1998 as confirmed by the Petitioner/Appellant's own witness while on the cross in answering a question. For the benefit of the Opinion, we also to quote the questions and answers found on sheet 18 of the records in the case file dated January 28, 2000.

"Q. Madam witness, in April 1998, in keeping with a memorandum made and signed over the signature of Mr. Fred D. Wesee, Industrial Relation Manager, the employees were required to work from 8:00 a.m. to 4.00 p.m. Monday through Friday. And to work on Saturday from 8:00 to noon, please tell this investigation whether the Complainants now in this case did comply by working under that schedule's.

A. Yes

"Q. Madam Witness, also on June 5, 1999, another schedule was proposed by management and required the employees to work from 8:00 a.m. to 5:00 p.m., Monday to Friday leaving Saturday out for work except by special assignment. Please say also whether the employees are working, under that schedule?

A. Yes, they are working under that schedule.

We are convinced that since there was an understanding between the parties in April 1998 that Respondents/appellees are required to work eight(8) hours a day, Monday through Friday and four(4) hours a day on Saturday making the total of fort four hours per week; Sunday being rest day, is in line with the Labour Law of this Republic and therefore we find it difficult to consider the contention of Respondents/Appellees that Saturday was their rest day and therefore they should he paid for work done on Saturday from January 1998 to June 1999.
This Court says there was no evidence to the contrary showing that the Respondents/Appellees worked beyond 12 noon on Saturday and worked on Saturday, which was their rest day, without pay. On the other hand, the Collective Bargaining Agreement entered into in November 1998 between the parties provided, among other things, that the normal work week for employees shall be forty-five (45) hours, including thirty (30) minutes rest period in excess of five (5) hours which Petitioner/Appellant agreed to pay for and that Petitioner/Appellant has the right to

schedule hours and work days (above or below the workday and workweek) t6 meet work requirements of the company or section of the company in accordance with applicable statues.

As a result of these understanding reached between the parties on November 27, 1998, a new work schedule was prepared by the Petitioner/Appellant on June 5, 1999 requiring the Respondents/Appellees to work from 8:00 a.m. to 5:00 p.m. from Monday through Friday of every week, thereby reducing the work days to five OD days in a workweek, with nine(9) work hours a day, making a total of forty-five(45) hours every week.

It is provided by our Labour law that "All employees within the application 01 this Chapter, shall be granted by the employer an uninterrupted rest period of not less than twenty four(24) consecutive hours in every week; provided that (a) an employee may be required to work on his regular day of rest under any of the circumstances specified in section 702(1) of the title, but in such a case, the employee shall be granted a day of rest within six days thereafter". See Chapter 9, section 801, page 51 of The Labour Law of Liberia, 2nd Edition(1974).

Our Labour Law also provides that An employee who works on a public holiday, or on a day of the week on which he is regularly entitled to a day of rest, or on a public holiday falling on his regular day of rest, shall be paid at a rate not less than fifty percent above the normal rate". See Title 18-A, Labour Practices Law Section 803 Volume IV, page 218, Liberian Code of Law Revised.

From the evidence adduced at the trial, no witness testify that when they work on a public holiday or on their day of rest, they were not paid or given a day of rest.

From the facts, circumstances, and laws cited above, it is the holding of this Court that the Petitioner/Appellant did not violate the Labour Statue on rest day and therefore the Respondents/Appellees are not entitled to any pay for the period January 1998 to June 1999 for rest day as claimed by the Respondents/Appellees in their letter of complaint addressed to the Ministry of Labour.

Wherefore and in view of the foregoing, it is our considered decision that in the ruling of the Judge of the National Labour Court for Montserrado County confirming and affirming the ruling of the Hearing Officer at the Ministry of Labour wherein the Respondent/Appellees were awarded Seventy Thousand Two Hundred Forty Nine Dollars Sixty Four Cents (US $70,249.64) representing, payment for work

done on Saturday is hereby reversed and the claim of the Respondents/Appellees is also denied and dismissed. The Clerk of this Court is hereby ordered to send a mandate to the Court below ordering the Judge presiding therein to resume jurisdiction over the case and give effect to this judgment. Cost disallowed. AND IT IS HEREBY SO ORDERED.