ISAAC DOE, et al., Appellants, *v.* SINKOR BAKERY, Appellee.

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

Argued October 28, 1976. Decided November 12, 1976.*

1. The Board of General Appeals on appeal from a ruling of a labor inspector cannot under the governing statute assume the authority exercised by a court of law to dismiss an appeal on the ground of abandonment by a party whose counsel was absent on the hearing of the appeal.
2. No one may be personally bound by a judgment of a court until he has been duly cited to appear and has been afforded an opportunity to be heard.
3. An administrative board having the power of "summary review" of an official ruling, is not required to follow the ordinary formal procedure prevailing on the trial of a case at law.
4. That a Circuit Court issues a ruling inconsistent with a previous ruling in the same matter is not error and the amended ruling may be affirmed by the Supreme Court.

This matter originated as a proceeding in the Labor Court against Sinkor Bakery to recover pay for overtime. The case was heard by the Senior Labor Inspector, who ruled against Sinkor. On an appeal to the Board of General Appeals, counsel for Sinkor, who was engaged at the time in representing a client in a matter before the Supreme Court, failed to appear at the hearing before the Board. The appeal was thereupon dismissed by the Board and the case transmitted to the Sixth Judicial Circuit Court for enforcement of the judgment against Sinkor. The Circuit Court ruled in favor of Sinkor because its counsel, in the absence of notification, had not been present when judgment was rendered by the Board. This was an appeal to the Supreme Court from the judgment of the Circuit Court. The *judgment* of the Circuit Court was *affirmed*.

* Mr. Chief Justice Pierre did not participate in this decision.

S. Edward Carlor for appellants. *MacDonald C. Acolatse* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

This matter emanated from the Labor Court, where it was heard and determined by the Senior Inspector. His ruling was against Sinkor Bakery, which noted exceptions and appealed to the Board of General Appeals. The Board disposed of the matter in the absence of counsel representing Sinkor.

The matter was transmitted to the Sixth Judicial Circuit Court for enforcement of the judgment arrived at by the Board of General Appeals. Following a judgment by the Circuit Court on April 21, 1976, against Sinkor, its counsel, on May 10, 1976, filed an amended motion for relief from judgment from which we quote:

> "1. That appellant says that it was sued in the Labor Court by appellees and that the case was heard by the Senior Labor Inspector, who ruled against appellant, to which ruling appellant excepted and appealed to the Board of General Appeals. The case was assigned on February 18, 1976, for hearing on February 24, 1976. That on February 12, the Chief Justice, His Honor James A. A. Pierre mandated His Honor, Alfred B. Flomo, assigned Circuit Judge presiding over the December Term, of the Civil Law Court, extending his term time to especially try the case: *James Freeman* v. *Mine Management Associate/Liberia,* and incidentally, Counsellor MacDonald C. Acolatse was counsel for plaintiff, James Freeman; and the Henries Law Firm, counsel for defendant, represented by Counselor Yangbe, and Counsellor Carlor of the Henries Law Firm was also counsel for appellees. Now Counsellor Carlor, who was active in the trial in the Circuit Court, knowing that the appellees were

being represented at the trial by himself and Counsellor Yangbe, did not attend the afternoon session on time, but instead clandestinely went to the Labor Court leaving Counsellor Yangbe, knowing that counsel for appellant was alone in the trial representing James Freeman, and there prayed the court to apply rule 7 on the ground of abandonment. Appellant submits that the fact that the Labor Court is an administrative court, it does not ipso facto exercise the function of judicial courts, in other words that the law and/or rule providing for abandonment does not apply to administrative trials. This function is exclusively legal and constituted or instituted by legislative enactment."

In his brief and argument before this Court, counsel for Sinkor, the appellee herein, contended that:

"It will be noted from the ruling that there was only one assignment which was served on the party appellee, for an enforcement of the ruling of the hearing officer, though the appeal had not been heard, which fact is clearly set forth in the letter to the Judge over the signature of the Minister of Labor, Youth and Sports, dated March 12, 1976, forwarding the ruling and relevant documents in the case for enforcement; but, more than that, appellee says that it was not given its day in court, for appellee, then appellant, was not served with a copy of the proferted ruling until March 12, 1976, though it was dated March 11, 1976, which if it had been delivered earlier would have afforded appellee the opportunity to have noted exceptions and file an appeal to the Civil Law Court as the law provides. However, appellee assuming that under the circumstance, his appeal would have started to run as of the date of the receipt of the ruling, on March 17, 1976, and not knowing that the judgment or ruling had been forwarded to the Civil Law Court for enforcement, filed a submission before the Board, which replied on March 24 stating that it regretted

that it could not reconsider its ruling because it had already forwarded it to the Civil Law Court for enforcement. It will be observed that at this point appellee's right to appeal had expired and the Board had lost jurisdiction."

In the contention of appellee's counsel quoted *supra,* it is observed that at the rendition of judgment by the Board of General Appeals he was not notified, which deprived him of his day in court as well as an opportunity to file his appeal from said judgment or ruling of the Board of General Appeals.

The question of not having had his day in court is very significant, as indicated by the following comment:

"In fact one of the most famous . . . definitions of due process of law is that of Daniel Webster in his argument in the *Dartmouth College* case in which he declared that by due process of law was meant 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.' Somewhat similar is the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is fairly administered." 6 R.C.L., *Constitutional Law,* § 442 (1915).

In the act to amend the Labor Practices Law with respect to administration and enforcement, it is provided:

"Section 3. *Summary review on appeal.* The Board of General Appeals shall review the determination of the hearing officer upon the copies of the record and other evidence filed with it by the Minister of Labor and Youth, and the parties to the appeal may not produce additional evidence. If, however, the

Board of General Appeals requires further evidence to enable it to make a decision or for any other substantial reason, or if in the Board's opinion the aggrieved party was not given sufficient opportunity on the hearing to introduce relevant and material evidence, the Board of General Appeals may allow such evidence to be introduced either before the Board or before a hearing officer, as the Board may direct.

"Section 4. *Disposition of Board of General Appeals.* The Board of General Appeals may affirm, reverse or modify the determination made by the hearing officer in any matter upon appeal before it, or it may remand the matter to the Minister of Labor and Youth for further proceedings and action by a hearing officer. Any decision disposing of the issues shall be made in writing within 30 days after the hearing of the appeal and shall be filed in the office of the Minister of Labor and Youth. The decision shall include a statement of the facts found and the reasons on which it is based. Immediately upon the filing of the decision of the Board, copies thereof shall be served on all parties to the proceeding." L. 1971–72, ch. XLV.

Counsel for Sinkor argued that the action taken by the Board of General Appeals in dismissing his appeal was contrary to the law governing the procedure to be followed by the Board. The provisions of the statute quoted *supra* support that contention; there is no authority for the dismissal of an appeal heard by the Board. Hence, it was error on its part to have dismissed the appeal in these proceedings, on motion of opposing counsel, especially so in the absence of counsel for Sinkor.

It is averred by counsel for the appellee that counsel for appellants committed an unethical act when they were representing opposing parties in the case in the Sixth Judicial Circuit Court, and counsel for appellants in an effort to defeat the legal interest of the appellee, without

notice to appellee's counsel, made the following submission to the Board of General Appeals on behalf of his clients, the appellees therein:

> "Counsel for appellees says that the pending case has been with this Board for a long period and that several assignments have been made in this case. Said assignments were acknowledged by appellant, yet despite its acknowledgment appellant continues to abandon the case along with his appeal. Because justice delayed is justice denied, appellees request this court to confirm and affirm the ruling of the Hearing Officer and rule for appellees dismissing the appeal."

The Board thereupon made the following ruling:

> "The notice of assignment for the hearing of this case at 2:30 this afternoon, February 24, 1976, was served and returns served by the sheriff of this Board. It is now 5 minutes past 3:00 and the appellant has not appeared.
>
> "Wherefore, upon application of counsel for appellees, we have no alternative but to dismiss the appeal and hereby confirm and affirm the ruling of the Hearing Officer.
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> "The officer in charge of the records of this Board is hereby ordered to forward the ruling to the Sixth Judicial Circuit Court for Montserrado County for enforcement in keeping with law. And it is hereby so ordered."

Section 3 of the statute quote *supra* provides for summary review. The word "summary" is defined to mean that:

> "the issue must be disposed of speedily, without delay; that the time usually allowed for pleadings does not apply; that the strict rules of evidence do not prevail; that the ordinary formal procedure prevailing in the trial of a case at law is dispensed with." *Peakeh* v. *Nimrod*, 2 LLR 102, 108 (1913)

From the above quotation it is obvious that the Board conformed in substance to the rule of court which provides for a party's abandonment of his cause and the consequence entailed.

Further, in count 11 of the bill of exceptions, appellants contend with reference to the action of the judge of the Circuit Court, that "appellants say further that Your Honor erred when you made two inconsistent rulings: On April 21, 1961, Your Honor ruled enforcing the judgment of the Board of General Appeals when you ordered the clerk to prepare a bill of costs against the appellee, to which no exceptions were noted nor appeal announced. Yet, on May 21, 1976, Your Honor ruled declaring the very judgment you ordered enforced void."

The ruling of May 21, which ruling is regarded by appellants in these proceedings as being inconsistent with the previous ruling, reads as follows:

> "The Court: According to Circuit Court Rule 7, where a party fails to appear, after having been previously notified and the law issues are disposed of, this is tantamount to an abandonment.
>
> "Counsel for appellant [Sinkor] contends that he was not present when the judgment was rendered in this case. There is no record here from the Board of General Appeals showing that the appellant was notified to be present when the judgment was rendered and the Constitution provides for representation both by party and by counsel. The appellant took part in the trial of this case and should have been present when this matter was concluded. The Labor Bureau is not a judicial forum; hence, a communication should have been sent to the parties to be present and this would be in violation of our organic law to act otherwise. There is no communication in this file showing that this was done. So how the party was notified is not known to me. The Bureau of Labor, that is, the Board of General Appeals, is hereby ordered to resume juris-

diction over this matter and render the judgment in the presence of the parties as the judgment is void which concludes the interest of parties who are not present at the time of the rendition thereof. And it is hereby so ordered."

From this order of the Circuit Court, appellants appealed to the Supreme Court.

It is our practice that upon motion of a party made before the end of the session of court or upon its own motion, the court may at any time during such session amend its findings or make additional findings and amend the judgment accordingly. It is evident that the contention of appellants in the bill of exceptions as quoted *supra* is completely contrary to the spirit of summary procedure according to which the ordinary formal procedure prevailing in the trial of a case at law is dispensed with.

Therefore, in view of the foregoing, the judgment of the Circuit Court of May 21, 1976, is hereby affirmed with costs against appellants. And it is hereby so ordered.

Judgment affirmed.