IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOH…….....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……ASSOCIATE JUSTICE
BEOFRE HIS HONOR: YUSSIF D. KABA…….……ASSOCIATE JUSTICE
BEOFRE HIS HONOR: YAMIE QUIQUI GBEISAY, SR……ASSOCIATE JUSTICE

The Management of OXFAM Liberia, of the City of Monrovia Republic Liberia…… Appellant	)	
Versus	)	APPEAL
Frederick G. David, also of the City of Monrovia, Republic of Liberia……. Appellee	)	
GROWING OUT OF THE CASE:	)	
The Management of OXFAM Liberia, of the City of Monrovia Republic Liberia…… Petitioner	)	
Versus	)	PETITION FOR JUDICIAL REVIEW
Frederick G. David, also of the City of Monrovia, Republic of Liberia…… Respondent	)	
GROWING OUT OF THE CASE:	)	
Frederick G. David, also of the City of Monrovia, Republic of Liberia…… Complainant	)	
Versus	)	UNFAIR LABOR PRACTICES
The Management of OXFAM Liberia, of the City of Monrovia Republic Liberia…… Respondent	)	

Heard: June 25, 2024 Decided: August 27, 2024

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The appellee, Frederick G. David, was dismissed by his employer, OXFAM Liberia, the appellant herein, for what it termed "gross misconduct". Predicated on his dismissal, the appellee filed a formal complaint with the Ministry of Labor against the appellant for unfair labor practice. The hearing officer at the Ministry of Labor conducted a formal investigation on the basis of the complaint, and thereafter ruled against the appellant, holding the latter liable for unfair labor practice, and ordered the reinstatement of the appellee with all his remunerations restored, or in lieu thereof, pay him an aggregate of his

monthly salary for twenty-four (24) months in the sum of Thirty-Six Thousand United States Dollars (US$36,000.00). Thereafter, the appellant filed a seven (7) count petition for judicial review before the National Labor Court, Montserrado County, alleging *inter alia*, that the hearing officer erred by adjudging the appellant liable for unfair labor practices because the appellee's dismissal was done in consonance with the law; that an internal investigation was conducted, and the findings therefrom established that the appellee was in violation of the appellant's procurement policy with respect to procuring five (5) specific laptops for the entity; that even the laptops allegedly procured by the appellee did not satisfy the appellant's standard; that the investigation further established that the laptops allegedly procured by the appellee were tagged with old management assets tag from 2018; that according to the tags, one of the laptops was transferred from the appellant's Nigeria office, one from the Rwanda office and two were previously assigned to the Liberia office; that predicated on these findings, the appellant dismissed the appellee for gross misconduct, an administrative action permissible under the applicable laws, to include the Decent Work Act.

Following the hearing on the Petition for Judicial Review, the Judge of the National Labor Court, His Honor Joseph M. Kollie, ruled affirming the decision of the hearing officer. The appellant noted exceptions to the final ruling of the trial court, announced an appeal to the Supreme Court, and thereafter filed a four (4) count bill of exceptions for this Court's review and determination.

Having reviewed the appellant's four (4) count bill of exceptions, we find that the sole issue of contention is whether or not the appellant proved its allegation of gross misconduct on the part of the appellee to warrant his dismissal.

Reviewing the records, we observe that the appellant's dismissal of the appellee for alleged gross misconduct is premised on the findings and recommendation obtained in the final report of an internal investigation conducted by the Anti-Corruption Team (ACT) of the appellant's organization. The said internal investigation was instigated by the appellant's allegation of asset misappropriation amounting to potential fraud by some employees of the appellant, inclusive of the appellee. The findings of the ACT's investigation reveal that the appellee was liable for breach of the appellant's Supply and Logistics Manual. The report states thus:

> "Frederick David approved the Purchase Order (PO) file checklist despite the inconsistencies in the documentation for the purchase of the five laptops. This was in breach of the Supply and Logistics Manual which stipulates that '*the Payment Request is issued by the Logistics Department…This approval involves assessing the transaction by matching the information between the purchase order, proof of delivery, and the invoice. If there is a discrepancy between the conditions agreed at the moment of the purchase and conditions of the actual delivery, it must be reflected in the invoice'*."

The final report further recommended that the appellee be subjected to disciplinary action for his breach of the Supply and Logistics Manual because he approved the Purchase Order (PO) file checklist despite the inconsistencies in the documentation for the purchase of the five laptops.

The afore-stated reason is the ground on which the appellant premised its decision that the appellee was liable for gross misconduct. The appellant's "*Dealing with Problems at Work Policy*", which is inclusive of Misconduct/Gross Misconduct Procedure, states *inter alia*, that:

> "Employee misconduct can range from continued lateness, bullying or harassment, failure to follow reasonable management instructions, to abuse of the organization's computer system or internet access (see Examples of Misconduct) … In cases of proven gross misconduct (see examples of Gross Misconduct), dismissal is normally the outcome following an investigation and formal meeting…
>
> Examples of offences that are normally regarded as gross misconduct include but are not limited to:

- Theft, bribery, fraud or deliberate falsification of records.
- Repeated or serious failure to comply with reasonable management instructions.
- Fighting, assault on another person.
- Deliberate Damage to OXFAM GB property.
- Serious incapability through alcohol or being under the influence of illegal drugs.
- Serious negligence causing unacceptable loss, damage, or injury…"

Pursuant to the Decent Work Act (2015), which the appellant's "*Dealing with Problems at Work Policy*" is in consonance with, fraud and other acts of malfeasance constitute grave misconduct, and are grounds for an employer to immediately terminate an employee's employment, where it is impossible to continue or to resume the necessary relationship of mutual trust and confidence between the employee and the employer, or the employee and other employees of the employer. As it pertains to what constitutes grave misconduct, Section 14.3 (d) states thus:

> "d) Without limiting the scope of the preceding provision, the following are examples of actions which may constitute grave misconduct for the purposes of this section:
>
> i) an employee is unable to carry out their function effectively due to the consumption of alcoholic drinks, narcotics, psychotropic substances or other like addictive substances in the working environment;
>
> ii) an employee has breached the fundamental rights of another employee as they are protected in Chapter 2 of this Act;
>
> iii) an employee has sexually harassed another employee within the meaning of section § 2.8.
>
> iv) an employee has attacked, battered, threatened, or intimidated his or her co-workers or the employer:
>
> (1) in the working environment; or
>
> (2) in circumstances which have a sufficient connection to the working relationship;
>
> v) an employee has either carelessly or intentionally destroyed or let property of the employer be destroyed, leading to significant losses to the enterprise; vi) an employee has either carelessly or intentionally exposed their fellow employees or other persons to risks to their safety and health in or arising from the workplace;

vii)an employee has been absent from work for more than 10 consecutive days or more than 20 days over a period of 6 months without good cause or explanation; or

viii) an employee has breached their obligation to protect and keep secure confidential information of their employer, provided that an employer may not terminate an employee's employment on this ground if the employee released the confidential information in order to:

(1) expose serious misconduct or wrongdoing by the employer; or

(2) protect the public interest."

We observe from the records, specifically the appellant's investigative report, that the gross misconduct alluded to by the appellant is alleged fraud perpetrated by the appellee. The executive summary and background of the said report states that the appellant forwarded a report to the ACT for an investigation on account of potential fraud and asset misappropriation alleged to have been perpetrated by the appellee in the purchase of five (5) laptops in behalf of the appellant.

In support of his complaint filed before the Ministry of Labor that the appellant had engaged in unfair labor practice when it dismissed him for gross misconduct, the appellee testified *pro se* that he was employed by the appellant as Logistics Coordinator and Security Focal person, and had served in said capacity from 2018 up until his dismissal in 2021. Referencing his involvement in the process which the appellant alluded to as fraudulent and misappropriation of the appellant's assets, the appellee testified that in June, 2020, he received a request for the procurement of five laptops from the IT personnel which request had already been approved by the line manager of the department; that following the procurement formalities which included advertising the request order and thereafter selecting a suitable supplier, the five laptops were procured from United Office Supplies & Equipment at a total cost of Eight Thousand Seven Hundred Fifty United States Dollars (US$8,750.00) and delivered to the offices of the appellant in two batches; that the first delivery was done at a time he (appellee) was out of the office, but was subsequently informed of said delivery and that the laptop had been placed in the custody of the IT personnel; that upon delivery of the remaining four (4) laptops, he noted that the specs varied from what was specified in the purchase order; that he notified the IT personnel of the variance in specs, but was assured that the specs delivered by the supplier were equivalent to or even of a higher quality than what had been ordered; that the laptops were received by the Warehouse/Logistics Assistant, Mr. Peter Bummie, and subsequently payment for the five (5) laptops was made to the supplier; that at the time the laptops were procured, the appellant's office was maintaining strict COVID protocols, and as such, staff were alternating their work schedule at the office; that because of this work schedule, physical verification of assets was difficult to carry-out; that following the resumption of full-time work schedule at the office, assets verification was conducted at which time the appellant asserted that the five (5) laptops which the appellee had procured were unaccounted for; that predicated on the suspicion of the appellant regarding the procurement of the five laptops, an investigation was initiated by the appellant through its Anti-Corruption Team; and that at the conclusion of the investigation, the appellant dismissed him, the appellee for gross misconduct.

In defense of its dismissal of the appellee, the appellant's Country Director testified *inter alia* that according to the latter's procurement policy, all laptop computers were normally purchased from Oxford in Great Britain; that upon purchase, Oxford gives a three-year warranty on each computer, and assigns a unique tag number to each computer so that no two computers in the appellant's system can bear the same tag number. The witness further testified that in accordance with the appellant's policy, any purchase in excess of one Thousand Pounds must be approved by the Regional manager of the appellant's organization; that notwithstanding the policy, the appellee issued purchase order for five (5) new Lenovo Thinkpad T480 or T490 laptops in the sum of Eight Thousand Seven Hundred Fifty United States Dollars (US$8,750.00) without seeking approval from the Regional Manager; that although the purchase order specified the spec of laptop computers that were ordered, the delivery note indicates that different specs of laptops were delivered which did not conform to the standard of the appellant; that the appellee failed to obtain approval from senior management when he observed that the specs ordered were different from the ones delivered; that upon physical verification, the tag number assigned to the purported new laptops procured by the appellee were tags that belonged to laptops that were previously purchased from Oxford and assigned to Rwanda, Nigeria, and Liberia respectively. Hence, the physical verification showed that the purported five new laptops were unaccounted for.

We note from the testimony of the appellant's witness as well as the final investigative report which the appellant relied upon to dismiss the appellee presents two scenarios. First the appellant seems to be arguing that the five (5) laptops purportedly procured by the appellee were in fact not purchased at all because, according to the appellant's verification process, said laptops were unaccounted for. This argument is premised on the investigative report which indicated that the tag numbers assigned to the purported new laptops were actually tag numbers of old laptops that had been in use in the appellant's system. The appellant further argued that based on the coding system employed by Oxford (appellant's preferred supplier of laptops) in behalf of the appellant, no two laptops in use within the appellant's system could bear the same tag number.

On the other hand, the appellant also argues that the spec of laptops that were ordered varied from the ones that were delivered. In fact, the appellant testified that the laptops purported to be Lenovo Thinkpad were actually Lenovo Thinkbook; that upon noticing this difference in spec, the appellee failed to reject the goods or obtain approval from the appropriate authority before accepting the non-conforming goods; this act, the appellant alleges, amounts to fraud and breach of its Procurement and Logistics Policy.

Reviewing the two accounts of the appellant appertaining to the appellee's alleged breach of the former's policy, we are left to wonder which account actually prompted the dismissal of the appellee for gross misconduct? The appellant having failed to clearly establish whether or not the laptops were actually purchased, albeit in a different spec than had been ordered, and which action it maintains constituted the alleged breach of its policy, this Court is more inclined to accept that the appellee did procure the five laptops and same were delivered to the appellant's facility, and were received by the latter's staff authorized to receive delivered goods.

The records show that even the appellant's witness testified to the color of one of the laptops procured by the appellee and delivered by the supplier, which she classified as silver. This testimony supports the appellee's testimony that he was present when the remaining four (4) laptops were delivered to the appellant's office. It is the law extant in this jurisdiction that admissions made by a party himself or by his agent acting within the scope of his authority are admissible, and that every agent, for the conduct of a cause, shall have authority to make admissions in that cause. *Civil Procedure Law*, Rev. Code 1:25.8; *Mandra v. Magna*, Supreme Court Opinion, October Term, 2018; *Nyumah et al. v Kontoe et al.*, 40 LLR 14, 18 (2000). Moreover, the staff who was in charge of the appellant's warehouse and responsible for receiving goods delivered to the appellant not only signed the supplier's delivery note as proof that the goods were delivered and received, he also issued a Goods Received Note (GRN) to the supplier indicating thereon the specs and quantity of laptops he had received. We therefore agree with the appellee that the laptops were procured and delivered to the appellant's facility, and same was received by its staff.

The next question worth consideration is whether the appellee perpetrated fraud or some other form of malfeasance in the procurement of the five (5) laptops. It is undisputed that the four (4) of the laptops ordered by the appellee in his capacity as Logistics Officer of the appellant and delivered by the supplier to the latter's officer were different specs than what was ordered and stipulated in the purchase order. However, the appellee testified that upon observing that the laptops delivered by the supplier were not the exact specs that he had ordered based on the recommendation of the IT personnel, he immediately consulted the said IT personnel in person of Tarloe Yardanmah, who had made the request for the laptops notifying him of the variance and if said laptops were compatible to the appellant's system and comparable to its standard; that Mr. Yardanmah informed the appellee that the laptops delivered were of even higher grades than the ones they had ordered, hence they were acceptable.

Fraud is defined as "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (especially when the conduct is willful) it may be a crime." Black's Law Dictionary, 9th edition.

Considering the facts and circumstances of the present appeal, this Court is curious as to who else would have been more suitable to confirm the compatibility and conformity of the delivered specs of laptops to the appellant's system and standard than the staff responsible for said functions, and in this case, Mr. Tarloe Yardanmah, the appellant's IT personnel whom the investigation report confirms, accepted the delivered laptops even though they differed from the model that had been ordered. Even viewed from our lenses which lack the technical expertise of computer science and the rudiments associated therewith, we are unable to see the fraudulent conduct associated with the appellee's procurement of the laptops on the basis that the specs of the models delivered differed from what was ordered. This Court notes that amongst the examples of gross misconduct contained in the appellant's "*Dealing with Problems at Work Policy*", the offence classified thereunder and applied to the appellee is fraud; this is clearly captured in the Executive Summary and Background of the appellant's Final Report involving the investigation of the appellee and other staffs of the appellant.

This brings us to the issue, *viz*.: whether or not the appellant proved its allegation of gross misconduct on the part of the appellee to warrant his dismissal.

Section 14.3(a) of the Decent Work Act, 2015 stipulates the grounds for immediate termination of employment. It states that "an employer may immediately terminate an employee's employment for **grave misconduct** which makes it impossible to continue or to resume the necessary relationship of mutual trust and confidence between the employee and the employer, or the employee and other employees of the employer…" Sub-section 'd' of the same Section 14.3 of the Decent Work Act, which is quoted *supra* in this Opinion, outlines examples of what constitute grave misconduct. [emphasis ours]

In the present case, the act which the appellant recognizes as gross misconduct is the appellee's "approval of the Purchase Order file checklist despite the inconsistencies in documentation for the purchase of the five computers". This Court recognizes that every institution or organization has the right to establish policies, rules or guidelines that govern the administration of said institution; that said policies or rules are effective and binding on employees or members of the institution or organization except it is repugnant to or inconsistent with any statutory or decisional law extant in this jurisdiction; and that the appellant's Policy pertinent to misconduct and gross misconduct being consistent with the Decent Work Act (2015), same is hereby valid and binding against the employees of the appellant, and we so hold.

However, reverting to the records to ascertain the actions and/or inaction of the appellee which the appellant classifies as gross misconduct, we note the following: that the request for the laptop computers originated from the IT personnel; that at least three quotations were solicited and vetted; that the decision to order the laptops from United Officer Supplies & Equipment was recommended by the IT personnel who based his decision on the technical specification quoted by the said supplier; that the supplier sent an alternative quote with another model of laptops with the same technical specifications and price as that of the ones ordered; that the first laptop was delivered in the absence of the appellee and same was turned over to the IT personnel; that upon delivery of the remaining four laptops, the appellee flagged the difference in the model contained on the delivery note *vis-à-vis* what was contained on the PO, and immediately notified the IT personnel who confirmed that the models delivered were of even higher grade than the ones ordered, and as such, they were acceptable.

While we grasp the appellant's contention that because the technical specification and model of laptops on the PO varied from what was recorded on the delivery note and the GRN issued by the staff who took delivery of the goods, the appellee should not have approved the Purchase Order file checklist, we also quickly note that prior to the appellee's approval, he had sought clarification from and had obtained the necessary approval from the IT personnel, who also happened to be the requester of the set of laptops, who affirmed that the laptops delivered were suitable and comparable to the models ordered, and as such compatible with the appellant's standard of laptops. The appellant having alleged but failed to prove fraud committed by the appellee in the purchase of the five computers, but proceeded to dismiss the latter for gross misconduct, the appellant is guilty of unfair labor practice.

Howbeit, this Court notes that the Hearing Officer of the Ministry of Labor having determined that the appellant was liable for unfair labor practice, ordered that the appellee be reinstated with his full benefits, or in lieu thereof, be paid the aggregate of twenty-four months' salary, the maximum liability provided for by the law. The Decent Work Act provides several remedies in case of a determination of invalid termination of employment, among which is section 14.10(2), which states that "the amount of compensation in lieu of reinstatement should not exceed an amount equal to two years' remuneration computed on the basis of the average rate of salary received 6 months immediately preceding the dismissal…" These provisions of the statute depict discretionary authority by the Ministry of Labor and the courts as to the application of each sub-section to the given facts and circumstances and the evidence adduced in a labor case. Hence, we ask the question as to how that discretion was exercised by the Ministry of Labor in determining that the facts and circumstances appertaining to appellee's case warranted the imposition of the maximum liability permissible under the law. This Court has held, that "the fact that the labor law allows or grants to the Hearing Officer and the National Labor Court Judge the discretion to award up to twenty-four months' salary to an employee who is adjudged to have been wrongfully dismissed does not *ipso facto* vests such right or power to give the maximum allowable award where the facts, the circumstances and the evidence in the case do not warrant such maximum award. *Dickerson et al. v. Her Honor Natt et al.*, Supreme Court Opinion, March Term, 2016.

The records show that the appellee had been in the employ of the appellant for three years and approximately three months prior to his dismissal. Assuming *arguendo*, that the appellant had decided to terminate the services of the appellee for reasons permissible under the law, what would have been the maximum compensation that the latter would have been entitled to? According to the law, at most, the appellee would have been entitled to one month's salary for each year of service completed, which would have aggregated to three months' salary since he had completed three years of service, in addition to other benefits he was entitled to during his period of employment.

In reference to the remedies available to an employee whose employment termination is found to be invalid, The Decent Work Act stipulates at Section 14.10 (b) that in making a determination on the appropriate remedy for a case of invalid termination of employment, the Ministry of Labor or the court shall order the reinstatement of the employee. The records show that the Hearing Officer did order the reinstatement of the employee, but same was not given consideration by the appellant, as it sought appellate review thereof.

Notwithstanding, the same law further stipulates at sub-section 4 of the provision cited immediately above, thus:

> "in all cases the amount of compensation shall take into account:
>
> (a) any payments made by the employer to the employee at the time of or in consequence of the decision to terminate the employee's employment;
>
> (b) the employee's earnings, if any, since the decision to terminate the employee's employment;
>
> (c) the extent to which the employee attempted to mitigate their loss; and

(d) the reasons why the employee commenced the proceeding when they did."

The records indicate that the appellee was paid his full remuneration until the effective date of his termination. As such, calculation of the compensation that the appellee may be entitled based on the appellant's liability for unfair labor practice is exclusive of any unpaid remuneration. Hence, we hold that the imposition of the maximum compensation of twenty-four (24) months not being commensurate with the facts and circumstances attendant to this case, this Court authorized to enter the judgment which the trial court should have entered modifies the compensation due the appellee from twenty-four (24) months to twelve (12) months.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the National Labor Court for Montserrado County is hereby affirmed with the modification that the award made to the appellee in the amount of Thirty-Six Thousand United States Dollars (US$36,000.00) is reduced to Eighteen Thousand United States Dollars (US$18,000) computed at the rate of US$1,500 per month for twelve (12) months. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellant. IT IS HEREBY SO ORDERED.

Ruling Affirmed With Modification

When this case was called for hearing, Counsellor Willie D. Barclay, Jr of the Century Law Offices appeared for the appellant. Counsellor Jimmy Saah Bombo, Sr. of the Central Law Offices, Inc. appeared for the appellee.