VAMPLY OF LIBERIA, INC., Appellant, v. ISAAC BOLO, et al., Appellees.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,

MONTSERRADO COUNTY.

Argued November 21, 22, 23, 1978. Decided December 15, 1978.

1 An appellate tribunal can amend, affirm, or reverse decisions or judgments and enter a judgment that should have been rendered, but it cannot disturb a judgment from which no appeal was taken.

2 A decision of the Board of General Appeals of the Ministry of Labor which is not based on any evidence in the record on review or on evidence admitted on its own hearing should not be upheld by the appellate courts.

The appellees, 21 employees of the appellant company, filed a complaint with the Labor Relations Officer that they had been illegally dismissed. Appellant contended that they were guilty of fraud in receiving money from padded payrolls, and that therefore it was justified in dismissing them without notice. The Labor Relations Officer ruled that five of the complainants should be paid their back wages and wages for an additional 12 months because of illegal dismissal but the other 16 complainants had collected their back pay and were entitled to no additional compensation. The 16 employees did not appeal from that ruling, but the company appealed to the Board of General Appeals from the portion of the ruling requiring payment of 12 months' pay to the five men for illegal dismissal. The Board of General Appeals affirmed the ruling but amended it by awarding 12 months' wages as compensation to the r6 complainants as well. This ruling was affirmed by the Circuit Court on the company's petition for review and the company then appealed to the Supreme Court.

The Court found insufficient evidence in the record of misconduct by appellees to have justified their dismissal without notice. The award of 12 months' compensation

to the 16 employees who were denied it by the hearing officer was, however, overturned since those employees had not appealed from that ruling and because the Court found that the record before the Board of General Appeals contained no evidence to support the award.

The *case* was *remanded* to the hearing officer for a new hearing.

D. C. *Harris* and *Z. P. Banks* for appellant. ***R.*** *T. Bortue* for appellees.

MR. JUSTICE TULAY delivered the opinion of this Court.

The cause before us has its genesis in the arrest of twenty-one men, former employees of the appellant herein, as accessories before and after the fact for allegedly receiving money out of the padding of payrolls by one Otto who was employed by the appellant as timekeeper.

The accused were later turned over for prosecution to the County Attorney for Sinoe County, who carried the case before the grand jury when the February 1975 Term of the Third Judicial Circuit opened. That body, after listening to the witnesses, CID officers, returned a bill of ignoramus in favor of the prisoners, whereupon they were released from jail. Following their release from custody, they filed a complaint to the Labor Relations Officer for Sinoe County against Vamply of Liberia, now appellant, for illegal dismissal. To their complaint they attached a copy of the bill of ignoramus returned in their favor by the grand jury.

The hearing officer conducted an investigation and ruled that as sixteen of the complainants had collected their pay, the money they had earned, they were not entitled to compensation for illegal dismissal, but that the remaining five complainants should be paid their

wages already earned and for twelve months more, this being the minimum compensation to an illegally dismissed employee who served his employer for more than two years. The record does not show, nor was it denied in argument before this Court by counsel for appellant, that the sixteen men refused compensation by the hearing officer did not appeal from this ruling. On the contrary, the appellant agreed to pay the five men the wages earned by them, but appealed from the portion of the ruling which required them to pay each of the five men twelve months' pay as compensation for illegal dismissal and, therefore, appealed the case to the Board of General Appeals. The Board of General Appeals not only affirmed the ruling appealed from but amended it by awarding twelve months' wages as compensation to the sixteen complainants as well. The appellant appealed from this decision to the Sixth Judicial Circuit for Montserrado County. Appellant's petition was traversed by a return filed by the respondents, and the lower court affirmed the decision of the Appeals Board. Appellant appealed from the judgment and has brought the case before us on a four-count bill of exceptions which we shall consider in consecutive order :

"r. Because petitioner says that the labor laws provide that an employer 'shall have the right to dismiss the employee where it is shown that the employee has been guilty of a serious breach of duty.' Petitioner submits that the respondents in these proceedings committed a serious breach of duty by defrauding and cheating petitioner and though brought out in evidence this was overlooked by the Board of General Appeals; yet Your Honor ruled that the respondents should be reinstated or paid in lieu thereof. Your Honor's failure to take into consideration the provision of the Labor Code as found under chapter 16, section 1508, subsection 5, is contrary to law.

"2. And also because petitioner says that Your Honor erred in ruling on the decision of the Board of General Appeals which is adverse to the interest of petitioner, when you did not give any consideration to the fact and law that if an employee commits any serious offense against his obligation he may be dismissed by an employer without notice or pay in lieu of notice. Petitioner contends that the respondents defrauded and cheated the petitioner in the sum of $1,2oo, which they admitted and signed written confessions and although this essential fact was brought out during the hearing before the General Appeals Board and argued before Your Honor, yet contrary to law, Your Honor ruled that the respondents should be reinstated or should receive compensation in lieu of reinstatement.

"3. And also because Your Honor, when passing upon the issue of the confession and bill of ignoramus, observed, 'It is well to state that the bill of ignoramus brought in favor of an accused is not acquittal for the matter may be re-examined by another grand jury.' The respondents defrauded and cheated the petitioner and contended that because a bill of ignoramus was brought in their favor they were absolved of the breach that they committed and for which they were dismissed by the petitioner. Petitioner contends that to rule that respondents be reinstated is contrary to the labor laws; hence erroneous on part of Your Honor."

Because counts 1, **2,** and 3 raised one and the same issue, "dismissal of an employee for serious breach of duty," we shall pass on them together. Section 15o8 of the Labor Practices Law (L. 1965-66, An Act to amend the Labor Practices Law with respect to employment in general), with all its subsections, treats of the dismissal of employees. This law authorizes an employer to dismiss, without liability, any of his employees who are found

guilty of serious breach of duty such as cheating and defrauding the employer, shirking work, etc. But where this is alleged, proof must be had through an investigation if the employee complains. The employer's allegation cannot be accepted without corroboration, and where the hearing officer is not convinced of the employee's breach of duty, as occurred in this case, he may award compensation. It was charged that complainants had received pecuniary benefits from the padding of the appellant company's payrolls and that they had confessed to this before a CID team that investigated the allegation. Three factors, however, operate in their favor : (1) they denied ever making the confession; their words are as good as those of the CID team, especially when we consider the kind of treatment given persons allegedly accused of committing crimes by the criminal investigators; (2) the bill of ignoramus returned by the grand jury in favor of the complainants after they had listened to the report by the CID team; it is true that one bill of ignoramus brought out in favor of an accused is no acquittal, but we hold that it is the duty of the prosecuting witness and not the accused to see that the case be examined by another grand jury; this has not been done;

(3) the timekeeper, a Mr. Otto, the best witness to testify that complainants benefited from his padding the payrolls in their favor, mysteriously vanished; the CID team, with all their vigilance, are silent on his whereabouts. What could the hearing officer do in the face of this anomaly but to rule in favor of the complainants? Counts r, 2, and 3 of the bill of exceptions are not sustained.

Count 4 of the bill of exceptions reads : "And also because Your Honor erred in confirming and affirming the decision of the Board of General Appeals rendered on the 24th day of June, 1975, not in keeping with section I5o8, subsection 4 and subsection 6 of the Labor Practices Law."

Subsection 4 of Section 15o8 of the Labor Practices Law reads : "The period of notice shall begin to run on the first day of the pay period next following that in which the notice was served." The pertinent part of subsection 6 is (c), which reads: "if the employee commits any other serious offense against his obligations under the contract."

We fail to sustain this exception in its entirety. Appellees were dismissed without notice as they were charged with the offense of serious breach of duty. If proof of this charge had conclusively been shown, the fate of this case would have surely been different. Appellant has not proved the offense charged to appellees beyond reasonable doubt even though one bill of ignoramus in favor of a defendant is not an acquittal. We hold that it was a duty incumbent upon appellant to have carried the case before a second grand jury in its quest to prove appellees' guilt.

We, however, agree that awarding compensation to the sixteen men who never appealed from the ruling of the hearing officer who denied them compensation is a reversible error both on the part of the Board of General Appeals and the lower court, which in this case, held only appellate jurisdiction. It is true that an appellate tribunal, such as the Board of General Appeals here, can safely amend, affirm, or reverse decisions or judgments and enter judgment that should have been rendered, but it does not disturb judgment from which no appeal was taken.

Additionally, a perusal of the record in this case does not reveal any more documents than the complaint, a copy of the bill of ignoramus, and the hearing officer's ruling which were forwarded to the Board of General Appeals. We wonder upon what basis the Board made its decision, since it had no record before it to review. Having no complete record of the investigation conducted by the hearing officer, the Board of General

Appeals should have sent the case back for the purpose of admitting more evidence, especially so when a request for such action was made to it by appellant on the record made on the 6th of June, 1975, and resisted by appellees. The Board decided not to make any ruling on the issue. Conversely, since the Board of General Appeals can also, by itself, admit evidence, and by so doing assumes original jurisdiction, it should have admitted more evidence before giving its decision in which the sixteen men, denied compensation by the hearing officer, were included for compensation, as they were properly entitled to it. It was error on the part of the Appeals Board, acting in the sole capacity of an appellate tribunal, to have awarded the sixteen men compensation when they had not appealed from the ruling of the hearing officer who denied them compensation. The same type of error is also attributed to the lower court. On the whole we find the trial of this case irregular because : ( ) the hearing officer refused to award the sixteen men compensation for illegal dismissal if they could prove their cause; (2) the hearing officer made no record of his investigation, or if he did, he failed to send a complete record to the Board of General Appeals; (3) the Board, finding an incomplete record before it, failed to send the case back for admission of more evidence or to reopen the case and take more evidence to justify its position in awarding the sixteen men compensation; (4) the judge of the lower court affirmed a void decision of the Board of General Appeals in so far as that decision related to the sixteen men's compensation.

These irregularities constitute reversible error, and we accordingly hold that the case be remanded to the office of the hearing officer for new hearing.

Costs to abide final determination. And it is so ordered.

Remanded.