

RULINGS IN CHAMBERS

1972

LIBERIA TRADING CORPORATION, Petitioner,
v. SEBRON J. HALL, Judge of the Debt Court,
Montserrado County, and JAMES N. SHANNON,
Respondents.

PETITION FOR A WRIT OF PROHIBITION.

Decided March 17, 1972.

1. A suit may be initiated for an amount owed under a pension right in the court with jurisdiction over such amount, as in the case of any debt.
2. The doctrine of *res judicata* cannot be invoked when the subject matter involving the identical parties was never judicially determined.

A determination was made by the National Labor Affairs Agency that the corporation was to pay an annual pension to respondent at a stated amount per month and consequently owed him over \$3,000.00 for which he began an action to recover in the Debt Court. The corporation moved to dismiss the complaint, alleging lack of jurisdiction in that the matter arose in the Labor Bureau, and statute required appeals to be taken in such matters to the circuit court. Upon denial of the motion, the corporation sought a writ of prohibition to enjoin the Debt Court from entertaining the action. The Justice to whom the writ was presented pointed out that the appellate procedure would apply were the Labor Practices Review Board created by statute operative and an appeal taken. However, even then, had the matter been heard by the Board, the right of a claimant to sue could not be abrogated and an amount due under a pension right can be sued for in the court with jurisdiction as, herein, the Debt Court. *Petition denied.*

David A. T. Brown for petitioner. *Nete-Sie Brownell* for respondents.

HENRIES, J., presiding in chambers.

Mr. James N. Shannon, one of the respondents in these proceedings, instituted an action of debt in the Debt Court of Montserrado County after the National Labor Affairs Agency had computed and declared that, as a retired employee of the Liberia Trading Company, he was entitled to receive an annual pension of \$2,039.44, or \$169.95 per month, from the company. Pleadings in the Debt Court progressed as far as the answer when the company moved for dismissal of the complaint on the ground that the Debt Court lacked jurisdiction to hear a matter involving retirement pensions, which falls within the jurisdiction of the Labor Bureau; that such a matter could be heard only before the Civil Law Court of the Sixth Judicial Circuit if Mr. Shannon had appealed from the decision of the National Labor Affairs Agency Court; and that the Debt Court cannot correct and enforce a Labor Bureau Court decision by an action of debt. The judge of the Debt Court denied the motion, and petitioner prayed for a writ of prohibition to be issued against the said judge, commanding him to desist from further hearing of the suit.

A careful review of the Labor Law, 1956 Code 19:120, 121, 122, 123, shows that these sections which provided for the creation of Labor Courts were repealed in 1961. Therefore, no such court existed at the time this matter originated in the National Labor Affairs Agency. Within this Agency, the Labor Practices Review Board, which was created by an act of the Legislature, passed May 24, 1961, as an act to provide for administration and enforcement of the law governing labor practices, is the body that comes closest to being a court, but in fact it

is only a board to review administrative controversies, from which one may appeal to the circuit court. See sections 202 and 203 of that act, *supra*. There is no indication that the members of the Board had been appointed by the President as required by Section 1 of that act or that the Board was functioning in December, 1969, when this matter was first brought to the attention of the Labor Affairs Agency, or in September, 1971, when the complaint was filed in the Debt Court of Montserrado County.

The petitioner contended in argument that the matter was first heard by the Board, which was composed of Messrs. Sieh, Monger, and Massaquoi; that an appeal was taken to Edwin Rogers, Director of Labor Standards, and then to J. Lamark Cox, Deputy Director General of the National Labor Affairs Agency; but no evidence was advanced to show that this matter was ever before the Board, and that a decision was rendered by the Board. Indeed, according to the record certified to us, this matter went first to Mr. Rogers, as evidenced by a letter.

“December 15, 1969.

“The Manager,
Liberia Trading Corporation (LTC),
Monrovia, Liberia.

“Dear Mr. Manager:

“We would like to inform you that James Shannon, an employee of your corporation, has filed a complaint here against you re: *Retirement Pension*. He claims that the corporation has requested him to retire with a monthly income of \$12.00 which he alleges is against the law and policies of this Country.

“You are therefore requested to call at our office, Room 107, 3rd Floor, on Friday, December 19, 1969, at 10:00 A.M.

“Please let this matter claim your immediate attention.

Very truly yours,
EDWIN L. ROGERS,
Director, Labor Standards."

The matter was scheduled for hearing by Mr. Rogers, and he found on January 12, 1970, that "the Liberia Trading Company is liable to pay the yearly pension of \$2,039.44, or \$169.95 per month, to Mr. James Shannon, effective February 1, 1970." The petitioner then appealed from Mr. Rogers' findings to Mr. Cox. There is no evidence that a hearing was held by Mr. Cox, but he wrote a letter.

"March 9, 1970.

"Mr. David A. T. Brown,
Counsellor-at-Law,
Liberia Trading Corporation,
Monrovia.

"Dear Counsellor Brown:

"In reply to your letter of January 19, 1970, appealing the decision of Director Edward Rogers in the case of James Shannon vs. L.T.C., and following a thorough analysis of Section 2501 Retirement Pensions, we have been advised by our Legal Section that your interpretation of the law is correct. In that, any employee qualifying for retirement under this section is entitled to receive $\frac{1}{2}$ of 40% of his average monthly earnings for the last five years.

"However, it is the view of this Agency that the law did not intend to give a retired employee $\frac{1}{2}$ of 40% of his average monthly earnings on retirement. To the contrary, it is our belief that the law intended to grant an employee, on a monthly basis, $\frac{1}{2}$ of 40% of his average yearly earnings over the last five years. This is the policy that is followed by the Labor Office and in most instances employees have been willing to cooperate. Therefore, this Agency is soliciting the cooperation of your Management in granting Mr.

Shannon his retirement pension in keeping with the apparent intent of the law and the policy as outlined above.

“Sincerely yours,
J. LAMARK COX,
Deputy Director General.”

There was disagreement between the parties as to whose contention was upheld, each arguing that Mr. Cox's decision was in his favor. Actually the letter is not as clear as it should be, and therefore appears to be ambiguous. However, it is clear that the petitioner was requested to grant Mr. Shannon his retirement pension in keeping with Mr. Rogers' calculations, which were based upon the Agency's policy and what it regarded as the apparent intent of the Retirement Pension Act of June 6, 1961, and May 1, 1963. Although we shall not consider whether the Deputy Director General's interpretation of the Act is correct, because this issue was never raised, yet it is clear that the decision was in favor of Mr. Shannon. In fact, the petitioner informed us that following Mr. Cox's decision, the company decided to raise Mr. Shannon's retirement pension to \$50.00 a month. There is no indication that Mr. Shannon agreed to the company's decision, since he did not accept any payments from the petitioner. Under the circumstances, only the company could have appealed from Mr. Cox's decision, and this appeal would have gone to the Labor Practices Review Board if it were in operation.

In passing, it must be observed that a lacuna is created by the nonformation of the Board which, if left unattended, could present serious difficulties in the effective settlement of labor disputes. The petitioner contended that the procedure for hearing labor controversies had been changed by rules promulgated by the Labor Agency which were not repugnant to the statute, but he failed to produce the new rules. In any event it was after trying unsuccessfully for almost nineteen months to receive his

pension that Mr. Shannon instituted an action in the Debt Court.

Under the Retirement Pension Act, and in accordance with the findings of the National Labor Affairs Agency, Mr. Shannon does have a claim against the petitioner. Now, we must determine whether this claim is maintainable in the Circuit Court or the Debt Court. In labor matters the Circuit Court has only appellate jurisdiction, and hears the appeal from a respondent aggrieved by an order of the Labor Practices Review Board; the Board may also obtain an enforcement order from the court. The relevant section of the Act to provide for Administration and Enforcement of the Law Governing Labor Practices, *supra*, describes such procedures.

“§ 203. Appeal from order of Board; enforcement of order. Any respondent aggrieved by an order of the Labor Practices Review Board may appeal therefrom and the Board may obtain an order of the court for enforcement of its own order, in a proceeding as provided in this section. Such proceeding shall be brought in the Judicial Circuit of the Circuit Court of the county in which the Board held its hearing in the case, or, if the hearing was held in the hinterland, in the Judicial Circuit of the Circuit Court most convenient to the place where the hearing was held. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing before the Board and the issuance and service of a notice on the Board and on the respondent of the time and place fixed for the proceeding. Thereupon the Court shall have jurisdiction of the proceeding and shall have power to grant such temporary relief or restraining order as it deems fit and to make an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board shall be con-

sidered by the Court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Either party may move the Court to remit the case to the Board in order to adduce additional specified and material evidence and seek findings thereon provided he shows reasonable grounds for the failure to adduce such evidence before the Board. The findings of the Board as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the Circuit Court, and if an appeal is taken, by the Supreme Court as expeditiously as possible. The judgment and order of the Circuit Court shall be final, subject only to review by the Supreme Court. The Board's copy of testimony shall be available at all reasonable times to the parties for examination without cost and for the purposes of judicial review of the order of the Board. A respondent who institutes a proceeding under this section must institute it within thirty days after the service of the order of the Board." L. 1960-61, ch. LVII, § 203.

In the case at bar, the matter never reached the Labor Practices Review Board and, therefore, could not be appealed to the Circuit Court. Moreover, the petitioner who would have been entitled to an appeal elected not to exercise his right to appeal. Since the Circuit Court could not exercise its appellate jurisdiction, let us see whether it could assume original jurisdiction to hear the suit. According to the complaint filed in the Debt Court, the matter involves a sum certain due from petitioner to Mr. Shannon. Mr. Shannon alleged that petitioner was indebted to him in the sum of \$3,950.86 at the rate declared by the Labor Agency and he demanded payment from the petitioner who refused to pay the amount due him. "A debt is an obligation to pay a sum certain regardless of whether the liability arises by contract or is im-

plied or imposed by law.” BLACK’S LAW DICTIONARY, 490. These allegations sound in debt; the Circuit Court has neither appellate jurisdiction herein nor original jurisdiction in cases of this amount of debt and, therefore, the matter is not actionable before that court.

It is our opinion that all the National Labor Affairs Agency did was to state how retirement pensions are computed and how much Mr. Shannon was entitled to receive from petitioner, his former employer. Armed with this knowledge, Mr. Shannon decided to bring an action to recover the amount due him. The amount, assuming the computation is correct, being within the jurisdiction of the Debt Court as provided in the Debt Court Act of 1968, the suit is actionable before that court, and, therefore, the judge did not err in denying the motion to dismiss the complaint.

Petitioner alluded to the doctrine of *res judicata*, but the doctrine is inapplicable in this case since the subject matter involving the same parties was never judicially determined. *Kiazolu-Wahab v. Sonni*, 16 LLR 73 (1964).

To require Mr. Shannon to look to the Circuit Court which has no jurisdiction over the subject matter, or to the Labor Practices Review Board which is not yet constituted, or to the National Labor Affairs Agency, which for nineteen months was unable to compel the payment of the pension due him, would work undue hardship upon him and leave him without a remedy, in contravention of Article I, Section 6th, of the Constitution, which states that “Every person injured shall have remedy therefor, by due course of law.” It having been determined that the petitioner was required by law to pay a retirement pension, in an amount which has been ascertained, which amount is within the jurisdiction of the Debt Court, the said court is competent to hear this matter. The fact that the amount due is called a pension does not change the fact that it is a debt; and the fact that the Labor Agency

determined the amount due does not in itself preclude the person entitled to the pension from suing in the Debt Court.

In view of the foregoing, the petition for the issuance of an interlocutory writ of prohibition is hereby denied with costs against the petitioner. The Clerk of this Court is hereby ordered to send a mandate down to the court below commanding it to proceed with the hearing of the case out of which these proceedings grew.

Petition denied.