INTERNATIONAL TRUST COMPANY OF LIBERIA, Appellant, *v.* THOMAS W.O. KING, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: April 5, 1993. Decided: July 23, 1993.

1. The absence of an employee for more than ten consecutive days or more than twenty days over a period of six months without good cause will be considered a termination of his employment.
2. Severance pay cannot be given to an employee whose services have been legally terminated.
3. A judge is not disqualified by having been counsel of a person who is interested or whose estate is involved, where he was never consulted relative to the particular matter that is the subject of the matter or proceeding before him.
4. Where a judge has, as counsellor, given advice or prepared pleadings or proceedings in a cause or matter pending or brought before the court, or made or proposed motions or petitions in such cause or matter, or where his law partner has been thus employed or consulted, such judge cannot give any judgment or discretion, which is in any way connected with such cause or matter.
5. Where a judge is satisfied that he is legally disqualified to act in a case he should not wait until an objection to him is raised by the parties, but should refuse to hear the cause by an entry on the docket that he does not sit in the case.

Appellee was dismissed due to his unexcused absence from work for more than ten consecutive days contrary to the Labour Practices Laws of Liberia, and his refusal to seek further medical attention. He thereafter filed a complaint against appellant with the Labour Ministry alleging unfair labour practice and claiming Thirty One Thousand One Hundred Seventy Dollars ($31,170.00). The hearing officer ruled against the appellee for failure to prove his claim. This ruling was reversed on appeal to the National Labour Court. Additionally the Labour Court granted appellee's motion to amend its ruling thereby increasing the award amount from Thirty-One Thousand One Hundred Seventy Dollars ($31,170.00) to Seventy Thousand One Hundred Seventy Dollars ($70,170.00).

On appeal, the Supreme Court reversed the ruling of the National Labour court holding that the judge of that court could not have awarded damages for wrongful dismissal when that charge was never alleged. The Court further noted that the judge had one time associated with the law firm representing appellee. Additionally, the court observed that appellee terminated his own employment by refusing to return to work when the period of excused absence for medical leave expired. The Court further held that the award of $70,170.00 as benefits and entitlements for severance pay were without legal merit considering appellee's length of employment. On the basis of the foregoing, the judgment was *reversed*

George E. Henries and *Wynston O. Henries* appeared for the appellant. *Frank W. Smith* and *Frederick D. Cherue* appeared for the appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

This case comes before us on an appeal from the judgment of the National Labour Court in Monrovia which was adverse to the International Trust Company of Liberia, (herein "ITC"), the appellant.

The appellee, Thomas W. O. King, was an employee of ITC, the appellant, from August 25, 1982 until 1987. In February, 1987, he fell seriously ill and was rushed to West Clinic, one of ITC's approved or retained clinics. He was issued a medical certificate by West Clinic declaring him unfit for work until February 20, 1987. This meant that he was to report to work on February 21, 1987 but instead, he returned on February 23, 1987, in consequence of which he was written a warning letter by the appellant.

According to the appellant, the appellee was instructed to go to Cooper Clinic for a further examination and possible treatment in view of the diagnosis from West Clinic that he was suffering from hepatitis, and also because appellee had continued to complain of being ill. Cooper Clinic was also one

of the appellants approved clinics and appellee was issued a slip on February 23, 1987 to attend that clinic, but the appellee failed to do so.

On March 12, 1987, the appellee requested time off from work to take his wife to the airport for her travel to the United States. His request was denied but he, nevertheless, left the office for the purpose of his request and did not report back to work that day. Appellee was therefore suspended from duty for the period March 13-19, 1987 and informed that he was expected to return to work on March 20, 1987. Further, he was instructed to go to Cooper Clinic, as he was previously requested to do, and present a medical report from that clinic evidencing his attendance thereat when he returned to work. This, the appellant felt, was necessary in order to obviate further complaints of illness by the appellee, especially since he had been diagnosed with hepatitis. The appellee did not report to work on March 20, 1987, neither did he go to Cooper Clinic.

On March 25, 1987, the appellant wrote the appellee advising that if he did not report to work by April 1, 1987 his name would be removed from the payroll pending a medical certificate from Cooper Clinic declaring him free from hepatitis, which the appellant indicated was a contagious disease. The appellee refused to go to Cooper Clinic and failed to return to work. As a result, the appellant removed his name from the payroll on April 3, 1987.

In June 1988, the appellee filed a complaint against the appellant with the Ministry of Labour for unfair labour practice. In his complaint, the appellee laid a claim for Thirty-One Thousand One Hundred Seventy Dollars ($31,170,00). After hearing the complaint the hearing officer rendered a ruling on August 28,1992, holding that the appellee failed to prove his complaint and sustain his claim. Further, the hearing officer concluded that the appellee's failure to report for work from March 20, 1987 was an un-excused absence of more than ten(10) consecutive days, in which case he was deemed to have terminated his employment contract.

The appellee appealed from the hearing officer's ruling and

sought a judicial review thereof at the National Labour Court. On November 12, 1992, the judge of the National Labour court reversed the hearing officer's ruling and remanded the case to the hearing officer with instructions to lift the suspension of the appellee and calculate the wages and benefits due him from the date of the suspension to the date of the judgment. The appellee, on November 17, 1992, through his counsel, filed a motion for amendment to correct the court's ruling submitting therein a list of claims totaling seventy thousand one hundred seventy dollars ($70,170.00) as wages, benefits and entitlements due him. The motion averred that the judge's ruling of November 12, 1992 was indefinite and prayed that the judgment be made definite by awarding the following:

"1. Monthly pay for 5 years at $660.60 a month =$ 39,600.00
2. Monthly Transportation allowance at $60.00 for 5 years = 3,600.00
3. Christmas Bonus at $360.00 for 5 years = 2,160.00
4. Severance pay for 10 yrs. at $660.00 a month = 6,600.00
5. Arrears at beginning of action = 1,170.00
6. One Month notice pay = 660.00
7. Wrongful Dismissal $660X 24(2) years = 15,840.00
TOTAL AMOUNT OF CLAIM = 70,170.00

The judge, on December 29, 1992 granted the motion and awarded the total sum of seventy thousand one hundred seventy dollars ($70,170.00) as prayed for by the appellee. The appellant excepted to and announced an appeal from the judge's final ruling, that is the ruling of 12th November1992, as well as the ruling of December 2, 1992.

The required appellate steps having been completed by the appellant, the case is thus properly before us for appellate review. Accordingly, the issues which we need to determine are:

1) Whether the appellee was illegally dismissed to present a basis for unfair labour practice as claimed by him?
2) Whether there is any basis for the lower court's award of seventy thousand one hundred seventy dollar($70,170.00) as salary, benefits and entitlements due the appellee?

The records indicate that the appellee stayed away from work without excuse from March 20, 1987 up to June 1988

when he filed his complaint with the Ministry of Labour. In addition, he refused to go to Cooper Clinic for a second medical opinion on his illness, and did not submit any written explanation to his employer showing why he had not complied.

In his findings of fact, the hearing officer made the following observations in his ruling:

"1. This investigation observes that the complainant, Mr. Thomas W. O. King, was on August 25, 1982, employed as collection typist by the International Trust Company, (I.T.C.)
2. That from the records of these proceedings, Thomas W.O. King presented a certificate dated February 20, 1987, which states that Mr. Thomas W. O. King is under medical treatment from 9th-20th, February 1987 and would be fit to resume normal duties from 21st February 1987;
3. That after complainant Thomas W. O. King was pronounced fit to resume normal duties, he deserted his job at 11:00 a. m. on March 12, 1987, for which he was suspended from March 13-19, 1987;
4. That complainant King was advised by Mr. Raymond Abu-Samra of the International Trust Company, (I .T .C .) to bring evidence from the Cooper Clinic before returning to work on the 20th March 1987, as he was requested to do on February 12, 1987;
5. That from the 20th March 1987 complainant King elected to stay away from work because he did not attend the Cooper Clinic;
6. That prior to the incident of 1987, Complainant Thomas W. O. King had absented himself from work for sixty(60) days in 1986, (see page 8 of the records);
7. That from the date of complainant's employment the defendant had been referring him and other employees to the Cooper Clinic and other clinics; and
8. That even though complainant, on many occasions, absented himself from work, the defendant did not terminate his services, as he has alleged in his "unfair labour practices claim."

In his conclusions of law, the hearing officer stated in his

ruling that Thomas W. O. King, the appellee, violated section 1508 (2)(d) of the Labour Law. That section states:

> "Absence of an employee for more than ten consecutive days (or more than twenty days over a period of six (6) 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".

Surely, the appellee's refusal to go to Cooper Clinic cannot be considered "good cause" or"vis major" to justify his absence from work from March 20, 1987 up to the time of his complaint on June 14, 1988.

The hearing officer then held that the appellee's claims of thirty-one thousand one hundred seventy dollars ($31,170.00) had no merit and properly dismissed his complaint together with the claims made therein.

The findings of fact of the hearing officer are supported by the Labour Laws Section 1508(2)(d) which cannot but lead to the determination that the appellee himself terminated his employment contract. The hearing officer therefore properly dismissed the appellee's complaint together with the claims lodged therein. The conclusion is thus obvious that the first issue stated above must be answered in the negative. There is, accordingly, no basis to support a finding of unfair labour practice on the part of the appellant.

As mentioned above, the trial judge, in reversing the ruling of the hearing officer, awarded the appellee an amount of seventy thousand one hundred seventy dollars ($70,170.00) as wages, benefits and entitlements due the appellee for the "unfair labour practice" allegedly meted out to him by the appellant. This award by the trial judge defies any logic since the same appellee submitted a claim of thirty-one thousand One hundred seventy dollars ($31,170.00) in his complaint to the Ministry of Labour which was dismissed by the hearing officer as it was determined to be unmeritorious. The factual and legal basis given for the findings of the hearing officer are clear and cogent.

The records show that the appellee worked for the appellant for five(5) years, spanning the period 1982-1987. On what basis then did the National Labour Court judge award the appellee ten(10) years severance pay, in addition to other amounts awarded which, to say the least, have no scintilla of evidentiary support in the light of the records before the court.

In the case *The Management of BAO v. Mulbah and Sikeley*, 36 LLR 404 (1989), this Court overruled the method of severance pay as a means of computing compensation to an employee whose services are terminated. Mr. Justice Kpomakpor, speaking for the Court in that case, said, "The parties are in complete agreement that Berry *(Firestone v. Berry)* served the company during the first six (6) years as a cadet and the last fifteen (15) years as a full-time employee. The basic contention of Berry is simply that his severance pay covers the entire 21 years, the first 6 years as a part-time employee and the last fifteen (15) years as full-time. For its part, the company maintained that the first 6 years could not and should not be considered for severance purposes, since compensation is calculated on the basis of one month for each full year of service. In short, the position of the company is that Berry was only entitled to 15 years severance pay, the length of time he worked full-time and not 21 years. This Court in 1982, sustained the contention of Berry that although he was a part-time employee for the first six(6) years, he was entitled to all benefits during the twenty-one (21) years he served the company, including severance pay."

Mr. Justice Kpomakpor further said:

> "The appellee has strenuously argued that the judgment of the trial court should be affirmed on the ground that our decision in the *Berry* case has not been overturned. We are not convinced that this contention of the appellee is legally sound. The Court held in *Berry* that effective as of the date of that decision an employer may not terminate the services of an employee who has served him for two or more years without assigning a cause or causes."

Here is what the Court said in the opinion:

> "This Court, therefore, feels that the time has now

come for a definite rule to be laid down as a legal guideline in the disposition of labor disputes of this nature. This Court, now, therefore, declares that the present practice and policy of the Ministry of Labour that 'an employee who serves his or her employer for a long time should not have his or her services terminated by simply giving him or her one month salary just to satisfy the provisions of Section 1508 of the Labor Practices Law of Liberia but, rather, that the employee should be compensated by receiving an aggregate sum representing one month for each of the years served', is sound and fully supported by this Court as a means of bringing about social justice to the working masses of our nation. In other words, the yardstick from now onwards is that the employer will have to pay his or her employee one month salary for each year he or she has served his or her employer at the time of such termination.

Along with this holding, this Court suggests that in order for an employee to benefit under the principle of law just pronounced, upon termination, such employee must have served his or her employer for a minimum period of not less than two years, that is to say 24 calendar months of unbroken services. In laying down this rule, we are in no way assuming legislative functions but, rather, giving a fair and reasonable interpretation of the law as contemplated and anticipated by our law makers, which function constitutionally belongs to the judiciary."

Mr. Justice Kpomakpor concluded: "The reliance placed upon *Berry* is misplaced, to say the least, as there was no statutory authority for the Court's position in 1982 and definitely there is none today. Although the facts and circumstances in the *Berry* case and those in the case at bar are clearly distinguishable, we must overrule the former because we wish that trial judges and others will guard against reliance upon it in the future." *The Management of BAO v. Mulbah and Sikeley,* 35 LLR 404 (1989).

The *Mulbah and Sikeley* case was decided in 1989, and so

the reasonable assumption must be that the trial judge and the counsel for appellee were aware of it when the award to the appellee was made. Worse still, even if the award was justifiable and severance pay was still in application, severance pay was usually based upon one (1) month for each completed year served by the employee. The question, therefore, which arises is how can an employee who served for five (5) years be awarded ten (10) years severance pay? Another question is how could the appellee be awarded twenty four (24) months pay when there is no showing in the records of wrongful dismissal as provided in Chapter Section 9 of the Labour Laws of Liberia. That section reads as follows:

> "Section 9. *Wrongful Dismissal.* Where wrongful dismissal is alleged the Board of General appeals shall have power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement. The party against whom the order is made shall have the right of election to reinstate or pay such compensation. In assessing the amount of such compensation, the Board shall have regard to: (a) (i) reasonable expectations in the case of dismissal in a contract of indefinite duration; (ii) length of service but in no case shall the amount awarded be more than the aggregate of two years salary or wages of the employee computed on the basis of the average rate of salary received 6 months immediately preceding the dismissal; however, if there are reasonable grounds to effect a determination that the dismissal is to avoid the payment of pension, then the Board may award compensation of up to but not exceeding the aggregate of 5 years salary or wages computed on the basis of the average rate or salary received 6 months immediately preceding the dismissal; (b) The Board of General Appeals may assess and order payment of all arrears of remuneration payable in any case referred to it."

Here we have a case where no wrongful dismissal was alleged; on the contrary, we have a case of an employee who refused to go to work and self-terminated his employment

under Section 1508(2)(d) of the Labor Law. How could the labour court judge so tightly close his eyes to the self-evident facts and law in the case?

Still disheartening is the fact that a member of the Supreme Court Bar would interpose such a ludicrous claim as laid in the appellee's motion to amend court's ruling filed by counsel for the appellee on November 17, 1992 in utter disregard of the facts of the case and the law controlling.

In appellant's brief and the counsel's argument, our attention was drawn to the trial judge's prior association, before his elevation to the position of labour court judge, with the Dugbor Law Firm, the counsel for appellee. Appellant's counsel takes the position that the judgment appealed from was influenced by prejudice and bias on the part of the trial judge who previously was associated with the Dugbor Law Firm, counsel for appellee. It is noteworthy that the judge was associated with the firm at the time appellee filed this suit with the Ministry of Labour and retained the services of the firm. With the records before us and the counter direction which the judge's ruling took as gathered from the records, it is difficult not to lend credence to this position of the counsel for appellant.

It is highly reprehensible that the trial judge, with the full knowledge that the present case was contended when he was associated with Dugbor Law Firm, the appellee's counsel, would sit on the case merely because he was not asked to recuse himself. The appellant's counsel in his brief and argument said that the judge was not asked to recuse himself because his prior connection with the case was not known until much later, after the case was concluded at the Labour Court.

In the case *Dennis v. Republic,* reported in 7 LLR 341 (1942), Mr. Chief Justice Grimes, tracing the origins of the principle on the disqualification of the judge to sit on a case where he had previously served as counsel for one of the parties, said: "The growing tendency towards the absolute disqualification of a judge to sit in matters in which he had previously acted as counsel for one of the parties gradually began to be circumscribed by certain limitations, one of which has been expressed in the following language" "A judge is not

disqualified by having been counsel of a person who is interested or whose estate is involved, where he was never consulted relative to the particular matters which are the subject of the cause or proceeding before him." 23 CYC. of Law and Proc., *Judges,* 588 (1906). Continuing Chief Justice Grimes said:" "Towards the close of the nineteenth century, Chief Justice Raney, delivering the opinion of the Florida Supreme Court in the case of *Tampa Street Ry. & Power Co. v. Tampa Suburban Ry. Co.*, 30 Fla. 595, L.R.A 861 (1892), took pains to differentiate between two different classes of cases, citing one in which a judge was legally disqualified to sit and another in which the disqualification claimed could not be applied. The relevant part of said opinion is as follows:

> "The decision of the Supreme Court of New Hampshire in *Moses v. Julian,* 45 N.H. 52, was that a judge of probate who has written a will is disqualified to sit upon the probate of it; and in "*Whicher v. Whicher*, 11 Id. 348, that a justice of the peace who at the request of the counsel for the plaintiff appeared on behalf of the plaintiff at the taking of a deposition to be used in the cause, and examined the witness, is incompetent afterwards to take, as magistrate, a deposition for the plaintiff to be used in the same case. *See* also *Smith v. Smith,* 2 Greenleaf, 408. In *Melaren v. Charrier*, 5 Paige 530, it was held where a master in chancery has in the character of a solicitor or counselor given advice or prepared any pleadings or proceedings in a cause or matter pending in or brought before the court, or made or proposed motions or petitions in such cause or matter, or where his law partner has been thus employed or consulted although not the solicitor or counselor on record, such master or judicial officer can not act as master or do any judicial act requiring the exercise of judgment or discretion, which is in any way connected with such cause or matter, and consequently can not approve an appeal bond." *Id.* at 601-602. *Dennis v. Republic,* 7 LLR 341, 344-345 (1942).

Clearly the trial judge falls under the view expounded by Chief Justice Raney of the Florida Supreme Court in 1892 in

the case *Tampa Street Ry. & Power Co. v. Tampa Suburban Ry. Co.*, as quoted by Mr. Chief Justice Grimes.

In *Ware v. Republic*, Mr Justice Grigsby speaking for this Court in 1935, said:

> "Where a judge is satisfied that he is legally disqualified to act in a case he should not wait until an objection to him is raised by the parties, but should refuse to hear the cause by an entry on the docket that he does not sit in the case. This indeed is the usual practice, and the judge's decision in such cases that he is incompetent through interest is not reversible except for manifest error." 11 CYC 781-82, Section III (i)." *Ware v. Republic*, 5 LLR 50, 54 (1935).

The conclusions from the authorities just cited, must be that the trial judge should not have sat on the case now before us. His failure to recuse himself attaches him with opprobrium and suspicion of unfairness. It is a spectacle when a layman, that is, the hearing officer better applies the law to the facts than a judge especially of a court of record.

In consideration of the facts and the law cited herein above, the judgment of the trial court, comprising that court's rulings of November12,1992 and December 2, 1992, respectively, are reversed in their entirety and the ruling of the hearing officer affirmed. Costs against the appellee. And it is so ordered.

Judgment reversed.