YaTex L. Yardamah of the city of Monrovia, Liberia, APPELLANT Versus **Her Honor Comfort N. Natt**, National Labor Judge, **Emmanuel W. Worjloh**, Senior Hearing Officer, Ministry of Labour and, the Management of the National Port Authority, (NPA) by and thru its Management of the City of Monrovia, Liberia, APPELLEE

LRSC 33

APPEAL

HEARD: October 23, 2014 Decided: August 13, 2015

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT.

On August 20, 2009, the appellant, Tex L. Yardamah, tendered a letter of complaint to the Ministry of Labor against the Management of the National Port Authority (NPA), the appellee herein. The primary allegation of the appellant was that on April 19, 2006, he was promoted from the position of Patrolman to Training Officer in the Liberia Seaport Police (LSP) Department of the NPA without commensurate change in his classification and salary; that by virtue of this new position he had been called upon by the appellee to train certain personnel of the LSP; that upon the completion of the training, the appellee mandated him to take up assignment on the third shift but that he informed the appellee that as said shift was only for those personnel of the LSP at the rank of patrolman and taking up such assignment would be tantamount to a demotion from training officer back to the position of patrolman. The appellant also complained that on July 30, 2009, he was suspended for one month without pay and subsequently dismissed due to his refusal to take up assignment on the third shift, thus prompting him to file the complaint before the Ministry of Labour. The appellant further complained that from April 19, 2006, the date of his promotion, up to and including July 30, 2009, the date of his suspension, as well as to date of the filing of his complaint, the appellee has refused to increase his salary or accord him any remuneration.

Moreover, the appellant alluded to a prior incident during the time of his employment, wherein he had sustained injuries. He made reference to a scuffle on Monday, July 9, 2007, that erupted between officers of the Liberia National Police (LNP) and the Liberia Seaport Police (LSP). The appellant claimed that he sustained an injury to his head during the scuffle and that he reported same to the appellee but that the latter never forwarded a report to the National Social Security and Welfare Corporation (NASSCORP) in order for him to receive compensation for the injury.

The appellant's complaint was assigned to Mr. Emmanuel Worjloh, a Senior Hearing Officer at the Ministry of Labour. Several notices of assignments for investigation into the complaint were issued between the period August 27, 2009 and September 9, 2009. The appellee failed to appear, either in person or by a lawyer. The records show only one (1) letter dated September 1, 2009 addressed to the hearing officer from the appellee's lawyer requesting to be excused from the September 2, 2009 hearing on grounds that he was ill. No medical certificate was attached to the letter and the records do not show that the said request was ever granted by the hearing officer. In the case Beyan et al., v. King Peter's Orphanage, Supreme Court Opinion, March Term, A.D. 2013, this Court held that a court has no duty to postpone a scheduled hearing of a case on medical grounds without evidence of a medical certificate to clearly demonstrate that the party cannot attend court based on medical advice.

On September 15, 2009, fourteen (14) days after the letter of excuse, the case was again called for hearing but the appellee and its counsel were absent. This prompted the appellant to move for default judgment on grounds that the appellee had abandoned its defense. It is the law in vogue that if a defendant in a labor case failed to appear, plead or proceed to trial or if a hearing officer orders a default for any other failure to proceed, the complainant may seek a default judgment against the defendant." See INA Decree No. 21 § S.Vijayaraman et al., v Xoanon Liberia Ltd., 42 LLR 47,56 (2004),·The Intestate Estate of the late Alihaji Massaquoi v. A.ME Church, Supreme Court Opinion, October Term 2014.The hearing officer granted the appellant's submission and afforded him the opportunity to perfect his imperfect judgment. The appellant alone took the stand in his behalf and recounted the allegations made in his August 20, 2009 letter of complaint. We quote hereunder, a pertinent portion of the appellant's testimony, as follow:

"I was employed by the management of NPA on October 13, 1997, as a patrolman and on April 19, 2006, I was elevated to a managerial position as training officer, as can be seen from the NPA change in status notice. But since my elevation to this position, the NPA management has failed and refused to change my patrolman salary of USD 264.00 (Two Hundred Sixty Four United States Dollars) as can be seen from one of my pay slips. This act of management is contrary to the NPA Employee's Handbook which provides for a change of salary when you are promoted to a higher rank. I therefore want this Ministry to order my employer to keep up with the terms and conditions of the Employee's Handbook and raise my monthly salary of USD 264.00 (Two Hundred Sixty Four United States Dollars) to that of a managerial salary and pay me the salary from the time I was promoted up to date. My second point or claim I have against my employer is my illegal suspension which I underwent starting from July 30, 2009, for not taking an assignment on the third shift as a patrolman, when in fact I was not paid my August 2009 monthly salary. This illegal suspension can be seen from their letter addressed to me. I am therefore claiming my August 2009 pay."

The witness identified and testified to the change in status notice, the NPA Employee's Hand-book, the letter of suspension for the month of August 2009, and his July 2009 pay slip reflecting a salary of USD 264.00 (Two Hundred Sixty Four United States Dollars) as a patrolman. The witness concluded his testimony by requesting for retroactive salary adjustment commensurate with his promotion as a training officer.

On November 23, 2009, the hearing officer rendered his ruling on the default judgment in which he held the appellee liable to the appellant in the amount of US $32,760.00 (Thirty-two Thousand Seven Hundred Sixty United States Dollars), representing what the hearing officer concluded as 39 months retroactive managerial salary at the rate of US $840.00 per month, covering the period April 2006, the date of his promotion to July 2009, when he was suspended and subsequently dismissed. We note that the appellant's evidence both oral and documentary failed to establish that a training officer earned US $840.00 per month or that said position was a managerial one. The law provides that a default judgment must be supported by clear and convincing evidence or same will be set aside. Interim National Assembly Decree# 21 section 8; Knuckles v. the Liberian Trading & Development Bank 40 LLR 511, 525 (2001); In re Petition of Massaquoi & Gibson 40 LLR 698, 704 (2001); The Management of the United States Trading Company v. Richards and Brown, 41 LLR 205, 211 (2002); LTC v. Former Managers of LTC Supreme Court Opinion, October Term 2011. This Court is therefore bewildered as to how the hearing officer derived such computation absent evidence to substantiate same.

On December 15, 2009, the appellee filed a motion to rescind the said ruling on grounds that it was not served with any notice of assignment. In response to said motion, the appellant, through his counsel, only cautioned the hearing officer to investigate the appellee's assertion by thoroughly scrutinizing the records and thereafter render his ruling. On February 2, 2010, the hearing officer granted the appellee's motion and rescinded his ruling based on the appellee's letter of September 1, 2009, requesting to be excused from a September 2, 2009 schedule hearing due to illness and not on the ground specified in the appellee's motion. We find the action of the hearing officer strange and peculiar in that a motion to rescind being intended to have the court take cognizance of certain facts and laws which it may have been inadvertently overlooked while making its ruling and which if considered, the court would have ruled otherwise. But to delve into the records and reconsider a letter of excuse on account of illness written five (5) months earlier and which was never substantiated by a medical certificate as stated supra is beyond this Court's comprehension, for the record is replete with numerous absences by the appellee from scheduled hearings; and if the appellee was dissatisfied with the hearing officer's ruling it was at liberty to file for judicial review before the National Labor Court.

Subsequently, on March 24, 2010, the investigation resumed, this time with the participation of the appellee. The appellant took the stand for the second time and recounted his earlier testimony, quoted herein above. On April 14, 2010, the appellant rested with direct examination. There is a gap in the records as there is no showing of any further hearing until on August 16, 2010, when the appellee's counsel commenced cross examination of the appellant, but before the counsel could rest with said cross examination, the hearing officer, for reasons not indicated in the records, suspended the investigation on that day, pending the issuance of a regular notice of assignment. On August 19, 2010, a regular notice of assignment was duly issued, served and returned served on the parties for

continuation of the investigation for August 30, 2010, but the appellee and its legal counsel failed to appear without any excuse. The records show that the appellant requested for another notice of assignment which was served and returned served for the parties to appear on September 6, 2010, but again the appellee and its legal counsel failed to appear and without any excuse. On September 9, 2010, another notice of assignment was issued, served and returned served for hearing on September 23, 2010. The appellee's counsel appeared on said date but requested for one week continuance on grounds that the management of the NPA had retained a new in-house-counsel who needed time to review the case file. This request was granted and the hearing was deferred for continuation on October 4, 2010.

When the case was called on October 4, 2010, the appellee and its counsel were again absent without any excuse, prompting the appellant to once again move for a default judgment. The appellant's submission was granted and he again took the witness stand and recounted his previous testimony. The appellant also testified to a medical report from Gerlib Clinic evidencing his injury sustained during the scuffle between the LNP and the LSP; the NPA's policy on employment injury and a letter addressed to him from the National Social Security and Welfare Corporation (NASSCORP). NASSCORP's letter was in response to a letter written by the appellant claiming benefit for the injury he allegedly sustained during the scuffle between officers of the NPA and the LNP and to which claim the NASSCORP informed the appellant that its policy mandated that the employer, the Management of the NPA, and not the employee, file for such claim.

The appellant having rested with the production of evidence, the hearing officer rendered a second default judgment on December 2, 2010, reflective of the same award as the first default judgment of November 23, 2009, to the effect that the appellant was entitled to a monthly managerial salary of US $840.00 (Eight Hundred Forty United States Dollars) and that said amount be paid retroactively for the period of 39 (Thirty Nine) months making a total amount of US $33,600.00 (Thirty Three Thousand Six Hundred United States Dollars). However, this new award was inclusive of the appellant's August 2009 salary and the cost for the alleged injury suffered by the appellant during the incident between the LSP and the LNP. Again, this Court is puzzled as to how this amount was computed to include the cost of the appellant's injury and the August salary claimed by appellant as same were simply assertions made by the appellant during his statement in chief. We herein quote the pertinent portion of the ruling of the hearing officer for the purpose of this opinion, as follows:

"Having carefully listened to the testimony of the complainant, coupled with the evidence adduced, as well as the relevant legal authorities, this investigation hereby considers the following as showeth, to wit:

That it is unquestionably clear, as far as [exhibit] "C/1", dated March 29, 2006, is concerned, the complainant's elevation to [the position] of Training Officer took immediate effect as of 19 April 2006. Yet complainant received a patrolman salary of US$264.00 monthly, as is evidenced by [exhibit] "C/3" in bulk.

That further, in consideration of [exhibit] "C/2" in bulk, Mr. Yardamah was a Training Officer; and said position, in one's mind, is or was a managerial one and as such same should and/or must be commensurate with salary of US$840.00

That the action on the part of defendant to deny complainant the right to enjoy and/or earn the just salary of US$840.00 commensurate with the position in question, purely demonstrates a gross malice against Mr. Yardamah. It is unfair. An old adage puts it: "Equal pay for equal value of work."

That the idleness and/or refusal on the part of the defendant/management to report complainant's job related injury to NASSCORP, jeopardized complainant's health security by NPA.

RULING

Wherefore and in view of the foregoing facts and circumstances, it is our candid opinion to order the defendant/management, NPA to pay complainant, Tex L. Yardamah retroactive pay covering the period: April 2006-July 2009 (39 months) at US$840.00 summing up to US$32,760.00 (Thirty Two Thousand Seven Hundred Sixty United States Dollars). Additionally, the defendant is further ordered to refund and/or underwrite the costs of medical treatment complainant underwent since defendant

failed to report the accident in question to NASSCORP for payment. Additionally, the defendant is further ordered to pay to complainant US$840.00 (Eight Hundred Forty United States Dollars), representing August 2008 salary.

Summary

1. Retroactive pay: 39 months ……32,760.00

2. August 2009 salary………… 840.00

TOTAL…………………………33,600.00USD

We herein reiterate that the above ruling of the hearing officer raises several questions regarding the conclusions reached on the new position of the appellant being a managerial one and the basis upon which he relied to compute the new salary for the position of training officer, as well as the evidence adduced for ruling in favour of the appellant in support of his motion for default judgment. We shall discuss these later in the opinion.

Further on the facts, we must note here that again there is a gap in the records as to what transpired following the above quoted ruling; but four (4) months later, on April 6, 2011, the judge of the National Labor Court, Her Honor Comfort S. Natt issued a mandate to the hearing officer to resume jurisdiction over the case, conduct an investigation on its merits and allow all parties to have their day in court. We herein quote the judge's mandate which reads to wit:

"Hon. Emmanuel W. Worjlorh
Senior Hearing Officer
Labour Relations Section
Ministry of Labour Monrovia, Liberia

Dear Mr. Hearing Officer:

Acting upon directive of Her Honor Comfort S. Natt, Resident Judge of the National Labour Court for Montserrado County, you are hereby mandated to resume jurisdiction in the case out of which the above captioned case grew and proceed to hear the case on its merits, thereby affording all parties their day in court for free, fair and transparent justice.

AND FOR SO DOING, THIS SHALL CONSTITUTE YOUR LEGAL AND SUFFICIENT AUTHORITY.

AND HAVE YOU THERE THIS COURT'S MANDATE

GIVEN UNDER MY HAND AND SEAL OF THIS HONORABLE COURT, THIS 6TH DAY OF ARPIL A.D. 2011

SEAL OF COURT:

G.ABEDNEGO N. SIMPSON, SR.
CLERK, NATIONAL LABOUR COURT
MONT. CO. REPULBLIC OF LIBERIA

There being nothing in the records to how the National Labor court became seized with jurisdiction over this matter, however, there being no objection or exception by either party to judge Natt's mandate this Court will not be remiss to conclude that parties acquiesced with same.

Subsequent to the mandate , the appellant was subjected to a third round of hearing by the Ministry of Labor to which he once again recounted his previous testimonies. The appellee, for its part, produced one witness in person of its Human Resource Manager, Mr. Patrick Konneh. The witness testified that the LSP is a paramilitary institution and that the officers are only promoted by 'rank' and not 'assignment'; that the training conducted by the appellant was only an assignment and not a promotion in rank from the position of patrolman. The witness also testified that security personnel are paid according to their rank and that the position of 'Training Officer' was not found within the LSP department of the NPA, neither was it a managerial or assistant managerial position. The human

resource manager further testified that the appellant, being a patrolman, was paid as a patrolman until his services were terminated by the management for abandoning his assigned post.

There is no showing that the human resource manager proffered any documentary evidence from his institution to substantiate his oral testimony to the effect that the appellant was only assigned a specific task and not promoted; neither did he establish by documentary evidence like the NPA employee roster or pay structure record that the appellant was still in the class or grade of a patrolman. This Court has held that "mere assertion does not constitute proof but must be supported by evidence so as to warrant a court or jury accepting it as true and that evidence alone enables the court to pronounce with certainty concerning the matter in dispute. Pentee v. Tulay 40LLR, 207 215 (2000); Jogensen v. knowland, 1LLR 266 267(1895). Also, it is the law that "he who alleges the existence of a fact must prove it and must do so by the best available evidence." Civil Procedure Law, Rev. Code 1:25.5 and 25.6, Teah v. Andrews, et al., 39LLR 493 501(1999); Harouni v. Mathies, 38LLR, 27 35(1995).

The requisite proof in this instance, especially coming from the testimony of a human resource manager, should have been in the nature of an exhibit of a policy and/or personnel manual from the appellee's institution indicating the various managerial and assistant managerial positions to effectively negate the appellant's evidence concerning his promotion. The appellee should have produced its salary structure indicating all categories of salaries for respective positions within its employ to substantiate that the appellant was not promoted and that the appellant was paid according to his rank. It is the law that when a negative averment of a subject matter lies peculiarly within the knowledge of a party the burden of proof rest on that party to disprove the negative averment. Civil Procedure Law Rev Code 1:25.5. The Supreme Court has repeatedly upheld the provision of the Statute which states that "the best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence." Civil Procedure Law, Rev. Code 25.5, Burden of Proof; Massaquoi et al. v. Dennis 40LLR 698 704(2001).

We hold that the appellee's human resource manager's mere assertion that the appellant's position was not a managerial or assistant managerial one, does not constitute the required proof as the burden to establish that the appellant was not promoted should have been satisfied by the production of all the employment records in possession of the appellee, especially in the face of the "Change of Status Notice" which unequivocally states that the appellant was promoted to the position of training officer.

Howbeit, the parties having rested with the production of evidence in toto, the hearing officer rendered a third ruling on March 21, 2012, this time holding the appellee not liable to the appellant but ordered that the appellee underwrite the cost of the appellant's occupational injury. The requisite portion of the hearing officer's ruling is quoted below, to wit:

"Having listened to the testimonies and arguments pro et con, as well as the legal authorities of the parties, this investigation hereby observes the following as showeth, to wit:

That Mr. Tex L. Yardamah was employed 13 October 1997 by N.P.A as patrolman, assigned in the Department of the Liberia Seaport Police;

That on March 29, 2006, a change in status notice, marked "C/1" was prepared in favor of the complainant by the defendant, giving his job title as training officer with the monthly salary of L$400.00;

That on July 29, 2009, a notice of removal from payroll, marked "C/3" in bulk, was also prepared against the complainant by the defendant for refusing to take up assignment on the third shift. This time complainant's job title, according to the said "C/3" in bulk, was as patrolman, carrying the monthly salary of US$240.00. The position he held up to his termination in July 2009, by NPA.

That complainant has given no convincing evidence to authenticate the actual salary of a training officer other than that of "C/3" in bulk. In other words, this investigation cannot and will not determine the salary of a training officer. For a court will not do for a party what it ought to do for itself.

That in the absence of documentary proof, we are constrained to overturn complainant's claim that the position of training officer is or was a managerial position.

That complainant has admitted refusing to take up assignment because, as he put it in his statement in chief.... 'the management of National Port Authority suspended me illegally for not taking up assignment that was below my status...' His failure and/or refusal to carry out defendant's order purely demonstrates a gross insubordination to authorities.

That Mr. Tex L. Yardamah has neither denied the fact that he was paid a terminal benefit by the defendant/management of NPA, nor has he denied being absent from work without excuse for ten (10) consecutive days.

That defendant is under every obligation to underwrite the cost of the accident/injury that complainant sustained on the job since it (NPA) failed to report the said accident to NASSCORP.

Wherefore and in view of the foregoing circumstances, it is the candid opinion of this investigation to order the defendant/management, National Port Authority (NPA) to underwrite the cost of the accident/injury that Mr. Tex L. Yardamah, complainant sustained during his normal duty at the defendant's premises minus the payment of the cost of accident, the defendant is hereby relieved from further liabilities to the complainant. All other claims are dropped."

Contrary to his two previous rulings in which the hearing officer arbitrarily awarded the appellant a managerial salary he recanted same in this third ruling quoted herein above stating that there was no evidence to show the requisite salary for the position of a training officer or that said position was a managerial one. The hearing officer also ruled that the appellant's dismissal was within the pale of the law given the fact that the appellant committed gross insubordination by refusing to be assigned on the third shift. Notwithstanding, the hearing officer further ruled that the appellee compensate the appellant for its failure to report the appellant's injury to NASSCORP.

The appellant excepted to this third ruling of March 21, 2012, and petitioned the National Labor Court on April 20, 2012, for judicial review, principally contending that the hearing officer erred by disregarding his previous default judgment rulings, the change in status notice and the fact that he was promoted to a managerial position. The appellee filed its returns to the petition alleging that the appellant was never promoted since his rank of patrolman was never changed and that the appellant refused to take up his assignment. The appellee also alleged that the appellant had been compensated by the appellee for the occupational injury he sustained and that the default judgments having been rescinded and set aside by the hearing officer were now moot.

On October 18, 2013, having entertained arguments on the petition and the returns thereto, Judge Comfort Natt of the National Labour Court entered final judgment confirming the hearing officer's ruling of March 21, 2012 on grounds that there were no evidence in the records to support the appellant's assertion that he was entitled to a managerial salary of US $840.00 (Eight Hundred Forty United States Dollars) and that the appellant's dismissal was legal due to his refusal to comply with the order of his principal for assignment on the third shift, which constituted gross insubordination for which he could be legally dismissed.

Judge Natt however, modified the hearing officer's ruling with regards to the appellant's injury by ruling that the appellant was not entitled to compensation as he had already been compensated and had signed a release in favor of the appellee. Our review of the records, however, show that none of the parties proffered any documentary or testimonial evidence in support of the existence of said release, neither did any of the parties raise the issue of a release during the investigation at the Ministry of Labor. It is the law that a trial judge in reviewing a labour matter on appeal from the Ministry of Labour commits reversible error in admitting into evidence documents which did not form a part of the records from or proceedings held at the Ministry of Labour. Briggs et al. v. Inter-Con Security System 40LLR, 316 321(2000). It is the law hoary with age that "a court should not pass on documentary evidence not testified to by witnesses, marked by the court, confirmed and admitted into evidence." Cooper v. Cooper, 39LLR 750 757 (1999); Maritime Transport Operators GMBH v. Koroma and Nigerian Port Authority, 25LLR 371 (1976), Scott v. Sawyer, 24LLR 500 (1976), King v. International Trust Co. 20LLR, 438 (1971). We therefore hold that the judge committed a reversible error when she relied on a release which was not admitted into evidence at the Ministry of Labour and ruled that the appellant was not entitled to compensation for the injury he sustained.

The records show that the labour court judge premised the disposition of the petition for judicial review and rendered her ruling thereon on three (3) issues which we deem relevant to this appeal. The three (3) issues and their discussions are quoted verbatim herein below to wit.

"This court having given a synopsis of the case has decided on three (3) issues for its determination as follows:

Whether or not, the change in status for which petitioner/complainant is claiming increment in salary was stated in his appointment letter and if so, was the amount stated so as to give it validity?

2. Whether or not, an employee who claims to have a position of authority over other involving the exercise of executor and supervisory powers prohibits him from obeying the orders of his superior officers?

3.Whether or not petitioner/complainant was treated by respondent/defendant/management when he received injury on the job, though same was not reported to the National Social Security Corporation (NASSCORP) of Liberia?

We shall address these issues as they appear. Touching on the first issue, the court says upon the careful perusal of the court's file, we have observed from respondent/management's own hand book, page 14, under section (b), which reads:

'Promotion provides an increase in the level of responsibilities with a commensurate change in salary. A promotion will also involve change in classification'.

Even though, a form of change in status is in the court's file, signed and approved by two (2) department personnel and management on various dates. This court sees a problem with the approval of these various departments where there has not been a change in classification because according to petitioner/complainant's own testimony, he was still serving in the position of a patrol man up to the time of his dismissal and was receiving a salary of two hundred sixty four ($264.00) dollars monthly. The alleged promotion did not carry a rank that will enable this court to decide on the salary of petitioner/complainant. This court therefore finds it difficult to determine the actual salary of a Training Officer absence of documentary evidence to convince this court that petitioner/complainant's position is a managerial position. We consider his testimony as mere allegation which must be proven by the preponderance of documentary evidence, and otherwise the claim shall be denied.

In the case: SALALA RUBBER CORPORATION, represented by its General Manager and/or its legal representative, Appellant versus Francis S. Garlawolo, Appellee, 39LLR 609, the Supreme Court of Liberia held:

"Pleadings are mere allegations subject to proof by the preponderance of evidence at the trial where a party plaintiff has not presented evidence in support of the allegation of his pleading, he cannot recover against the party defendant".

"The mere allegation or averment set forth in the complaint do not constitute proof, but evidence is essential as the truth of facts constituting the claim in order to render a judgment with certainty concerning the matter in dispute".

On a question posed to petitioner/complainant during hearing concerning his status/rank before his dismissal, petitioner's answer was "there was no rank regarding the status and that he was only a patrolman." Who else would have given any better evidence than petitioner/complainant himself? With this answer, the court then concludes that even though petitioner/complainant considers himself as being changed in status, but there was no rank and classification for change in salary.

Touching on the second issue, which deals with the refusal of petitioner to respect the orders of his superior officer, this court says the action of petitioner/complainant to deliberately refuse to take up an assignment assigned to him by respondent/management, highly demonstrates gross insubordination against the respondent/management.

The Supreme Court has held, in the case: LIBERIA AGRICULTURAL COMPANY 34LLR 698, SYL. 12, THAT:

'The failure of an employee to carry out the legitimate instructions or orders of his employer when such 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 Supreme Court of Liberia also held in the case: THE MANAGEMENT OF THE LIBERIA AGRICULTURAL COMPANY (LAC) AND THE BOARD OF GENERAL APPEALS VERSUS FORKPAH, 31LLR 698, SYL2.THAT:

The failure of an employee to carry out the legitimate instructions or orders of his employer when such 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 Supreme Court of Liberia also held in the case: THE MANAGEMENT OF THE LIBERIA AGRICULTURAL COMPANY (LAC) AND THE BOARD OF GENERAL APPEALS VERSUS FORKPAH, 3LLR 698, SYL. 2 THAT:

'The fact that an employee holds a position of authority over others, involving the exercise of executory and supervisory powers, does not relieve him from the duty of obedience to the orders of his superior'.

The attitude of petitioner/complainant to deliberately refuse to carry out the instructions of his immediate superior constitutes gross insubordination and breach of duty for which respondent/management was legally right to relieve petitioner/complainant of his employment by terminating his service for his wanton and deliberate refusal to take up the assignment given by his immediate Boss.

According to respondent/management, petitioner/complainant was even served with a notice for his insubordination to authority requesting that the action of petitioner/complainant could not be condoned by respondent/management. This notice of respondent/management was ignored by petitioner/complainant and continued his stay away habit.

Touching on the third issue which deals with the reporting of petitioner/complainant's injury case to the National Social Security, the court says yes, the management of the National Port Authority (NPA) should have reported the matter to NASCORP. However, management having observed the importance of the case, decided to treat petitioner/complainant on its own. Petitioner/complainant was treated and paid for all of his missing items, for which he issued a 'Release' to Management, which reads:

National Port Authority
Freeport of Monrovia

REPUBLIC OF LIBERIA)
MONTSERRADO COUNTY)

Date: September 4, 2008

"I the undersigned, a victim of the scuffle between the Liberia National Police (LNP) and the Liberia Sea-Port Police on July 9, 2007, received the full amount ofUS$600.00 (Six Hundred United States Dollars).

Now, thereafter, I, Tex Yardamah of the Liberia Seaport Police, NPA hereby release and forever discharge the National Port Authority of actions, suits, claims and demands whatsoever in law and in equity which I may bring against said Corporation or its Management or assigns, that I ever had, may have or shall have.

I also personally understand that full settlement has been received by me in consequence as aforesaid and that the National Port Authority is discharged from any action/claim as a result of any and all injuries sustained on my human person or loss of personal effect.

This instrument therefore confirms that the Management of the National Port Authority (NPA) has fully compensated me for all losses therewith sustained as a result of the July 9, 2007."

Name: Tex L. Yardamah

Signature:

Witness:

Human Resource Department
Date: September 4, 2008

However, on September 6, 2008, petitioner/complainant wrote the management of NASCORP inquiring about the corporation's obligation to him as a result of the injury sustained. Petitioner/complainant was referred to respondent/management concerning any payment of medical benefits as evidenced by NASCORP's reply of September 11, 2008.

Respondent/management said whatsoever cash benefit that accrued to petitioner/complainant under the temporary disablement benefit was predicated upon petitioner/complainant undergoing treatment for fourteen days and that whatsoever medical benefit (TDB) reverted to respondent/management who underwrote the medical cost of all the July 9, 2007, victims and not only petitioner/complainant. The victims were forty- nine (49) in number. Petitioner/complainant received Six Hundred (US$600.00) United States Dollars. Settlement was based on the injury sustained. Some of the victims received up to Thousand plus United States Dollars.

The medical report was issued July 19, 2007, long before petitioner/complainant issued the 'Release' to respondent/management on September 4, 2007, relieving respondent/management of all liabilities. The Hearing officer had prior notice of this release as same was testified to during hearing. Notwithstanding, the Hearing Officer ruled that in as much as respondent/management did not report the incidence to NASCORP, respondent/management is liable to petitioner/complainant for the injury he sustained, even though, NASCORP wrote a statement that the amount it should have spent on petitioner/complainant would be paid to respondent/management for the settlement it made to petitioner/complainant.

The dismissal of petitioner/complainant also alluded to his deliberate refusal to carry out the legitimate instructions or orders of his employer, which were in the power of the employer. This court feels that the action of petitioner/complainant was gross insubordination and gross disrespect to his employer.

Petitioner/complainant's services were terminated in conformity with section 1508 (1), 2(b) of the Liberian Labour Practices Law.

The third reason for petitioner/complainant's dismissal was due to his refusal to appear to work. Notwithstanding the warning given him by respondent/management, he continued his stay home action for eleven (11) consecutive days without excuse from June 29, to July 12, 2009, for which he was suspended for a month and even at that, he continued to defy authority.

Wherefore and in view of the foregoing reasons stated above, this Court cannot in any way up hold the Decision of the Hearing Officer that Petitioner/complainant be compensated for the temporary injury he sustained on the job. Case dismissed. AND IT IS HEREBY SO ORDERED. COST DISALLOWED."

We have painstakingly presented the facts and circumstances of this case in order to show the glaring procedural irregularities and negligence that" were deliberately employed by the lawyers and labour consultants for both parties which have led to the extended delay of the matter before the Ministry of Labour and the National Labour Court, respectively, for a period of six (6) years, that is from 2009 to 2015. These facts and circumstances also exposed the acts of some lawyers and their clients in baffling the ends of justice; while others clearly demonstrate blatant acts of incompetency or sheer lack of knowledge of the law and practice, thereby inadequately representing the interests of their clients. We take particular offense because the institution involved, the National Port Authority (NPA), is wholly own by the government, and as such lawyer from said institution must demonstrate high regard for the

rule of law and knowledge of the law, so that the citizenry is encouraged similarly to demonstrate the needed respect for the law and to have confidence in the judicial system.

Albeit the appellant excepted to the above quoted ruling from the National Labour Court and announced an appeal to this Court based on a five count bill of exceptions, basically contending that the trial court overlooked the evidence in the records by dismissing his entire complaint. We quote verbatim the five count bill of exceptions to wit:

1. "That Your Honor erred when you ruled that petitioner/appellant was not entitled to compensation for injuries suffered as a result of the attack on the Liberia Seaport Police at the Monrovia Free Port by the Liberia National Police on July 9, 2007, because Your Honor relied on a purported release which was not part of the evidence before the hearing officer who heard the facts of the case, thereby going beyond the scope of your court's jurisdiction as a review court and taking evidence, especially evidence not given under oath. (See Page Five of Your Honor's ruling)

2. That Your Honor committed a reversible error when you ruled that appellant was not entitled to an increase in salary because of his change of status from a patrolman to a training officer because there was no change in rank in order for his classification for the purpose of salary when in fact a document marked "Ex-C/1 confirmed" which was one of the documentary evidence produced by appellant during the hearing of the case before the hearing officer at the Ministry of Labor is captioned "change of status" and contains the following clear and precise information: "You are hereby promoted to the position of Training Officer by Management of the National Port Authority."

3. That Your Honor also committed a reversible error when Your Honor observed, "even though, a form of change in status is in the court' s file signed and approved by two (2) departments, personnel and management on various dates, this court sees a problem the approval of these various departments where there has not been a change in classification, because according to petitioner/complainant's own testimony, he was still serving in the position of patrolman up to the time of his dismissal and was receiving a salary of two hundred sixty four United States Dollars (US$264.00). This court, therefore finds it difficult to determine the actual salary of a training officer which was never mentioned in the change of status form. "in that you blamed the petitioner for the failure to adjust the petitioner/complainant’s salary and not on the respondent/management who failed to change petitioner’s classification and change his salary in clear violation of respondent/management’s own policy on “promotion provides an increase in the level of responsibilities with a commensurate change in salary. A promotion will also involve change in classification”.

4. That Your Honor committed a reversible error when Your Honor ruled that petitioner/complainant's dismissal was for gross insubordination because of his failure to carry out the reasonable order or instruction of his employer, when Your Honor saw no evidence in the record that training was done at night or on the third shift of the Liberia Seaport Police (LSP) or that there was any evidence to show that petitioner had received a new notice of change of status regular duties and not special duty such as training; consequently Your Honor's ruling that management's instruction for petitioner to serve on third shift while still serving as training officer was reasonable was grossly prejudicial and unfair to him.

5. That Your Honor also committed a reversible error when Your Honor ruled that petitioner's dismissal was legal because he was absent from work for eleven days when in fact the record shows that petitioner was suspended for the period of one month from July 30, 2009 to August 30, 2009 and before his suspension period began, his name was removed from the payroll on July 29, 2009, thereby not affording him the opportunity to comply with management's order following the end of his suspension. Your Honor's failure to declare that a dismissal under such a situation was unfair, unreasonable was a reversible error."

The Court has determined that to affirm the ruling of the National Labour Court would mean that the appellant was never promoted and that the reason given for his dismissal, that is, his refusal to be assigned on the third shift was within the confines of the law. The other side of the coin would mean that the appellant proved his complaint with preponderance of evidence that he was promoted to the

position of training officer a managerial position in the appellee's employ and that his dismissal was unfair and illegal.

From the above, the core contentions of the parties as gleaned from their respective briefs and arguments before this Court are couched in the two issues stated herein below to wit:

1) Whether or not the appellant was promoted and;

2) Whether or not the appellant's to take up assignment as a patrol man warranted his dismissal. Restated, was the appellant's dismissal legal.

As usual the lawyers in answering the issues raised supra have advanced divergent views. In answering the first issue, the appellant claimed that he was promoted from the position of patrolman to the position of training officer; that the position of training officer was a managerial one, and that he was entitled to a monthly salary commensurate with said position.

The appellee disagreed on grounds that the appellant being a member of a para-military organization the LSP, is aware that promotion is by rank and not assignment. The appellee argued that only the appellant's assignment was changed and not his rank hence, he was not promoted.

The Court, in resolving this first issue as to whether or not the appellant was promoted has decided to analyze the prime evidence in the records which is the change in status notice that was admitted into evidence by the appellant during the investigation before the Ministry of Labour. The said change of status notice dated March 29, 2006, carries the following notation:

"You are hereby promoted to the position of 'training officer' by the management of the National Port Authority." (Emphasis Ours]

Worthy of our notation are the admissions made by the parties that indeed the appellant was given a new level of responsibility to train and enhance the skills of security personnel within the Liberia Sea Port Police (LSP). This new level of responsibility and change of assignment according to the appellee's own policy is defined as "promotion". To bolster this position of the Court we herein quote below the requisite provision of the appellee's policy as follow:

"...promotion provides for an increase in the level of responsibilities with a commensurate change in salary. A promotion will also involve change in classification."

Given the clear and unambiguous language appearing in the change of status notice of March 29, 2006, stating that the appellant was promoted coupled with the above quoted provision of the appellees' policy on promotion this Court is convinced without any iota of doubt that appellant was promoted from the position of patrolman to the position and rank of training officer. This, the appellee failed to do contrary to its policy defining promotion which provide for a change in salary and change in classification.

Regrettably however, though we are convinced that the appellant was actually promoted, there is nothing in the records to establish that the position of training officer was a managerial or assistant managerial one as the 'Change in Status Notice', dated March 29, 2006, only confirmed a change in the appellant's job title from patrolman to training officer. We re-emphasize that the appellee was meticulous enough to increase the appellant's task and level of responsibility to train its security personnel in the Liberia Sea-port Police Department but did not however, change the appellee's classification and salary to commensurate with the appellant's task.

Howbeit, the Court believes that the appellant's lawyer should have exerted his best effort by applying for a writ of subpoena duces tecum to compel the appellee to produce the requisite employment records to determine the actual classification and salary of the appellant as a Training Officer.

Our Civil Procedure Law states that:

"a subpoena may require the attendance of a person to give testimony or to produce books, documents, or other things or both. A subpoena requiring the production of books, documents, or other things is referred to herein as a subpoena duces tecum. Every subpoena shall be issued under

the signature of the judge or clerk and the seal of the court, shall state the name of the court and the title of the action and shall command the person to whom it is directed to attend and give testimony or to produce the books, documents, or other things designated or to do both at a time and place therein specified."[Emphasis Ours] Civil Procedure Law Rev Code 1:41.1

The Court is bewildered as to why the appellant's counsel failed to avail himself of the writ of subpoena duces tecum to be served on the appellee, the NPA, to produce its employment policy and handbook which could have clearly enumerated the various managerial positions and attendant salaries and classifications. In the absence of such documents it is the holding of this Court that although the appellant was promoted in keeping with the 'Change in Status Notice', dated March 29, 2006, and the appellee's policy, there is however no substantial evidence to support the appellant's contention that the position of training officer is a managerial position and that he is entitled to a monthly salary of US$840.00 (Eight Hundred Forty United States Dollars). Our holding is based on previous holdings of this Court, stating that evidence alone enables the court to pronounce with certainty concerning the matter in dispute and, that absent the best evidence, even the best laid case will be defeated. Levin v. Juvico Supermarket 24LLR 187, 194 (1975);The Heirs of the Late Jesse R. Cooper v. The Augustus W Cooper Estate 39LLR 750, 757(1999);Knuckles v. TRADEVCO 40LLR 511 525(2001),· Reynolds v. Garfuah 41LLR 362, 371 (2003).

The Court shall now address the second issue which is whether or not the appellant refusal to take up assignment as a patrol man warranted his dismissal. The appellant, in answering this issue, has argued that his dismissal was unjustified and illegal on grounds that the appellee promoted him to training officer, and then intended to reassign him to third shift- an assignment intended for a patrolman. Hence his refusal to take-up assignment as a patrolman did not justify or warrant his dismissal.

The appellee disagreed and has argued that the Liberia Seaport Police (LSP) Department being a para-military, the appellant was reassigned from the task of training security personnel to the third shift as a patrolman but he refused to take up his assignment on third shift. Hence, his refusal to obey the appellee's orders justified his dismissal. The National Labour Court has agreed with the appellee's theory and in its final judgment relied on the case The Management of Liberia Agricultural Company (LAC) v. Forkpah 31LLR 698 (1984), in ruling that the appellant dismissal was within the confines of the law since he refused to obey the lawful orders of his employer.

In resolving this issue regarding the appellant's dismissal, the Court has decided to review the case relied on by the National Labor Court and its applicability to the present case if any. The facts in the LAC case revealed that a supervisor disobeyed LAC management's orders by dismissing an employee from LAC's employ after the management had specifically cautioned the supervisor not to dismiss the employee. The supervisor was dismissed for his refusal to carry out the management's instructions. Thereafter, the supervisor instituted an action for unfair labour practice on grounds that his actions were without bad intention to injure LAC management and that he should be paid for the months of April and May, plus one month salary in lieu of notice. The hearing officer ruled that the LAC management was liable to the supervisor but on appeal for judicial review to the Board of General Appeals, the latter reversed the ruling of the hearing officer on grounds that the supervisor was guilty of breach of duty. On appeal to the 6th Judicial Circuit Court of Montserrado County back then, the ruling of the Board was reversed and the findings of the hearing officer reinstated. However on appeal, the Supreme Court reversed the ruling of the trial court by holding thus:

"among the fundamental duties of the employee is the obligation to yield obedience to all reasonable rules, orders, and instructions of the employer, and willful or intentional disobedience thereof, as a general rule, justifies a rescission of the contract of service and the peremptory dismissal of the employee." Id.705

The striking distinction between the LAC case and the present case is embedded in the fact that the supervisor in the LAC case willfully and intentionally disobeyed the orders of his employer but argued that there was no evidence to prove or presume that his conduct was insolent and injurious to the

business of the LAC management. On the other hand, the appellant in the present case is contending that he did not refuse any assignment as a training officer but rather, he refused to be demoted from a training officer back to a patrolman. Also, another distinguishable feature is the fact that in the LAC case the management of LAC give a very reasonable order to its supervisor while in the present case the NPA management order to the appellant was not only unreasonable but also relegating and humiliating.

In the LAC case, the Supreme Court also held that

"in every contract of service it is implied that the employee shall obey the lawful rules, orders, and instructions of the employer-at least so far as they are reasonable and not merely arbitrary or capricious. The employee is not, however bound by any rules that be bas not contracted to observe or that are not incident to or assumed by him as being within the general scope of his employment." Id 702. [Emphasis Ours]

And that

"unprovoked insolence or disrespect on the part of the employee toward the employer may afford ground for dismissal of the employee. However, dismissal is not justified where it appears that the employee acts of disrespect or insolence were provoked by conduct on the part of the employer." ld 702-703. [Emphasis Ours]

In view of the principle of law and the facts articulated herein above, this Court holds that the LAC case is distinct from the present case and that the reassignment of the appellant to a third shift as a patrolman after being promoted to the position of training officer was capricious, and unjustified on the part of the appellee and as such the appellant refusal to take up such demoting and humiliating assignment did not warrant or justify his dismissal. The Court affirms its holding in the LAC case and hold further that in as much as an employee must obey the lawful instructions of the employer, the employee is not, however bound to observe or obey orders which are capricious and not within the general scope of his employment and any dismissal arising thereof is illegal.

In the case The Management of the United States Trading Company (USTC) v. Richards, 41LLR 205, 210 (2002), the Supreme Court defined illegal dismissal as "dismissal effected without prior notice being given by the employer to the employee for specific offenses, such as gross breach of duty, disobedience, incompetence, and misconduct." Thus, having held that the appellant was promoted and then illegally dismissed, this Court, being clothed with the authority to enter judgment that the trial court should have entered, shall now determine the award the appellant is entitled to as a result of his illegal dismissal. As earlier stated, there is no evidence in the records to support the contention that the appellant was entitled to a managerial salary. Howbeit, we have found in the records that the appellant did earn a monthly salary of US $264.00 (Two Hundred Sixty Four United States Dollars) even after his promotion and up to the date of his illegal dismissal. The Supreme Court has held that "a person employed under a contract of indefinite duration who is wrongfully dismissed may be awarded up to two years wages." Intercon-Security System Inc. v. Philips 4LLR 42, 47 (2002). It is the law that where wrongful dismissal is established the court shall have the power to order reinstatement or order reasonable compensation to the aggrieved employee in lieu of reinstatement. In assessing the amount of such compensation, the court shall have regards to;

a) reasonable expectations in the case of dismissal in a contract of indefinite duration;

b) the length of service; but in no case shall the amount awarded be more than the aggregate of two (2) years' salary or wages of the employee computed on the basis of the average rate of salary received 6 months immediately preceding the dismissal. The Labour Law, Rev. Code. 18.9, ld.46

Hence, we hold that given appellee's extreme indifference towards the appellant's promotion, and the fact that the appellee illegally dismissed ·the appellant, the appellant is hereby awarded ten (10) months

of his actual salary as a training officer to be determined by the Ministry of Labour. This amount is awarded in lieu of reinstatement in case the appellee determines that it would not reinstate the appellant.

WHEREFORE AND IN VIEW OF THE FOREGOING laws and facts articulated herein, this case is hereby remanded to the National Labour Court to have the Ministry of Labour proceed as follow:

1) To order the appellee, the National Port Authority (NPA) to tender to the hearing officer all relevant employment records indicating various levels of positions, classifications, commensurate salaries and that same should reflect the position and salary of a training officer. This exercise by the appellee shall be concluded within three (3) working days as of the date of receipt of this mandate.

2) The hearing officer at the Ministry of Labour upon receipt of the requisite documents from the appellee management, the NPA be ordered to determine the appellant's actual salary as a training officer and pay the appellant thirty- nine (39) months retroactively as of the period April 19, 2006, to July 30, 2009, the dates of the appellant's promotion and his dismissal, respectively.

Noting that the appellant continued to receive his salary of US 264.00 from the date of his promotion to his dismissal constituting 39 months, and in the spirit of equity, said amount (264.00 x 39 months =US $10,296) received over the period of 39 months should be deducted from the salary determined from the investigation as the monthly salary of a training officer. For better clarity we herein insert a numerical formula which is expected to be adhered to by the hearing officer.

i) Training Officer salary x 10 months = X (Payment in lieu of reinstatement)

ii) Training Officer salary x 39 months- 10, 296.00 = Y (Retroactive salary)

X+ Y=Total/Final Award

3) That given the length of time this case has remained undetermined, the Ministry of Labor be ordered to expeditiously dispose of this matter within the period of one (1) month of receipt of this Court's Judgment and file its official returns to the National Labour Court, stating its compliance to this Court's mandate. The National Labour Court upon receipt of the Ministry's official returns is hereby mandated to transmit same to the Clerk of this Court.

4) Failure on the part of the Ministry of Labour to adhere to the timeline stated herein shall constitute contempt of this Court. Lawyers representing the appellee, the NPA are sternly warned that derelictions and excuses to delay this Court's mandate shall also amount to contempt of this Court and could lead to immediate suspension and or disbarment.

The Clerk of this Court is ordered to send a mandate to the National Labor Court to give effect to this Judgment. Costs are ruled against the appellee. And it is so ordered.

WHEN THIS CASE WAS CALLED FOR HEARING, THE APPELLANT WAS REPRESENTED BY COUNSELLORS AMARA SHERIFF OF THE SHERMAN AND SHERMAN INC. AND MOMODU G. KANDAKAI OF GONGLOE AND ASSOCIATES LAW FIRM. THE APPELLEE WAS REPRESENTED BY COUNSELLOR DEXTER TIAH OF THE HENRIES LAW FIRM.