

Nathaniel Weah et al of the City of Monrovia, Liberia APPELLANTS Versus The
Management of National Port Authority (NPA) by and thru its Managing
Director Hon. Alphonso Gaye, also of the City of Monrovia, Liberia APPELLEE.

PETITION FOR JUDICIAL REVIEW

Heard: May 19, 2005 Decided: September 15, 2005

MR. JUSTICE CAMPBELL DELIVERED THE OPINION OF THE COURT

The facts in this case reveal that on June 10, 2002, Nathaniel Weah et al, filed a Complaint of "Unfair Labour Practice/Failure to pay just entitlements" with the Ministry of Labour against the National Port Authority (NPA).

The Appellants are thirty five (35) Retirees of NPA Appellee in these proceedings, who alleged among other things in their complaint that prior to their retirement, they served faithfully and diligently in their various capacities and management of the NPA paid their salaries in two currencies: Liberian Dollars and United States Dollars respectively, but to their surprise, the management refused to compute and pay them their 40% (Forty per cent) of the United States Dollars component upon their retirement. The Appellants further alleged that in the year 1993; the management of the NPA established a policy whereby its retirees were paid two months salary as bonus and one month salary in-lieu-of-notice, but the management has failed to pay said bonus to them.

Upon receipt of the complaint, the Deputy Minister of Labour for Administration invited the parties to a conference for the settlement of the matter, but all efforts made by the Deputy Minister failed; he therefore referred the case to the Labour Relations Section of the Division of Labour standard for appropriate action.

The records in the case file further show that because the parties could not reach a settlement after several conferences before the Hearing Officer, the matter was ruled to trial and regular hearing started on Decqmbler 11, 2002.

The records also reveal that Appellants produced two witnesses during the hearing who testified and confirmed the allegation set forth in their *Amended* complaint filed with the Ministry of Labour. After the production of both oral and documentary evidences, the appellants offered into evidence C/1 thru C/5 as documentary evidence (Memorandum of Understanding entered into between the Board of

Directors of the National Port Authority and the 35 retirees in 1993 which constituted a guideline for all retirees thereafter; Entitlements of Nathaniel Weah et al in the form of Notice/Bonus and 40% of US\$ component of salary not included in payment of pension benefits; Notice of Assignment; letter of excuse sent to the Hearing Office by Atty. Yvonne Hoggard Clemens, Legal Counsel, etc.) and thereafter rested evidence in toto.

On January 31, 2003, the day the case was assigned for hearing and for the Appellee to take the witness stand, Appellee's Counsel requested the Hearing Officer to grant it a two week adjournment to enable the Appellee to obtain witnesses on its behalf. The Hearing Officer granted the request, but reduced the-two weeks to a one week period and on the same day reassigned the case for hearing on Friday, February 17, 2003. To this ruling, neither party excepted.

The records further show that prior to the scheduled date of that hearing, the Appellee's Counsel through a communication requested for another two weeks adjournment to enable Appellee have its material witness in Court, who according to it, was out of the bailiwick of the Investigation.

The request was again granted by the Hearing Officer and a notice of assignment was issued out for the hearing of the case on February 25, 2003 at 10:30 a.m. The Sheriff's Returns show that the notice of assignment was served on the parties.

On February 25, 2003, at 10:30 a.m., the scheduled date for the hearing, the Appellee and Counsels failed to appear nor send any excuse to the Hearing Officer stating reasons for their inability to attend the hearing of the case. As a result of their failure, the Appellants' Counsel made an application for Default Judgment and further requested the Investigation to grant unto them any and all relief that is legal. The application was granted and Appellants' Counsel was ordered to argue their side of the case due to the fact that Appellants had presented their side of the case by the production of both oral and documentary evidences. Thereafter the Hearing Officer ruled that Appellee is liable to the Appellants for the claims made in their complaint in the total amount of USD\$17,440.00 and LD\$118,858.00 which was based on the calculated document attached to their complaint.

Upon the receipt of the Ruling of the Hearing Officer, the Appellee filed a five(5) count Petition for Judicial Review on March 28, 2003 with the National Labour Court for Montserrado County, sitting in its April Term, A.D. 2003.

In the Petition for Judicial Review, Appellee alleged, among other things, that the claims of the Appellants that Appellee owed each of them two months' salary as bonus and one month salary in lieu of notice and that these benefits were paid to other retirees before them, is unfounded because the policy under which management gave the bonuses was no longer in effect due to financial constraints facing Appellee.

Appellee further alleged in the Petition that when the case was assigned for hearing on February 25, 2003, Appellee and its Counsel did not appear due to the absence of Appellee's material witnesses from the bailiwick of the Investigation and despite that, Appellants' Counsel prayed for Default Judgment which was granted by the Hearing Officer contrary to law. Appellee also alleged that there was no legal basis for awarding bonuses to Appellants because the policy under which Appellee gave bonus pay to retirees was withdrawn and out of force since January 1, 1999 as evidenced by Appellee's circular letters to all 'employees and that bonus is gratuitous and within the discretion of the giver; therefore, the Hearing Officer committed reversible error by including bonus' pay in the calculation of the final award for the Appellants. Appellee therefore prayed the National Labour Court to reverse the Final Ruling of the Hearing Officer, Honourable G. Rudolph Brown, and further requested the Court to grant unto Appellee any and all further relief that is just and legal.

To this Petition for Judicial Review, the Appellants filed a eight (8) Count Returns. The Returns alleged among several other things that Appellee had failed and refused to pay Appellants' three months salary, a policy established since 1993 by the Board of Directors whereby Appellee's retirees were paid two months salary as bonus and one month salary in lieu of notice and that there is no evidence showing that said policy has been cancelled by the Board of Directors of the National Port Authority; therefore, the Hearing Officer did not commit any error to have included Bonus' Pay in the calculation of the final award.

The Returns further alleged that the Hearing Officer correctly and legally granted the Default Judgment because the Appellee intentionally refused to attend the hearing of the case without any excuse to the Hearing Officer after the two requests made for adjournment which were granted by the Hearing Officer; therefore, Appellants prayed the National Labour Court to dismiss the petition for Judicial Review as filed by the Appellee.

On Monday, February 9, 2004, the National Labour Court heard the Petition and the Returns and thereafter reserved ruling subject to the issuance of a notice of

assignment,

On the 23rd day of March, A.D. 2004, a notice of assignment was issued out by the National Labour Court for ruling in the Petition for Judicial Review on March 24, 2004 at 11:00 A.M. According to the Sheriff's Returns, both-parties were served with said notice of assignment.

In her Ruling, the Judge of the National Labour Court set aside the ruling of the Hearing Officer at the Ministry of Labour and ordered the Hearing Officer to resume jurisdiction over the matter in order to afford the Appellee an opportunity to be heard. The Ruling of the National Labour Court stated among several other things that "Hearing Officers have been prohibited by the Labour Law from rendering Default Judgments since the establishment of the National Labour Court and since the dissolution of the Board of General Appeal. A Default Judgment is a decision in favor of one party simply because of the failure of the other party to appear at the Investigation. The prohibition of Default Judgment by Hearing Officers is to ensure that both parties to the case are heard and afforded ample opportunity to present their evidence".

The Ruling further stated that "Hearing Officers had Contempt proceedings brought against employer by the Circuit Court now National Labour Court due to the employer's failure to appear at the Investigation". The Court therefore ruled that "In keeping with our law, an action which has not been fully adjudicated on its merits, will be re-tried by order of the court, since indeed Judges ought never to hurry to dispose of matters, if so doing, would be prejudicial to the interest of the parties."

To this -Ruling Appellants excepted and announced an appeal to the Honourable Supreme Court sitting in its March Term, A. D. 2004, which appeal was granted and thereafter, Appellants filed a Nine (9) count approved Bill of Exceptions.

For the benefit of this Opinion we deem it necessary to quote counts 4,5,6, and 9 of Appellants' Bill of Exceptions which read thus:

"4. That your Honor's final judgment is erroneous and without legal basis, in that even though the case was regularly tried amidst several excuses from the Appellee/Defendant and that at the close of Appellants'/Complainants' testimony, Appellee/Defendant requested for two weeks adjournment , which request was granted in part for one week and at the end of the one week granted, Appellee/Defendant through a letter. requested for another two weeks adjournment

which was granted. At the end of the two weeks an assignment was issued and served on the parties, the receipt of which was acknowledged by both counsels, but at the call of the case, Appellee/Defendant refused and neglected to appear or send a valid excuse for which refusal and abandonment the Hearing Officer granted Complainants Counsel's request for Default Judgment; Your Honour ruled that the Hearing Officer would have requested the National Labour Court to arrest Appellee/Defendant in contempt proceeding which is erroneous."

"5. That your Honor erred when in your ruling on page 3 you said we do agree that the Defendant was indeed cited, but due to his excuses, he was never heard. The record before your Honour is void of any excuse sent by the Appellee/Defendant when it was served the last assignment which it acknowledged."

"6. Your Honor erred when you said that the Hearing Officer has been Prohibited by Labour Law from rendering default judgment since the establishment of the National Labour Court. Section 6 of the Labour Law refers to person who received citation to settle labour disputes, but refused to cooperate and not Management whose lawyer acknowledged an assignment, but failed to appear at trial."

"9. That Your Honor having elected to review, traverse and pass on the merit of the matter when there is no testimony or evidence submitted by the Appellee/Defendant is grossly erroneous."

This Court says there are several issues raised in the Bill of Exceptions, and the briefs filed and argued by the parties before this Court, but we consider the below issues relevant for the determination of this case; they are:

1. Whether or not the default judgement granted by the Hearing Officer is in keeping with law, facts and circumstances of this case and therefore should have been upheld by the National Labor Court?
2. Can the Labor Court Judge review and pass upon a document attached to a Petition for Judicial Review which was never presented and testified to before a Hearing Officer from which the case originates?

We shall discuss the above mentioned issue in the reverse order by starting with the last issue which is: Can the Labor Court judge review and pass upon a document attached to a Petition for Judicial Review which was never presented and testified to before a Hearing Officer from which the case originates?

From the records in this case, it is clear that upon the receipt of the Ruling of the Hearing Office of the Appellee fled to the National Labour Court by filing this Petition. The Appellee contended that the Hearing Officer had no legal basis to have awarded bonus to the Appellants because same was withdrawn since January 1, 1999, and was out of force; Appellee therefore prayed for the reversal of the Hearing Officer's Ruling.

The Appellants on the other hand contended that the circular document should not be considered simply because the policy under which the management of the National Port Authority give benefit to its retirees has not been revoked by the Board of Directors that ordered said policy. The Appellant further argued that the Appellants had no knowledge of the revocation of the policy and that Appellee had the opportunity to have introduced the alleged document before the Hearing Officer, but refused to attend the Hearing and therefore the Ruling of the Hearing Officer was proper.

The records show that the Judge of the National Labour Court, in her Ruling mentioned among several other things that "the records before this court revealed that prior to the retirement of complainants in 2002, management made it emphatically clear that it will not pay bonus to the 2002 retirees simply because the policy under which management gave the benefit was no longer in effect due to financial constraints facing the management of the National Port Authority".

This Court finds it difficult to accept the procedure adopted by the Judge of National Labour Court, in that said Court has appellate jurisdiction over matter from the Ministry of Labour and therefore it was an error on the part of the Judge to have considered and passed on a document that was never presented and testified to before the Hearing Officer at the Ministry of Labour. The National Labour Court not having; original jurisdiction over Labour cases, it was contrary to the practice and procedure in our jurisdiction for the Judge to take cognizance of s document attached to the Petition for Judicial Review for the first time. A Court cannot pass on any documentary evidence that was not testified to by witnesses, marked by Court, confirmed and admitted into evidence.

The circular document attached to the petition for Judicial Review by the Appellee is a mere allegation and was never presented and testified to before the Hearing Officer and therefore is not supported by evidence in order to amount to proof. More besides, the Appellee did not take the witness stand due to the failure of the Appellee

to honor the assignment and as such it is clear that said circular document relating to bonus was never a part of the records from the Hearing Officer to the National Labour Court.

"When documentary evidence is proferted with pleading, said document must be testified to by witnesses, marked by Court and confirmed by witnesses before being admitted into evidence to form part of the record in the case". see the case: Levin Vs. Jurico Supermarket, 24 LLR 187 (1975). A judge therefore cannot base his ruling on document not formally admitted into evidence to form part of the record before the trial court". See the case: King vs. The International Trust Company of Liberia, 20 L LR 438 (1971). This Court has held that "A Petition for Judicial Revier of the ruling of the Ministry of Labour to the National Labour Court does not constitute a trial de novo but is a form of appeal, and the review proceedings are therefore restricted to the records transcribed and certified to the appellate forum" Inter-Con Security Systems, Appellant Versus Rachel R. Miah & Mammie Yarkparwolo, Appellees, 33 LLR 633, Syl. 7, Text at page 646 (1998). This court also held that "On Appeal , from the Ministry of Labour, the trial Court's jurisdiction is confine only to the record certified to it by the Ministry of Labour". Firestone Plantations Company by and through its Representative, Appellant, Versus Solomon Fortune and The Board of General Appeals Ministry of Labour, Appellees, 30LLR, 547, Syl. 4, Text at page 555, (1983). Hence, it is the holding of this Court that since the National Labour Court has appellate jurisdiction, the Judge of the National Labour Court erred when she considered the document that was never presented and testified to before the Hearing Officer.

The next issue for our determination is whether or not the default judgement granted by the Hearing Office is in keeping with law, facts and circumstances of this case and therefore should have been upheld by the National Labor Court?

The records show that when Appellants rested both oral and documentary evidences, Appellee requested the Hearing Officer Or two weeks adjournment due to the absence of its material witnesses. The application was granted, but the two weeks request for adjournment was reduced to one week without an exception from any of the parties.

The records further show that when the case Niras assigned for hearing after the one week adjournment, the Appellee again requested the Hearing Officer through a communication for additional two weeks adjournment. The request was also granted, but upon the issuance of another assignment for the hearing of the case on February

25, 2004 at the end of the two weeks adjournment, the Appellee and Counsel refused to attend the hearing of the case without an excuse. The Appellants therefore prayed for default judgment and same was granted and Appellants' Counsel was ordered to argue their side of the case since Appellants had rested with the production of evidence in toto. The Investigation thereafter awarded Appellants USD\$17,440.00 and LD\$118,858.00 respectively.

Upon the receipt of the Ruling of the Hearing Officer and not being satisfied with said Ruling, the Appellee filed a Petition for Judicial Review with the National Labour Court and contended among other things that the Hearing Officer did not give Appellee the opportunity to present its side of the case.

In their Returns to the Petition for Judicial Review, the Appellants contended among other things that the Petition should be dismissed because the Appellee had the opportunity to present its side of the case, but refused to attend the hearing of the case without an excuse upon the receipt of the notice of assignment after several excuses for adjournment which were granted by the Hearing Officer.

After the hearing of the Petition and Returns, the Judge of the National Labour Court ruled among other things that Hearing Officers have been prohibited by the Labour Law from rendering default judgment since the establishment of the National Labour Court and the dissolution of the Board of General Appeal in order to ensure that both parties are afforded the, opportunity to be heard. . .

We disagreed and are of the opinion that the Appellee was given the opportunity by the Hearing Officer to present its side of the case, but failed to do so which is supported by the record before us. Hence, Appellee is estopped from raising the issue that the Hearing Officer denied it from being heard after several requests for adjournment which were granted in order to afford the Appellee present its side of the case, but refused to honor the last assignment without any excuse.

Our law provides that "If a defendant has failed to appear, plead or proceed to trial, or if the Court orders a default for any other failure to proceed, the Plaintiff may seek a default judgment against him." see Chapter 42, Section 42.1 1 LCLR page 214. Also Section 42.2, page 214 of the Civil Procedure Law, Liberian Code of Laws Revised provides that "If the Plaintiff's claim in an .action in which the defendant has defaulted is for a sum certain or for a sum which by computation can be made certain, the Court, upon submission of the proof required by Section 42.6, shall direct entry for the amount demanded on the complaint plus costs and interest..." Section 42.6,

page 216 of 1LCLR Provides that "On an application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default, and the amount due."

Article I, Extension of Administrative Powers and Procedure of the Ministry of Labour, Section 8, 'Default Judgment', page 4 of the Degree of the interim National Assembly of the Republic of Liberia Amending the Executive Law to Extend the Administrative Powers and Procedure of the Ministry of Labour, Amending the Labour Law to Extend the Duties of the Labour Solicitor and Amending the Judicial Law to establish a National Labour Court No. 21, provides that "If a defendant in a Labour case has failed to appear, plea or proceed to trial, or if the Hearing Officer or the Board of General appeal orders a default for any other failure to proceed, the complainant may seek default judgment against the defendant on an application for a default judgment, the applicant shall file proof of service of the summons and complaint and give proof of the facts constituting the claim, the default judgment, the Ministry of Labour is hereby empowered to enforce such judgment by imprisonment until said default judgment is fully complied with." This Court has held that "If a Defendant in a labour case has failed to appear, plead or proceed to trial, or if the hearing officer or the Board of General Appeals orders a default for other failure to proceed, the complainant may seek a default judgment against the Defendant. On the application for default judgment, the applicant shall file proof of service of summons on Defendant and give proof of the facts constituting the claim". -Judgment rendered against a party whose Counsel absents himself from the hearing of which he was duly notified, is justified on the basis of abandonment of the case". See the case: Monrovia Tobacco Corporation, Appellant, Versus Sei Flomo and Labor Commissioner Henry B. Barnh, Sr., Appellees, 36LLR522, Sylls. 1&3, Text at pages 527 and 529 (1989).

We hold that this Court not being able to find any law which has repealed Article 1 Section 8 of the Extension of the Administrative Power of the Ministry of Labour on Default Judgment, therefore it was proper for the Hearing Officer at the Ministry of Labour to have granted Default Judgment as supported by the above laws. Hence, the Judge of the National Labour Court erred when she ruled that the Hearing Officer has no legal authority to enter final ruling based on Default Judgment.

Wherefore and in view of the facts, circumstances and the laws cited above in this case, it is our holding that the Ruling of the Judge of the National Labour Court is hereby set aside and the Ruling of the Hearing Officer sustained and confirmed. The Clerk of this Court is hereby ordered to send a mandate to the National Labour

Court to resume jurisdiction and enforce the Ruling of the Hearing Officer of the Ministry of Labour. Cost against the Appellee. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, THE APPELLANTS WERE REPRESENTED BY COUNSELLOR YAMI Q. GBEISAY, SR. OF THE TIALA LAW ASSOCIATE WHILE THE APPELLEES WERE REPRESENTED BY COUNSELLOR COOPER W. KRUAH OF THE HENRIES LAW FIRM.