His Honour Emmanuel W. Worjlor, Senior Hearing Officer, Division of Labour Standards, Ministry of Labour, and **Jerry D. Zangar** of the City of Monrovia, Liberia, APPELLANTS VERSUS **The Management of Save the Children-UK (Liberia**) of the City of Monrovia, Liberia, APPELLEE

APPEAL

LRSC 44

Heard: April 22, 2015 Decided: December 19, 2015

MR. JUSTICE BANKS delivered the opinion of the Court.

This case, growing out of a complaint filed by the appellant with the Ministry of Labour, alleging wrongful dismissal, is on appeal to the Honourable Supreme Court of Liberia from a judgment of the National Labour Court reversing the ruling of the Hearing Officer of the Ministry of labour wherein the Hearing Officer ruled that the appellee, The Management of Save the Children-UK (Liberia), had wrongfully dismissed the appellant, Jerry D. Zangar, and hence was adjudged liable to the appellant in the amount of US$38,980.00 (thirty-Eight Thousand Nine Hundred Eighty United States dollars) or in the alternative reinstate the appellant and pay to him salary for the period lost with all benefits to which the appellant was entitled as if never dismissed. The appellant, not being satisfied with the Labour Court's reversal of the ruling of the Hearing Officer and with that court's decision holding the appellee not liable to the appellant for wrongful dismissal, excepted to the said judgment and announced and perfected an appeal to the Supreme Court for a review of the Labour Court's judgment.

Our thorough review of the records in the case dictates that we probe and analyze the genesis of the complaint, the evidence adduced by the parties before the Hearing Officer and the rulings made, both by the Hearing Officer and the Judge of the National Labour Court.

The appellant alleged in his letter of complaint to the Minister of Labour and testified before the investigations conducted by the Hearing Officer that he had served the appellee for a period of thirteen (13) unbroken years prior to the date of his dismissal by the appellee. We note that nowhere in the records certified to the Supreme Court do we find that the appellee disputes the allegation of the appellant as to the date of his employment or as to the period of service with the appellee. What the records do reveal is that a series of events occurred in 2009 which involved the appellant and which the appellee asserted formed the basis for the dismissal of the appellant.

The records show that a Memorandum of Understanding was entered into between the appellee, on the one hand, and the Ministry of Education and the Parent Teacher Association of Bong County, on the other hand, for the renovation of eight schools in Bong County, of which four were to be immediate beneficiaries. Under the Memorandum of Understanding, the Parent Teacher Association of Bong County was required to open a bank account with Ecobank Gbarnga Branch to which the appellee would

transfer funds from its Ecobank Gbarnga Field Office Account to underwrite costs associated with the renovation works which were to be carried out at the four schools identified as beneficiaries under the Memorandum of Understanding. Further, under the Memorandum of Understanding the transfer to the Parent Teachers Association account was to be made in three installments, each such installment to be made as each phase of the work was completed.

Moreover, under the rules, regulations and directives of the appellee, a transfer could only be made from the appellee Gbarnga Field Office account on the signature of two authorized signatories of the appellee placed on the records of Ecobank, a requirement which the records reflect the appellant was aware of. The records also reveal that notwithstanding the above and the appellant's knowledge thereof, the appellant chose, contrary to and in violation of the terms of the Memorandum of Understanding, did, on June 11, 2009,authorized and had effected the transfer from the appellee's account, in a single installment, of the full amount of the proceeds which had been earmarked by the appellee for the renovation project to the Parent Teachers Association's Ecobank Gbarnga Branch account. The appellant insists that this action, on his part, was an inadvertence and that he immediately informed the appellee's finance office, via phone, of the mistake. Nothing in the records shows that the error was reversed by the appellant, or that any contacts were made with the Bong County Parent Teachers Association to rectify the mistake, or that any contacts were made with the bank appraising the bank of the error and seeking a reversal of the transaction. Instead, what the records reveal is testimony of the appellant that when he alerted the appellee of the mistake, he was requested to write an explanatory letter narrating the error, which he did thirty-two days later, on July 13, 2009.

Our further meticulous review of the records reveals that four (4) days following his letter of explanation to the appellee, the appellant wrote a letter to Ecobank Gbarnga Branch directing the transfer from the appellee account of the first installment of funds to the account of the Bong County Parent Teachers Association account for work on the remaining four schools referenced in the Memorandum of Understanding. The letter was signed solely by the appellant even though, as the appellant was fully aware, both under the rules of the appellee and as per instruction to the bank, two signatures were required for any transactions relative to the said account. It was only following the rejection by the bank of the lone signature that the second signature was secured from the carrier of the letter to the bank, who also being a signatory to the account, was directed by the appellant to write his name on the letter and affix his signature thereto. The appellant also instructed the carrier of the letter, Mr. Elliot Nowtuah, to cross out the word savings, which appeared on the face of the letter, and replace it with the word checking. The records indicate also that with the corrections, directed by the appellant, the bank honoured the requested and transferred the funds to the account of the Bong County Parent Teachers Association.

The records also reveal, as per testimony of the appellant, that on July 19, 2009, two days following the debacle with the bank, he left Gbarnga for Monrovia for the appellee's mid-year review; that upon appellant arrival in Monrovia, he was directed to return to Gbarnga, turn over his office to another person, and return to Monrovia to take up a new portfolio in Monrovia on August 3, 2002, a position which he had sat for and passed the appellee's recruitment requirement. One day after the directive to return to Gbarnga, however, the appellant was invited to meet with officials of the appellee relative to concerns which the appellee had with respect to how the matters regarding the Memorandum of Understanding were being handled. The appellant testified further that following the meeting and after providing written statements, as requested by the appellee, he was directed by the Acting Country Director of the appellee to resign his position and make preparation for assuming the new portfolio of Deputy Program Manager for Health on August 3, 2009. The appellant never assumed the new portfolio, however, since following his resignation on August 6, 2009 from the position held by him at the time, the appellee proceeded, on August 10, 2009, to advertise the position which the appellant should have occupied, and thereafter, on September 8, 2009, served him with a letter of termination bearing date September 7, 2009, over the signature of the appellee's Country Director. For the purpose of reviewing the grounds upon which the appellant was dismissed and determining whether the dismissal was justified, we quote the said letter of termination, as follows:

"Mr. Jerry Zangar
Field Manager Bong
Field Office
Save the Children UK, Bong County, Liberia

Dear Mr. Zangar

Termination of Employment Contract

Save the Children regret to inform you that after our internal investigations, we find that we have no alternative, but to terminate your contract of employment with effect from September am 2009 for serious negligence and breach of duty. The conduct of yours which constitutes a serious breach of duty and for which your employment contract is terminated, is that on July 17th, 2009, you, as the Field, Manager, Bong and as an authorized co- signatory to "Save the Children UK, Gbarnga Field Office" bank account with Ecobank, Bong County, wrote to Ecobank a letter to transfer funds (US$31,501) with only one signature instead of two signatures, as required for all such transactions.

In addition, on June 11, 2009, you transferred the full value of the contract sum in one installment to 4 PTAs instead of transferring the amounts in 3 installments contrary to the terms and conditions for payment stipulated in Agreement between PTAs and Save the Children.

This is serious negligence and serious breach of Safe the Children financial policy and procedures. You

failed to perform your duty within the laid down financial policy and procedures to be observed at all times.

Please refer to Clauses 12.1(iv) and 14.3(a) of your terms and conditions of employment which stipulate the conditions for summary termination of services as an employee of Save the Children UK. You will observe that the said conditions are in consonance with Section 1508(6c) of the Labour Practices Law of Liberia.

Upon receipt of this letter, you will please contact the Finance/Grants Manager for your compensation for the number of days worked In September, 2009 and any outstanding leave less any monies owed to Save the Children and any applicable taxes and other valid deductions. Prior to your final payment you will turn over to the Human Resources/Admin Manager any assets of Save the Children (including identification card) which may be in your possession.

Please acknowledge receipt of this letter by signing at the bottom of the enclosed copy.

Yours sincerely,

Susan Grant
Country Director"

It was predicated upon the foregoing that the appellant, on December 4, 2009, filed a letter of complaint with the Minister of Labour alleging that after thirteen {13) years of service with the appellee, the appellee had 11Wrongfully and instantly terminated the indefinite contract" he had with the appellee and further that the appellee had refused to give him his termination benefits. The Minister having referred the matter to a Hearing Officer, a hearing was duly conducted, at which evidence was adduced by the both parties and a ruling thereafter made by the Hearing Officer, adjudging that the appellee had illegally dismissed the appellant and that the appellee should reinstate the appellant and pay him back salary and all benefits to which he was entitled as if he had never been dismissed. The Hearing Officer also ruled that in the alternative, should the appellee choose not to reinstate the appellant to his previous position with all the benefits appertaining thereto, as directed, then the appellee should pay the appellant the amount of US$38,880.00, constituting twenty-four (24) months' salary calculated at the rate of the monthly salary earned by the appellant at the time of his dismissal, and being the maximum amount provided for under the Labour Law. We deem it appropriate, for the benefit of the analysis made in this Opinion, that we recap the basis upon which the Hearing adjudged that the appellee had wrongfully dismissed the appellant. Here is how the Hearing Officer, after summarizing the evidence produced by the parties in the case, rationalized his decision:

11Having carefully listened to the testimonies, coupled with the argument pro et con, as well as the law citations, the Investigation hereby observes the following as showeth, to wit

• That complainant for thirteen (13) unbroken years diligently served the

Defendant in various positions, one of which was the Field Manager for Operations; the position he held up to his dismissal on September 8, 2009, with a monthly take-home pay of US$1,620.00

• That complainant having discovered and/or realized his error have formally transferred from Ecobank, Gbarnga branch to the respective PTA accounts the funds in question in lump sum in one installment instead of three (3). Immediately, in consideration of the code of conduct of Save the Children, he reported the said error to Defendant. Bullet six of the code of conduct says: "...reporting any matter that breaks the standards ..;" So, complainant did exactly what the said code of conduct is driving at by reporting the incident to Defendant. It was a rational decision complainant made, when he reported his mistake/error to the Defendant/Management, having discovered and/or realized the error. As such the said inadvertent error cannot be termed as a serious breach of duty, as defendant claimed to be.

• That even though complainant, inadvertently, goes beyond his authorization limit to do a formal transfer of monies from Ecobank, Gbarnga branch in lump sum with one signature, the said transfer and/or error does not and will not directly or indirectly plunge defendant into a financial loss or losses. Besides, Mr. Zangar did not expend the funds for his personal gain.

•That it would be very naive and/or unlawful on the part of the Save the Children- UK Liberia to let go complainant's diligent services for thirteen (13) unbroken years into oblivion.

•That Defendant has not denied the fact that complainant's services, considering the period in question, were very unique and rewarding, in that thru Mr. Zangar's tireless efforts and/or laborious work, the Management of Save the Children was able to win a gallantry award from the daughter of the Queen of England at the time our Country was navigating the rough sea in 2003. What a prestigious prize!

• That the action perpetrated against the Complainant by. Defendant to terminate his services, in the absence of due process, purely demonstrates a gross malice against. Mr. Zangar. The dismissal is, therefore, considered wrongful.

RULING:

WHEREFORE, and in view of the foregoing circumstances, it is the candid OPINION of this Investigation to order the Defendant/Management of Save the Children UK-Liberia to re-instate Complainant Jerry D. Zangar with accrued benefits as though he was never dismissed; or in lieu thereof, pay him twenty four (24) months for wrongful dismissal, computing at US$1,620.00 x 24 = US$ 38,880.00. (See Title 19A, Section 9 of the labour Practices law of Liberia.) All other claims are dropped.

AND IT IS HEREBY SO ORDERED!"

The appellee, disagreeing with and considering that the Ruling of the Hearing Officer was erroneous, excepted to the said Ruling and appealed the same to the National Labour Court, filing before that court, as required by law, a petition for judicial review.

The petition for judicial review alleged substantially that the Hearing Officer was in error in holding the appellee liable to the appellant since the acts committed by the appellant, and acknowledged by the appellant as errors, constituted a serious or gross breach of duty as defined both by the Labor Laws of Liberia and the decided cases of the Honourable Supreme Court, and which is one of the grounds under the law for the dismissal of an employee. The appellant, in its resistance to the petition for judicial review, asked the court to deny the same as the acts he is said to have committed did not (a) constitute a willful, deliberate, criminal action against the policy of the appellee; (b) that appellant's transfer of the full value of the contract in one installment instead of the three installments specified in the Memorandum of Understanding, was an inadvertent error which he had reported to the appellee, and therefore did not constitute a serious breach of duty as warranted the termination of his employment with the appellee; (c) that the projects for which the funds were intended, and regarding which the appellant had made the inadvertent errors, were all carried out and completed without any problem or financial loss being suffered by the appellee, and hence could not constitute a serious breach of duty given the appellant's thirteen years of faithful and dedicated service to the appellee; and (d) that the ruling of the Hearing Officer was not bias or lacking in foundation in law, as alleged by the appellee.

The pleadings exchanged between the parties having rested and the court having entertained arguments by the parties, entered judgment on December 4, 2010, reversing the ruling of the Hearing Officer and holding instead that the acts of the appellant were a serious breach of duty as defined by law, that the appellee was justified under the law in dismissing the appellant, and that the Hearing Officer was therefore in error in determining otherwise. The following is the reasoning provided by the judge of the National Labour Court Judge for reversing the Hearing Officer's ruling and in reaching the opposite conclusion of not liable in favor of the appellee:

This court having heard arguments pro et con, has decided on two (2) issues for determination of this case as follows:

1. WHETHER OR NOT CO-RESPONDENT, JERRY D. ZANGAR, BEING A SENIOR DECISION MAKER AND A CO-SIGNATORY TO THE MOU THAT WAS ENTERED BETWEEN SAVE THE CHILDREN AND THE PTA, VIOLATED THE POLICY OF SAVE THE CHILDREN FOR WHICH HIS DISMISSAL SHOULD BE CONSIDERED LEGAL? YES.

2. WHETHER OR NOT THE CONDUCT OF JERRY D. ZANGAR CONSTITUTES GROSS BREACH OF DUTY SO AS TO WARRANT HIS DISMISSAL?

In addressing these issues, we shall take a keen look at the case file with the testimonies of Co-respondent Jerry D. Zangar, the corroborative testimonies of Management's to (2) witnesses, his own testimony and the supporting law. In addressing the first issue, the Court says yet according to Co-respondent Zangar's

own testimony, he admitted that he had served Management for thirteen (13) years in different positions and that his last position in which he served was that of a Field Manager for operations in song County, from 2006 to 2009, That during this period; save the children decided to enter into a Memorandum of understanding with Parents/Teachers Association and the Ministry of Education for the purpose of schools renovation and that there were eight (8) schools supported by Save the Children; that it was later agreed to open a bank account for the PTA and transfer from Save the Children Ecobank Gbarnga Field Account'.

He further testified that letters were written by him as Field Manager on June 11, 2009 for the first four (4) schools. He also testified that in the transfer, he inadvertently transferred in lump sum the full value of the contract sum in one installment to a PTA instead of transferring the amount in three (3) installments contrary to the terms of conditions and payments stipulated in all Agreements between the PTA and Save the Children. He admitted also that this lump sum payment was done for the first four (4) groups and that at the end of June, 2009, he discovered this error and reported same to his Bosses. The Court says from June 11, 2009, to the end of June, 2009, was indeed a long period for Jerry D. Zangar as a signatory to this account to have realized this error, especially so when he was one of the members of the MOU between Save the Children and the PTA.

"1 LCLR Section 25.8(1), Admission, reads: all admissions made by the party himself or his agent acting within the scope of his authority are admissible. Every agent for the conduct of a cause shall have authority to make admission in that cause. The admissions of .every other agent in any matter under his control as agent shall be admissible 25.8(1)".

Also, "In the case NATIONAL PORT AUTHORITY (NPA) versus J. DEWEY NIMELY and The BOARD OF GENERAL APPEALS, 33 LLR 530, reads:

"A violation or omission of a legal or moral duty is the neglect or failure to fulfill in a just and proper manner the duties of an office or a fiduciary employment."

Further, the case THE MANAGEMENT OF LIBERIAN AGRICULTURE COMPANY (MAC) AND THE BOARD OF GENERAL APPEALS versus ERNEST J. FORKPAH, reads:

"A failure of an employee to carry out legitimate instructions or orders of his employer when said instructions are within the power of the employer and are legal and reasonable, is disrespect on the part of the employee to the employer for which the employee may be dismissed."

The court says in as much as Co-respondent, Jerry D. Zangar, was instructed by the Management of Save the Children as well as the PTA of the manner of disbursement, he as Field Manager should have followed the instructions given in the MOU, but instead went contrary to Management's instructions. Co-respondent Jerry D. Zangar, as Field Manager, Bong county, and as an authorized co-signatory to Save

the children (UK), Gbarnga Field Office and

Bank Account was required to ensure that before any letter was written to Ecobank for the transfer of funds to (2) signatures were required, which instructions co-Respondent Jerry D. Zangar ignored by sending one signature to the bank.

In addressing the 2nd issue, the court says that Co-respondent Jerry D. Zanger went against the policy of pave the Children - Liberia when he wrote a letter to Ecobank to transfer funds in the amount of THI TY OW THOUSAND FIVE HUNDRED ONE (US$31,501.00) UNITED STATES DOLLARS with only one signature instead of two signatures as required by all such transactions; That on June 11, 2009, Co-respondent Jerry D. Zangar, also transferred the full value of the contract sum in one installment to four (4) PTAs Instead of transferring the amount in three (3) installments contrary to the terms and conditions for payment stipulated in all the Agreements. Therefore the conduct qf Jerry D. Zangar constitutes Gross Breach of Duty and a total disrespect of the instructions.

The Supreme Court of Liberia has held in the case The Management of Roberts International Airport {RIA}, Appellant, vs. Beysolow and The Board of General Appeals, Ministry of Labour, Appellees, 33LLR 637,Syls. 2 and 3, that:

2. "A breach is the breaking or violation of a law, right, duty, either by commission or omission."

3. "A breach of duty is any violation or omission of a legal or moral duty; it is the neglect or failure to fulfill the duties of an office or fiduciary employment in a just and proper manner."

Also, Black's Law Dictionary, 5th Edition, defined breach, as "Any violation or omission of a moral or legal duty."

Our Labour Law, Section 1508,Sub-Sections 5 and 6 read:

Notwithstanding, the provision of Section 1508 of this chapter, an employer may dismiss an employee engaged for an indefinite period without notice, subject to payment only of wages due, where It is shown that the employee has been guilty of a serious breach of duty." "The following acts and violations shall be deemed to be serious breaches of duty within the meaning of preceding section entitling the employer to terminate without notice or pay in lieu of notice contract of employment for an indefinite period."

The law provides among other fundamental duties of the employee, the obligation to yield obedience to the reasonable rules, orders, and instructions of the employer, and that the willful or intentional disobedience justified a recession of the contract of service and the peremptory dismissal of the employee, which disobedience consists of disregard of the expressed provision of the contract, general rule or instruction or particular command. The Supreme Court of Liberia has also held in the case The Management of Roberts International Airport (RlA), Appellant, versus Inez Beysolow and the Board of General Appeals, 35 LLR 637, Syls. 7 & 8, heard November 20, 1988 and decided December 29, 1999,

read that:

"The failure of an employee to carry out the legitimate instructions or orders of his employer when such instructions are within the powers bf the employer and are legal and reasonable grounds for dismissal."

"That failure of an employee to establish his innocence or guilt of breach of duty creates a strong presumption that the employee is guilty of serious breach of duty."

WHEREFORE, and in view of the foregoing circumstances, coupled with the law citations quoted herein, Respondent Jerry Danger is only entitled to payment for wages due, since it is shown that he is guilty of Serious Breach of Duty. See Labour Practices Law, section 1508, Sub-sections 5 & 6.

The Clerk of this court is hereby ordered to send a copy of this Ruining to the Hearing Officer, Immanuel H. Worjlor, to calculate the wages due respondent Jerry D. Ranger and have same forwarded to this Court within a week as of the date of receipt of this Ruling. Ruling denied with modification. Cost disallowed. AND IT IS HEREBY SO ORDERED."

It is from this judgment of the National labour Court that the appellant, believing that the judge was in error in deciding as she did, noted exceptions thereto and announced an appeal therefrom to this Honourable Court. Here is how the appellant, in its nine (9) count bill of exceptions filed with the power court, one of the conditions for the hearing and consideration of the appeal taken to this court, characterized the alleged errors of the lower court:

"Respondents in the above entitled cause of action present to Your Honour the following Bill of Exceptions for Your Honour's approval:

1. That it was a reversible error by Your Honour to ignore the fact that Save the Children policy statement states that:

a. I WILL PROTECT SAVE THE CHILDREN RESOURCES... by handling our financial and other resources carefully. Therefore:

I will ensure Save the Children resources are not misused and protect them from theft, fraud or other damages.

I will not release to others any private or confidential information relating to Save the Children (or for which we are responsible unless legally required to do so).

b. I WILL REPORT ANY INCIDENT OR CONCERN RELATING TO THE CODE OF CONDUCT...In order to make this Code of Conduct come alive within Save the Children we must not only apply it individually but be ready to bring to the attention of relevant management within Save the Children any potential incident abuse or concerns that we witness or are made aware of.

c. Our Code of Conduct is binding on all staff. If you break the Code and Standards it promotes and requires, we may take disciplinary action (including, potentially, dismissing you). In some cases the matter

may be so serious that it will lead to criminal prosecution or we may choose (and in some cases be obliged) to report you to any relevant professional or legal organizations or authorities.

And that it was Co-respondent Zangar, who upon discovering that an error had occurred, immediately informed the relevant authority of Save the Children who in this case was the Finance and grants Manager Mt. Alhassan Bah, who also requested him to reduce same into writing which he (Co-Respondent/Complainant Zangar) did, with the copy of the bank statement attached thereto.

2. That it was a reversible error by Your Honour to rely on cases cited by Petitioner, that are in no way analogous to the case at bar. The Case: National Port Authority Vs. Nimley vs. J. Deway Nimley and The Board of General Appeals, Ministry of Labour, 33LLR. P.530-539,has to do with an employee in the person of J. Deway Nimley who overstepped his authority and engaged himself in activities outside of his assigned duties with the conscientious intend to criminally defraud his employer and personally benefit from said action, thereby resulting into a substantial financial lose being sustained by his employer the National Port Authority. Your Honour also cited the case: The Management of Liberia Agricultural Company (LAC) and the Board of General Appeals, Ministry of Labour Vs. Ernest J. Forkpah, 33LLR. P.698-706; in this case, Forkpah was dismissed for refusing to carry out an instruction given to him thru the office of the Administrative Manager, which refusal was an outright gross disobedience.

While in the instant case at bar, co-respondent Jerry Zangar did not conscientiously act outside of his assigned duties, with a criminal intend to defraud his employer Save the Children UK-Liberia, nor did he outrightly refused to carry out a given instruction like the case of Mr. Ernest J. Forkpa, and thereby grossly disobeying his constituted authority(ies). Instead, co-respondent Zangar unlike Nimely and Forkpah, simply err in carrying out his assigned duties without any criminal intend to defraud his employer or benefit financially from said action. Hence, the citations relied on by Your Honour was misapplied thus making your final ruling erroneous and meriting review and reversal as not to do so would be depriving co-respondent/Complainant Zangar of his just and legal benefits, while at the same time unjust enriching Save the Children, who have immensely benefited from his services and expertise for thirteen unbroken years.

3. That it was a reversible error to ignore the fact that co-respondent Zangar did not realize any personal gain from the error made by him. Mr. Bah one of petitioner's witnesses informed the investigation that the Scheme of Delegation's authorization limits does not necessarily mean that the one who approves or authorizes a particular spending is the very one that spends it, and he does not have to be the one that spends it.

4. That it was a reversible error for Your Honour to state the fact that the communication addressed to

Ecobank requesting the transfer of funds by co-respondent Zangar and place in the hands of the Co-Signatory as bearer to be delivered to the said Ecobank while at the same time ignoring the fact that the communication acted upon by the Bank in effecting the transfer of funds bore the signatures of the two authorized signatories as the second signature was added by the authorized signatory who was also the bearer of the communication.

5. That further as to count four (4) above, co-respondent/complainant say that it was a reversible error for you Honour to consider that the fact that Co-respondent Zangar admitted to committing the errors, his action is a sufficient ground for dismissal, thereby ignoring the fact that it was co-respondent Zangar who discover and report the error in compliance with Save the Children Policy handbook. Your Honour also ignore the fact that the Liberian Labour Practices Law in Section 1508 (1- 2) requires that one can only be summarily terminated for gross breach

of duty and the acts that amounts to gross breach were so listed in the law. And from all intents and purposes, Co-respondent Zangar errors did not amount to gross breach owing to the length of time he serve petitioner/defendant Management and considering the fact that Save the Children did not suffer or sustain any lose as in the case of NPA and J. Deway Nimely.

6. That Your Honour also made a reversible error when you opine that the time frame between the commission of the error and Co- Respondent/Complainant Zangar's discovery and reporting of same was unduly long. When the fact remains that it was less than a month and that same was discovered by Co-respondent/ complainant Zangar owing to his efficiency and dedicated commitment in reconciling his accounts and Bank Statements regularly on a monthly basis. How than can same be used against him as being too long instead of he being commended for his efficiency and proficiency.

7. That Your Honour further made a reversible error when you fail to consider the fact that Co-respondent Zangar was not given the report of the internal investigation held by the petitioner/ defendant- management of Save the Children, which should have contained the findings and recommendations. Co-respondent/ complainant Zangar still ponders over what were the findings and recommendations, in keeping with the discoveries made during the investigation by respondent/defendant management.

8. That your Honour made a reversible error when you fail to acknowledge the fact that the management of Save the Children advertised Co-respondent Zangar's post in the absence of the findings from the investigation conducted. Such action confirm the fact that all that happened prior to the suspension and subsequent dismissal of Co- respondent Zangar, was planned and calculated to deprive him of what is due him under the law.

9. That Your Honour made a reversible error when in your ruling you fail to observe the argument raise

by the Respondents in their Legal Memorandum and the issues raised therein. The management of Save the Children received an award due to the hard work and dedicated service exhibited by co-respondent Zangar during the crisis period of 2003. Co-respondent Zangar conducted the affairs of Save the Children as its acting Country Director in the absence of all its international staffers.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondents tendered this document as its Bill of Exceptions so that the patently erroneous and unmeritorious final decision or judgment of Your Honour here in mentioned will be reviewed by the Appellate Court, the Honorable the Supreme Court of Liberia."

In its brief, the appellant has asked this Court to consider the following four issues in resolving this matter:

1. Whether or not it was reversible error for the Judge of the National Labour Court to have reversed and or modified the ruling of co-appellant Hearing Officer.

2. Whether or not co-appellant Jerry D. Zangar transferred monies/funds from appellees Field Operations Account to the PTAs operational account through a letter of request bearing only one signature in violation of the signature mandate of Ecobank which requires two (2) signatures?

3. Whether or not the conduct of co-appellant Jerry D. Zangar constituted serious/gross breach of duty which warrants the maximum penalty of dismissal of co-appellant Jerry D. Zangar by appellee?

4. Whether or not the alleged conduct of co-appellant, Jerry D. Zangar brought about a loss or injury in any way to appellee thereby justifying his dismissal by appellee?

The appellee, on the other hand, believes that the case presents a single issue which it characterizes as follows:

(i) Whether or not the National Labour Court Judge's determination that appellant breached his duty to appellee is supported by the evidence adduced during the investigation?

Because all of the issues advanced by the appellant fall under the umbrella of the larger issue as stated by the appellee, this Court believes that the single issue for its consideration. and for the resolution of this case is as stated by the appellee, that is, whether the National Labour Court's reversal of the Hearing Officer's Ruling and her determination that the appellant acts constituted a serious breach of duty and therefore that his dismissal was justified were erroneous.

In answer to the single issue stated above, this Court holds that the National Labour Court Judge was not in error, as a matter of law, in reversing the Ruling of the Hearing Officer and in holding, to the contrary, that the appellant's acts were a serious breach of the duty which the appellant held to his employer, the appellee, and that the employer, the appellee, was therefore justified in dismissing him, the appellant. We take cognizance of the manifold decisions of the Supreme Court that a circuit court judge,

or as in the instant case, the Judge of the National Labour Court, cannot and should not ordinarily disturb the findings of a fact finding administrative body such as the Ministry of Labour; and that even the Supreme Court will not ordinarily disturb such findings, considered to be conclusive. See The Liberia Institute of Certified Public Accountants of Liberia v. The Ministry of Finance, 38 LLR 657,672 (1998), wherein the Supreme Court said: "Further, it may be stated that the courts cannot or will not annul, reverse, set aside or disturb the action of an administrative agency which is within its jurisdiction or not beyond its power or authority, and which is not contrary to law, illegal or fraudulent, or which has a reasonable basis, is not arbitrary or capricious, or an abuse of discretion. Thus, determinations of fact by an administrative agency, or determinations made in the proper exercise of discretionary or administrative, legislature, executive or judicial functions or of primary jurisdiction vested by the Legislature in administrative agencies are conclusive upon the courts." See also Vijayaraman and Williams v. The Management of Xoanon Liberia, 42 LLR 41,53 (2004). We continue to uphold that principle and the many Opinions of the Honourable Supreme Court subscribing thereto.

However, this Court is similarly aware, and we also take cognizance, of the several other Opinions of this Court, wherein the Supreme Court has held that while normally and typically the findings of fact of an administrative agency is conclusive and therefore should not be disturbed, there are instances where it is proper and legal for a higher judicial forum to disturb and even reverse the conclusions reached by the administrative agency, especially where the conclusions run contrary to or do not conform to the findings or the evidence and/or where, as a matter of law, the conclusions reached by the fact finding administrative body is in conflict with or in opposite to the applicable law. In the case Catholic Relief Services (CRS) v. Natt, Brown et al., 42 LLR 400 (2004}, this is what the Supreme Court, speaking through Mr. Chief Justice Cooper, said in this regard: uA hearing officer conclusion of facts is to be accepted only so far as, in the opinion of the reviewing court, it is supported by the reasonable inference from all the other principal and subsidiary facts found." ld., at 413 (2004). Also, in the case The Management of the Liberian Opportunities Industrialization Center, Inc. (LOIC) v. Williams and Zinnah, 42 LLR 451 (2004) the Supreme Court reiterated its stance on the issue in the following words: “We are of the opinion that in this case, the National Labour Court should have reviewed the findings of the hearing officer and his conclusion of law in order to determine whether the substantial rights of the appellant had been prejudiced because the administrative findings, inferences, conclusions and decisions were improper, unreasonable or unfair. It appears clear to us that if upon such review, the administrative findings, inferences, conclusions or decisions were found to be in violation of law or clearly erroneous in view of the substantial evidence on the whole re-cord, or was arbitrary or capricious or characterized by abuse of discretion, or clearly an unwarranted exercise of discretion, then the court is

not duty bound to enforce such findings but to instead reverse or modify same. It is for these reasons that the Labour Court is expected to forgo or relax the strict application of general rules of procedures and evidence in labour cases." Id., at 461.

The instant case presents one such situation in which we believe there was ample and sufficient justification, legal and factual, for the intervention and reversal by the National labour Court Judge of the Hearing Officer's conclusions, as the conclusions were not in harmony with clear provisions of the law and the several decisions of the Supreme Court. The facts presented by the parties are basically not in dispute. The appellant alleged, and the appellee conceded that the appellant had served the appellee for thirteen (13) years; the appellee alleged, as the first basis for the dismissal of the appellant, and the appellant conceded, that under the Memorandum of Understanding concluded between the appellee and the Bong County Parents Teachers Association, payments for works being undertaken to renovate the four schools earmarked for the first phase of the project was to be made in three separate installments, but that the appellant had, in violation of the memorandum of Understanding, instead authorized and effected the full payment in a single installment. The records also reveal that only three days after the appellant had submitted a written explanation of the incident to the appellee, he again committed a further act against the policy and procedures of the appellee, this time involving the submission of a letter to the Ecobank Gbarnga Branch for the transfer of funds under his lone signature and above the authorized limit for a lone signature, when the policy and regulations of the appellee clearly defined and required two signatures for such transfer. The records reveal additionally that at the time of the transfer there were four signatories to the account and that it was only after the rejection by Ecobank of the letter authorizing the transfer that a second signature was secured in the person of the carrier of the transfer instrument.

The appellant admitted to all of the mishaps narrated above, but characterized them as an inadvertent errors which did not warrant his dismissal. He advanced the following contention for this conclusion: (a) that as to the first “error" [the payment or transfer of one lump sum to the Bong County Parents Teachers Association], he argued that he reported the matter to the management of the appellee in conformity with the code of conduct of the appellee, evidencing that he had no sinister motive in ordering as he did the transfer of full contract payment amount in one installment rather than three installments, as stipulated in the Memorandum of Understanding; (b) that as to the same first error, the appellant had put into place safeguard measures to ensure that the appellee would sustain no losses, and hence no loss was sustained by the appellee; (c) that as to the second error, the bearer of the transfer letter [Mr. Elliot Nowtuah] was also a signatory to the account and hence when the error was brought to the attention of the appellant, he directed the bearer of the transfer communication to write his name thereon and to

append his signature, thereby making it possible for Ecobank to honor the instructions in the letter; (d) and that also as to the funds transfer communication, a further error appeared thereon, in that the appellant had indicated that the transfer should be made from the appellee's savings account when he had intended that the transfer should be made from the appellee's checking account; and that as with the error with the one signature, he also directed the bearer of the transfer letter to alter the letter to reflect a checking rather than a savings account.

The appellant maintained that with regard to the errors indicated above, none of them reached the threshold of a serious breach of duty to warrant the maximum penalty of dismissal, particularly as the errors were corrected; the appellee had suffered no loss(es) as a result thereof; and the appellant had adhered to the code of conduct of the appellee by reporting the errors to the appellee.

We note further that the appellant, although asserting that the appellee did not furnished him with a copy of the results of the investigation conducted by it in regard to the several acts done by the appellant, and admitted by him, acknowledged that the appellee did conduct an investigation into the matter before proceeding to dismiss him. This act by the appellee in investigating the incidents attributed to the appellant before proceedings to dismiss the appellant was in conformity with the decision of the Supreme Court, handed down in the case The United Liberia Rubber Corporation v. McCauley, 29 LLR 342 (1981). In that case the Supreme Court, speaking through Mr. Justice Bortue on the steps which an employer accusing an employee of gross breach of duty, as provided for under section 1508 of the Labour Practices Law, should follow, stated: "It is therefore our interpretation of the above quoted law, that what the Legislature intended is that before an employer dismisses his employee for having allegedly committed a gross breach of duty, the employer must conduct a proper Investigation at its place of business, to establish the innocence or guilt of the employee or else, the dismissal of the employee involved is legally unjustified. Hence, the dismissal of the appellee by co- appellant, United Liberia Rubber Corporation, was indeed wrongful and illegal." Id., at 347. Also in the case Liberia Electricity Corporations (LEC) v. Mongrue and The Board of General Appeals, 32 LLR 487 (1984), the Supreme Court, speaking though Mr. Justice Koroma, said of section 1508 that: "The Supreme Court has construed the legislative intent of section 1508, subsection 5 of the Labor Law, to mean that before an employee can be dismissed by his employer for having allegedly committed a gross breach of duty, there must be an investigation properly conducted at the place of business of the employer to establish the accused employee's guilt or innocence or else the dismissal of the employee involved is unjustified. United Liberia Rubber Corporation and The Chairman of the Board of General Appeals v. McCauley, 29 LLR 342 (1981), decided July 11, 1981. Therefore, the dismissal of Charles S. Mongrue by the Management of LEC, not being in compliance with nor supported by law, is indeed wrongful and legally null and void.

Count one of the bill of exceptions is therefore overruled." ld., at 495. See also Wilson v. Firestone Plantations Company, 34 LLR 134,142-144 (1986).

It is clear therefore, by the appellant's own admission, that the appellee did comply with this requirement of the law, espoused by this Court in the cited cases, In that the appellee conducted the appropriate investigation before proceeding to dismiss the appellant.

The matter in dispute for resolution does not therefore center on disparity in the facts of the case as presented by the parties or on any accusation that the' procedure adopted by the appellee in dismissing the appellant was inconsistent with the labor law, or that the procedure adopted by the lower court was in violation of the law. What is at issue is whether under the facts, culled from the records, and which the parties, the Hearing Officer and the National Labour Court were in agreement with, constituted a sufficient basis or adequate legal grounds under the Labour Practices Law to warrant the dismissal of the appellant by the appellee. We believe that they did, and that therefore the Hearing Officer was in error in concluding or in holding under the facts presented that the dismissal of the appellant by the appellee was wrongful under the Labour Practices Law, and that the appellee should therefore be held liable for such dismissal and accordingly should compensate the appellant as determined by the Hearing Officer. In such a situation, the National labour Court could and was jus1iifiedreviewing and reverse the conclusions of the Hearing Officer, as we believe she correctly did. National Port Authority v. Doupu and the Board of General Appeals, 34 LLR 665 (1988).

The Labor Practices Law states, at section 1508, and at sub-sections (5) and (6), that an employee may be dismissed by the employer where the employee has committed a serious breach of duty in regard to his employment contract. Here is how the law structures the offense and the penalty associated therewith:

"5. Notwithstanding the provision of Section 1508 of this Chapter, an employer may dismiss an employee engaged for an indefinite period without notice, subject to payment only of wages due, where it is shown that the employee has been guilty of a serious breach of duty.

6. The following acts and violations shall be deemed to be serious breaches of duty within the meaning of the preceding Section entitling the employer to terminate without notice or pay in lieu of notice contracts of employment for an indefinite period:

(a) any of the acts or violations specifically set out in Sub-section of this section;

(b) lack of skill or manifest inefficiency of the employee which makes impossible the fulfillment of his duties under the contract;

(c) if the employee commits any other serious offence against his obligations under the contract."

In defining what constitute serious breaches of duty, let us explore and analyze the full coverage of the

provision, including how the Supreme Court has viewed the definition of the term in its interpretation of the Act. Firstly, the section is divided into two separate categories of dismissals: (1) Dismissals where the employee holds a contract of definite duration with the employer; and (2) dismissals where the employee holds a contract of indefinite duration with the employer. The statute outlines, in the first instance, the conditions and the grounds which constitute the basis for the dismissal of an employee who is employed under a contract for a definite period by the employer (sub- section 1 and 2). Secondly, it outlines the conditions and the grounds which constitute the basis for the dismissal of an employee who holds a contract with the employer for an indefinite period of time.

We have pointed the distinctions referenced above so that an appreciation is shown for them, but also because while it is the latter part of the statute (sub-sections 5 and 6) that we are concerned with in the instant case, we must also make the point and take cognizant of the fact that the latter part of the statute interfaces with the former part of the statute so that we are not circumscribed to the specifics of the latter part and ignore its reference to the former part. Sub-section 6, which forms part of the latter part of section 1508,refers to the grounds which can be used for the dismissal of an employee who hold a contract for an indefinite period of time as 11Serious breaches of duty" while sub-sections 1and 2, which form part of the former part of section 1508, refer to the grounds which can be used for the dismissal of an employee who holds a contract for an indefinite period of time as "gross breach of duty". While no explanation is given and the courts have not been able to dissect reasons as to why the word 11gross" is used in the one instance (dismissal under contract for a definite period of time) and the word 11serious" is used in the other instance (dismissal under contracts for an indefinite period of time), we note that sub-section (6)(a) states that any of the acts or violations specifically set out in the sub-sections of section 1508 shall constitute a serious breach of duty, which for this Court means that in addition to the grounds stated in sub- section 6, sub-section 2 of the section is also applicable to justify the dismissal of an employee who holds a contract with the employer for an indefinite period of time. Such being the case, here is what sub-section 2 states as the further conditions and grounds for the dismissal of an employee who holds an indefinite contract with an employer:

"2. The following acts and violations shall be deemed to be gross breaches of duty (without limiting the generality of the term) within the meaning of Section 1 of this Chapter and shall dispense the employer from payment of compensation for dismissal under the provisions of that Section.

(a) any unprovoked assault by an employee upon the employer or his agents in the course of or arising out of employment;

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(c) disclosure by an employee of the working secrets of the employer's undertaking;

(d) absence of an employee for more than ten consecutive days (or more than 20 days over a period of six months) without good cause, in which case the employee shall be deemed to have terminated his contract. Save in the case of vis major, an employee shall be required to notify the employer or his agent of the reason for his absence."

From the above quoted statutory provisions, it is clear that the right and the authority associated with the right, under the conditions set by the statute, is vested in the appellee, and for that matter all employers. Hence, the question for resolution is whether the acts committed by the appellant reached the threshold contemplated by the law regarding a serious breach of duty as entitled the appellee to exercise the right granted under the law to dismiss the appellant. In other words, did the acts committed by the appellant constitute a serious breach of the duty which the appellant owed to the appellee, as envisioned by the law? And when the Supreme Court has stated that an employer has committed a wrongful or illegal dismissal of an employee, it has consistently affirmed that the section 1508(c) grant to the employer means that "an employer may dismiss an employee engaged for an indefinite period without notice, subject to payment of only wages due, where it is shown that the employee has been guilty of a serious breach of duty". Wilson v. Firestone Plantations Company and the Board of General Appeals, 34 LLR 134 (1986).

In the instant case, it is clear to us that the appellant committed a serious breach of duty, as defined both by sub-section 2 and sub-section 6 of section 1508 of the labour Practices Law. The appellant admitted to that he ordered and had paid in one installment payment to the accounts of the Parents-Teachers Associations when he should have authorized three separate installment payments, each apparently to be made in accordance with the progress of work being done on the selected schools in Bong County for renovation. This act meant that the contractors or the Association could have utilized the entire amount with only the minimum amount of work being done, as has been the case with many contracts brought to the attention in matters brought before this Court for resolution. In many of those cases, the employer had been made to suffer tremendous losses as a result of the employee's conduct. The fact that no losses were suffered in the instant case cannot provide an excuse for the conduct which under the law is a serious breach of the duty which the employee owed to the employer.

We therefore do not accept the appellant's contention that because the appellee suffered no losses, the appellee was without any legal basis to effect his dismissal even in the face of the clearly obvious negligent conduct displayed by him, not on one occasion, but on two occasion, the latter only several days after the appellant had explained the first negligent conduct which had the propensity to expose

and did expose the appellee to injury or losses even if actual injury or loss did not occur. We also do not accept, indeed we reject, the contention that an employer is obligated to accept the negligence conduct committed in clear violation of the policy, rules and regulations of the employer, of which the employee is aware, and which opens avenues for possible losses by the employer, merely because the employee has served the employer for a period of thirteen years.

We must state unequivocally that while the longevity of service is a factor to be appreciated by every employer, such longevity of service does not provide the employee with a license to engage in negligent or reckless conduct that places the employer at risk and exposes it to losses, even if losses do not occur in a pecuniary sense; nor is the employer required to suffer actual damages or losses before the employer can take action against the repeated negligent conduct of the employee which places the employer in the path of danger, damage or losses. We have found nothing in our labor laws that impose such duty, obligation or requirement on the employer and we are not prepared to take on the function of the Legislature by legislating such into our law, as we have no authority under the law, constitutional and statutory, to indulge in such luxury no matter how the Court may feel about the issue presented. Weasua Air Transport Company v. The Beneficiaries of the Intestate Estate of the late Emmett J. Scott, 29 LLR 65 (1981); Firestone Plantations Company v. Paye and Barbar and Sons, 41 LLR 12 2002); Vijayaraman and Williams v. The Management of Xoanon Liberia, 42 LLR 42 (2004).

But moreover, there was certainly reasons for disturbing the employer that only three days after the appellant had provided explanation to his employer, the appellee, relative to his conduct in authorizing and having paid the full value of the contract rather than the three installments provided for in the Memorandum of Understanding concluded between the appellee and the Parents-Teachers Association of Bong County that he again, without regard for the policy and regulation of his employer and the terms of the memorandum of understanding, proceeded to authorize the transfer of an enormous amount of money on his lone signature when he knew that no such transfer could or should be made with only a lone signature and that at least two signatories were required for such transaction. Not only was this act by the appellant, a violation of the rules and policy of the appellee, of which the appellant was aware, a showing or absolute disregard for the legal and legitimate instructions of the employer, but as with the first disobedient act which the appellant characterized as "inadvertence", it had the risk of exposing the appellee to losses and/or embarrassments.

This Court has held, and we fully subscribe to that holding, that that the failure of an employee to carry out the legitimate instructions or orders of his employer when such instructions are within the powers of the employer, are legal and reasonable grounds for dismissal. And the failure of an employee to establish his innocence or guilt of duty creates a great presumption that the employee is guilty of serious breach of duty. Roberts International Airfield (RIA) v. Beysolow et al., 35 LLR 637, Syl. 6, 7, & 8, Text at P. 644. The law demands, as a fundamental duty of an employee the obligation to yield obedience to the reasonable rules, orders and instructions of the employer, and any willful, intentional or persistent

disobedience constitutes a serious and gross breach of duty contemplated by the labor Practices law and justifies, as per the said law, rescission of the contract of service and the peremptory dismissal of the employee. The disobedience may consist of disregard of expressed provision of the contract, general rules or instructions or particular command. Liberia Agriculture Company v. Forkpa, 31LLR 698, Syl. 1,Text at P. 705; Liberia Tractor and Equipment Company (LIBTRACO) v. Sonpon, 35 LLR 329, Syl. 4 & 5, Text at P.337; and 53 Am Jur 2d, Master and Servant, § 54. It does not matter whether the employee obtained pecuniary benefits from the disobedience or failure to heed the instructions of his employer; nor is there any requirement under the law that the employee must have benefitted from the failure or refusal to obey the instructions of the employer before he or she can be dismissed by the employer.

Yet the appellant, by the argument of his counsel, seeks of have this Court give a ruling that the employer must await the occurrence of further events which should result into injury or actual losses or that the employee must have benefitted from the wrong before the employer can exercise the right to take action against the employee or effect the dismissal of the employee. We think not and we are not prepared to adopt such a course which would clearly run counter to the Labor Practices Law. This Court is not clothed with the authority, constitutional, statutory or otherwise to depart from the clear wording, meaning and intent of any Act of the Legislature except where it infringes on the Constitution. We hold therefore that under the circumstances the appellee had the legal right and the authority to dismiss the appellant for his continued showing of disobedience of the rules, regulations and instructions of the appellee.

In the instant case, Appellant admits that he was instructed and required to transfer an amount in question in three installments to the Parents Teachers' Accounts for the rehabilitation of schools in Bong County, to submit two signatories to said accounts, and not to transfer funds above a pre- determined limit. Contrary to appellee's clear and unambiguous instructions as acknowledged and admitted by appellant himself, he transferred said funds via one lump-sum payment, submitted his lone name as the sole signatory to said accounts, and authorized the payment of an amount of US$31,501.00, which not only was against the employer's instructions but which also was far above the amount the appellant was authorized to transfer. This admission by the appellant of his failure and neglect to comply and follow the instructions, orders and command of the appellee was a serious breach of duty which warranted the appellant's dismissal.

We conclude therefore that based upon the facts narrated above and the laws controlling, the National Labour Court Judge committed no error when she firstly, reviewed and reversed the ruling of the Hearing Officer, and secondly, when she determined that the appellant did breach the duty he owed to the appellee, and therefore that he was justifiably dismissed by the appellee. Accordingly, we hereby affirm the judgment of the National Labour Court.

The Clerk of Court is hereby to send a mandate to the National Labour Court ordering the judge there to resume jurisdiction over this cause and to give effect to this Opinion. Costs are adjudged against the

appellant. AND IT IS HEREBY SO ORDERED.

Counsellor Peter D. Howard of Legal Consultants, Inc. appeared for the appellants. Counsellors Amara Sheriff and Golda Bonah-EIIiott of Sherman and Sherman, Inc. appeared for the appellee.