M. Z. FREEMAN, Appellant, *v.* FIRESTONE PLANTATIONS COMPANY, Appellee.

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

Argued October 29, 30, 1974. Decided November 15, 1974.

1. Waiver is the intentional relinquishment of a known right by a party.
2. When an injured employee is readmitted to a hospital facility operated by his employer, a release executed theretofore by him to such employer cannot be asserted against him, for such readmission constitutes a waiver of rights.
3. An employee who leaves a hospital "not without cause," does not forfeit his benefits under the Labor Practices Law.

Appellant sustained an injury to his right eye while at work on December 24, 1972, and entered appellee's hospital on January 13, 1973, having been afforded only first aid on December 25 at a clinic operated by appellee. On January 13, 1973, appellant was taken to the company's hospital, which he left against doctor's orders on January 16, 1973, complaining, among other things, that the treatments were not helping his condition. At the time he left he executed a release, absolving his employer from all liability for the injury he had sustained.

On January 23 he was readmitted to the hospital, where it was subsequently found that he had lost all vision in the injured eye. He was discharged on March 6, 1973, and thereafter apparently complained to a labor inspector of the Ministry of Labor, Youth and Sports, who ruled that appellant was entitled to payment for time lost and to compensation for the disability sustained by reason of his injury. The company appealed to the Ministry, where an official affirmed the inspector's ruling. The company finally appealed to the Board of General Appeals at the Ministry, which affirmed the official's finding. An appeal was then taken to the Circuit Court, where the trial judge reversed the findings in the Min-

istry. Thereupon the injured employee appealed to the Supreme Court.

The Supreme Court emphasized the readmission of appellant to the hospital as the basis for waiver of the company's rights it obtained by the release given to it by appellant. The judgment of the Circuit Court was *reversed* and the lower court was commanded to order the Board of General Appeals to enforce its ruling appealed from by the company.

Nete-Sie Brownell for appellant. *Morgan, Grimes and Harmon,* by *Beauford Mensah* and *D. Caesar Harris,* of counsel, for appellee.

MR. JUSTICE HORACE delivered the opinion of the Court.

This case is on appeal before us because of the ruling of the judge presiding by assignment over the December 1973 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, reversing the ruling of the Board of General Appeals of the Ministry of Labor, Youth and Sports awarding appellant compensation for an eye injury incurred in the course of his employment with appellee company.

On December 24, 1972, while at work in the course of his employment with the Firestone Plantations Company, Mr. M. Z. Freeman suffered an injury to his right eye by the accidental splashing of ammonia into his eye while he was mixing ammonia with rubber latex. Because medical aid was not available he did not get treatment for his injured eye until eighteen hours later, when on December 25, 1972, he was taken to Farmington Clinic, apparently owned by his employers. A nurse examined the eye and, concluding that nothing was seriously wrong with it, gave him some medication to take home to treat the eye.

On January 13, 1973, Freeman was taken to the Firestone hospital at Harbel and admitted into the hospital for treatment of his eye, which the nurse had said on December 25, was not seriously injured. After being treated for three days he asked to be discharged. There are conflicting reasons given for his leaving the hospital on January 16, 1973. Appellant claims that he was getting no relief from the treatment and wanted to leave to consult his Divisional Superintendent. The medical authorities at the hospital claim, however, that the eye was showing improvement after the three days of treatment and he was advised not to leave. In any case, before he left he was required to sign a release absolving his employer from any claim which he might assert as a result of the injury to him or complications which might arise by his leaving the hospital.

On January 23, 1973, upon the request of the Superintendent of the Division in which he was working, who asked the hospital authorities to disregard the release appellant had signed, he was readmitted to the hospital. On or about January 30, 1973, he was examined by one of the doctors who found the injured eye was completely damaged and appellant had no vision therein whatsoever. Appellant remained in the hospital until March 6, 1973, undergoing treatment for a total of 42 days. There are two medical reports, dated February 2 and 19, respectively, the latter signed by Dr. Edwin Jallah, which concerned the injury and the handling of it by the hospital. Strangely there is no medical report from Dr. Traub, the specialist who declared appellant's right eye completely damaged and void of vision and gave the cause thereof.

Although the record does not show what induced him to do so, appellant must have complained against his employer to the labor inspector of the Ministry of Labor, Youth and Sports, assigned at Harbel, Firestone Plantations. The labor inspector investigated the complaint and after relating the negligence of appellee in not pro-

viding facilities for the immediate treatment of such in-injuries as was sustained by appellant, and the deplorable working conditions under which appellee's employees were compelled to work, which contributed to the cause of the injury, he made his ruling.

"1. Mr. Freeman be reinstated.

"2. That he be readmitted to the medical center for examination to determine the disability of his lost vision in accordance with section 3659(1) of the Labor Practices Law.

"3. That he be paid for time lost.

"4. That Mr. Freeman be compensated for whatever disability he suffered as a result of the occupational injury he sustained in the accident in accordance with section 3550(1) of the Labor Practices Law."

Firestone Plantations Company appealed from the ruling to the Ministry of Labor, Youth and Sports. At the Ministry the matter was reinvestigated by Mr. A. Dashward Cox, Chief, Workmen's Compensation and Industrial Safety sections of said Ministry, who, on August 28, 1973, confirmed the ruling of the labor inspector at Harbel, Mr. E. Kruah Johns.

Firestone thereupon appealed to the Board of General Appeals of the Ministry. After a hearing, the Board, on October 17, 1973, upheld the ruling of Mr. Cox. Firestone then appealed to the Circuit Court for the Sixth Judicial Circuit, Montserrado County.

Before the appeal could be heard by the Circuit Court, counsel for appellant filed a motion to dismiss the appeal, which was heard and denied by Judge Shannon-Walser, who was presiding. The appeal was then considered by the judge who, after perusing the record and hearing argument by counsel for the parties, reversed the decision of the Board of General Appeals of the Ministry of Labor, Youth and Sports. Thus, this case is before us for final adjudication.

Going through the record certified to us, it would seem

that appellee's contention is that it is not liable because appellant refused to remain in the hospital after he was admitted on January 13, 1973, leaving three days later against the advice of the doctors, thereby releasing it of any responsibility. Appellee also contends that the loss of vision of the right eye of appellant was due to his refusal to take treatment and use the medication given him, instead using other medication purchased locally by him, such as penicillin ointment, which ruined his eye. Appellee does not deny that the eye of appellant was injured in the course of his employment.

Appellant contends that the injury to his eye was caused by the deplorable working conditions under which he had to work, the lack of initial treatment for more than 18 hours, and the poor treatment he received when he was first admitted to the hospital. He also contends that when he was readmitted after signing a release, the appellee, by admitting him, waived its defense under the release. These were the issues stressed before the Board of General Appeals of the Labor Ministry, as well as before the Circuit Court.

The judge reversed the ruling of the Board of General Appeals of the Ministry of Labor, Youth and Sports on the grounds that Liberians would not be provided with medical attention by doctors and concessionaires, and doctors at the hospitals operated by such concessionaires, for fear of creating liability for injuries sustained by employees. The judge also held that readmittance of Mr. Freeman to the hospital did not amount to a waiver of the release executed by Mr. Freeman.

We think it important to mention here that it seems the facts of the working conditions under which appellant received his injury were completely overlooked by the trial judge in her ruling, although these facts, which were not denied by appellee, are replete in the record, arising from the investigation by the Labor Ministry, as well as the ruling of the Board of General Appeals.

It is also of interest to note that although mention is made of medication having been given to appellant, first by the nurse on December 25, 1972, and then by the doctor at the hospital on January 16, 1973, there is no indication of the kind of medication given so as to enable us to determine whether proper medication was given. This omission is especially significant since appellant has contended that one reason for leaving the hospital on January 16, 1973, was because he felt he was not getting proper treatment.

Appellee has contended that the readmittance of appellant on January 23, 1973, after he had signed a release on January 16, 1973, did not constitute a waiver but was due to the nature of the medical profession; a humane act and in keeping with good public policy. Appellee has also contended that the cause of the loss of vision in appellant's right eye was due to the "inexcusable misconduct" of the appellant by leaving the hospital against doctor's orders. It cited section 3550(2a, b, c) and section 3655(3) of the Labor Practices Law. Appellant on the other hand has contended that he left the hospital for "just cause" and has cited the same sections of the Labor Practices Law upon which appellee relies, as well as section 3655(1) of said Law. We have set forth the relevant portions of the Labor Practices Law.

> "There shall be no liability on [the] part of an employer for compensation under this chapter when the injury or death of his employee has been occasioned:
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> "(a) Solely by the intoxication of the injured employee while on duty; or
>
> "(b) By the inexcusable misconduct of the injured employee; or
>
> "(c) By the willful intention of the injured employee to bring about the injury or death to himself or of another." § 3550(2a, b, c).
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> "The employer may require any employee who

claims compensation for disability resulting from occupational injury or disease to submit to an examination by a physician at a place and time reasonably convenient to the employee. If a disabled employee refuses, without just cause, to submit to such examination, the employer shall not be required to pay the compensation otherwise required by the provisions of this chapter. The physician's report shall form a part of the permanent record of the case." § 3655(1).

"Whenever a physician who examines an employee allegedly disabled as the result of a compensable occupational injury or disease prescribes treatment to arrest the disability or to rehabilitate the employee, it shall be the duty of such employee to follow such treatment to the best of his ability; and failure or refusal so to do, without just cause, shall justify the employer in refusing to pay the compensation otherwise required by this chapter; provided, however, that the employer shall be required to supply the drugs, appliances, or equipment, required to carry out such prescribed treatment, as provided in sections 3556 and 3605 above, and to train the employee to use the same." § 3655(3).

While it is true that "inexcusable misconduct" on the part of an injured employee relieves the employer of liability for the injury, we do not see that the circumstances of this case warrant the conclusion of "inexcusable misconduct" on the part of appellant, especially when after the alleged "inexcusable misconduct" of leaving the hospital against doctor's orders, he was unconditionally readmitted to the hospital and treated for forty-two days. Moreover, appellant's averment that his leaving was "not without cause" does seem to have substance when consideration is given to the fact, first, of the conditions under which he received the injury and, secondly, the casual handling of his case until he had lost the vision entirely of his right eye.

After careful study and consideration of the trial judge's ruling we find ourselves unable to reconcile our view with hers. We feel that all facts and circumstances being taken into consideration, especially the readmittance of appellant into appellee's hospital after the signing of the release by appellant, appellee cannot be absolved of responsibility for the injury sustained by appellant. We cannot agree with the learned trial judge that the readmittance of appellant to the hospital did not constitute a waiver but was in keeping with public policy. We also find ourselves unable to agree with her when we take into consideration her reasons for reversing the ruling of the Board of General Appeals of the Labor Ministry, namely, the number of Liberians working in rural areas for concessionaires who would be denied medical care, for when they left the hospital against doctors' orders liability would attach to the concessionaire. Moreover, that doctors working for concessionaires would be reluctant to treat employees even in an emergency except for injuries on the job for fear of liability attaching to their employer. On this point we find ourselves in complete agreement with appellant's counsel when he stated in his brief and argument that the court below went outside of its orbit by raising the issue of public policy and the effect the readmittance of an employee after signing a release would have on the general operation of concessionaires and their employees throughout the country. We also agree that every case should be decided on its merits and not on generalities. This principle is sound in law.

As to the release executed by appellant, we feel that appellee did waive its rights under the release when it readmitted appellant to the hospital after the release had been signed by him; the more so because his Divisional Superintendent requested the hospital authorities to disregard the release. Their compliance shows that they were aware of the right they were relinquishing. Waiver

has been defined as "the relinquishment or refusal to accept a right. The intentional relinquishment of a known right with both knowledge of its existence and an intention to relinquish." BOUVIER'S LAW DICTIONARY. This Court has confirmed this in principle in *Horton* v. *Horton,* 14 LLR 57 (1960), and *Kobina* v. *Abraham,* 15 LLR 502 (1964).

It seems strange to us that appellee should assume the high moral stance that because of the nature of the medical profession, the readmittance of appellant to the hospital was done out of humane consideration and, yet, should have required before he left the hospital a release from appellant who had sustained an injury in the course of his employment after working more than 12 years for appellee.

Because of what we have stated herein, it is our holding that the ruling of Judge Shannon-Walser, presiding at the time over the Civil Law Court for the Sixth Judicial Circuit, should be and is hereby reversed and the ruling of the Board of General Appeals of the Ministry of Labor, Youth and Sports upheld. The Clerk of this Court is hereby commanded to send a mandate to the judge presiding over the Civil Law Court for the Sixth Judicial Circuit to order the Board of General Appeals to enforce its ruling of October 17, 1973, in this case, and make returns as to how our mandate has been executed. Costs against appellee. It is so ordered.

Reversed.