IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS MARCH TERM, A. D. 2026.

BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR....................................CHIEF JUSTICE
BEFORE HER HONOR : JAMESETTA H. WOLOKOLIE..........................ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA...ASSOCIATE JUSTICE
BEFORE HER HONOR : CEAINEH D. CLINTON-JOHNSON........................ASSOCIATE JUSTICE
BEFORE HIS HONOR : BOAKAI N. KANNEH...ASSOCIATE JUSTICE

The Management of APM Terminals Liberia Limited Represented by its Managing Director and all of its Authorized officers of the City of Monrovia .... APPELLANT VERSUS Augustus Paye of the City of Monrovia, Republic of Liberia .... APPELLEE	APPEAL
GROWING OUT OF THE CASE: The Management of APM Terminals Liberia Limited Represented by its Managing Director and all of its Authorized officers of the City of Monrovia .... PETITIONER VERSUS His Honor Boikai A. Sheriff, Director/Hearing Officer of the Division of Labor Standards, Ministry Of Labor, Republic of Liberia and Augustus Paye Of the City of Monrovia, Liberia .... RESPONDENTS	PETITION FOR JUDICIAL REVIEW
GROWING OUT OF THE CASE: Augustus Paye of the City of Monrovia, Republic Of Liberia .... COMPLAINANT VERSUS The Management of APM Terminals Liberia Limited represented by its Managing Director And all of its authorized officers of the City of Monrovia .... DEFENDANT	UNFAIR LABOR PRACTICE

Heard: March 26, 2026 Heard: AUGUST 27, 2026

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT.

The undisputed facts, drawn from the certified records in this appeal, show that the appellant/management, APM Terminals Liberia Ltd., employed the co-appellee, Augustus Paye, as Deputy Head of Information Technology (IT) on November 22, 2010. He remained in the appellant's employ until his retirement on January 28, 2020.

A few months after his retirement, co-appellee Paye filed a complaint with the Ministry of Labor against the appellant. He alleged that the appellant had refused to pay him an additional month's salary each year, commonly referred to as a "thirteenth-month salary"; had failed to pay his leave allowance; and had failed to pay pension benefits allegedly agreed upon by the parties. The Hearing Officer thereafter investigated the complaint.

During the investigation, co-appellee Paye testified on his own behalf. He was also supported by the testimony of Bright Atta Baah, a former employee of the appellant. Co-appellee Paye substantially testified that he commenced employment with the appellant on December 6, 2010, as Deputy Head of IT; that, under the terms of his employment, he was entitled to receive one additional month's salary every December based on his November salary; and that, throughout his employment, he did not receive the additional one month's salary contemplated by his employment agreement. On cross-examination, co-appellee Paye was asked how many salary payments he received during each year of his employment. He responded that he received thirteen salary payments, explaining that his annual salary was divided by thirteen rather than twelve and that the thirteenth portion was paid to him in December. He maintained, however, that this arrangement did not constitute payment of the additional one month's salary contemplated by his employment agreement. According to him, the appellant's practice of dividing his annual compensation by thirteen merely created the appearance that he was receiving the additional month's salary. He further testified that none of his salary adjustment letters stated that his annual salary would be divided by thirteen.

Co-appellee Paye further testified that his salary was adjusted from time to time, generally in April of each year. Regarding his pension claim, he testified that the appellant had globally established a pension benefit calculated at 10% of an employee's earnings multiplied by the number of years worked. He acknowledged that the appellant established a local pension scheme for senior managers but stated that the applicable policy had not been finalized. According to him, the policy he relied upon and the ten-percent figure were derived from the appellant's global policy on the appellant's website, while the actual amount was to be determined by the local business unit. He further testified that the appellant insured him with the National Social Security and Welfare Corporation (NASSCORP).

The co-appellee's second witness, Bright Atta Baah, a former employee of the appellant, testified that an employee's letter of employment provided for an additional one month's salary in December, apart from the employee's annual salary. He also testified that employees were entitled to a leave allowance equal to the average annual salary. According to the witness, during his tenure with the appellant, management divided employees' annual salaries by thirteen rather than twelve, which, in his view, deprived employees of the additional one month's salary promised in their employment letters. He further testified that, during his tenure, employees did not receive leave allowances. He stated that there were numerous controversies regarding employee allowances, but the Human Resources Department failed to address them. He further testified that, following the March 2018 employees' uprising, he heard that management had agreed to pay leave allowances, but only to employees who remained in active service. On cross-examination, the witness testified that he was employed by the appellant in April 2011 and that, in December of that year, he received two salary payments. He confirmed that, from April 2011 through December 2011, he received ten months' salary, including what he characterized as his thirteenth-month salary.

For its part, Jean Thompson, the appellant's Human Resources Business Partner and sole witness, testified on behalf of the appellant. She testified that she was employed by the appellant as Human Resources Business Partner and had previously served as Acting Head of Human Resources. She further testified that co-appellee Paye was employed by the appellant in December 2010 at a gross monthly salary of US$3,300.00; that, in April 2011, his salary was adjusted from US$3,300.00 to US$3,520.00; and that, at the time of the adjustment, he received a compensation statement reflecting the adjustment. The witness further testified that the appellant paid the co-appellee Paye his thirteenth-month salary, calculated based on his annual gross compensation. She stated that, in December of each year, the co-appellee received two pay slips, representing his regular December salary and his thirteenth-month salary. On cross-examination, she also testified that the co-appellee's salary was adjusted annually in April and that the corresponding compensation statements reflected those adjustments.

At the conclusion of the investigation on July 6, 2021, the Hearing Officer rendered a ruling holding the appellant liable to co-appellee Paye. The Hearing Officer awarded US$20,294.09 as accumulated leave allowance; US$37,466.04 as compensation for the alleged unpaid thirteenth-month salary for the period 2013 through 2019; and directed the appellant to pay co-appellee Paye pension benefits in accordance with the existing pension scheme at the appellant's company. The Hearing Officer's determination concerning the pension claim was premised, in part, upon a letter addressed to the then Minister of Labor by the appellant in which the appellant purportedly agreed to make certain adjustments to its employees' compensation packages, including a twenty-percent adjustment in basic salaries, a personal automobile ownership scheme financed by the employer, club membership, and a pension scheme.

Aggrieved by the Hearing Officer's ruling, the appellant, on August 5, 2021, filed a Petition for Judicial Review before the National Labor Court. The appellant alleged that the Hearing Officer's ruling was contrary to the weight of the evidence. Specifically, the appellant contended that the Hearing Officer disregarded evidence establishing that co-appellee Paye had been paid his thirteenth-month salary; that the co-appellee's pay slips demonstrated payment of the thirteenth-month salary; that there was no evidence establishing his entitlement to the leave allowance awarded by the Hearing Officer; and that the co-appellee had failed to establish the existence of a pension scheme upon which his pension claim could properly be based. The appellant therefore prayed the National Labor Court to reverse the Hearing Officer's ruling.

On August 13, 2021, co-appellee Paye filed his returns, categorically denying the allegations contained in the appellant's petition and praying that the National Labor Court sustain the Hearing Officer's ruling. He maintained that the appellant had not paid his thirteenth-month salary or leave allowance and had repudiated its obligation to pay his pension benefits as allegedly agreed upon by the parties and reflected in the company's policy of March 18, 2015, which was circulated by email to the appellant's senior management. Co-appellee Paye further contended that the appellant had misinterpreted the terms "annual," "annual leave," "annual salary," "annual revenue," and "annual payment." He argued that "annual" ordinarily refers to a period of twelve months and that "annual salary" therefore means compensation earned over a twelve-month period. Consequently, he argued, annual salary could not properly be construed to include a thirteenth-month salary. He maintained that, by dividing his salary by thirteen, the appellant had effectively acknowledged that his annual compensation was based upon thirteen months and had thereby underpaid him throughout his employment. He further maintained that the evidence presented during the investigation was sufficient to sustain the Hearing Officer's ruling in his favor.

Following arguments by the parties, the trial judge affirmed the Hearing Officer's ruling. The appellant excepted to the ruling, announced an appeal, and thereafter filed a nine-count bill of exceptions. In substance, the appellant alleged that the trial judge's ruling of September 30, 2021, affirming the Hearing Officer's decision and judgment in favor of co-appellee Paye was erroneous and contrary to law.

With respect to the leave allowance, the appellant argued that the trial judge erred in affirming the award of US$20,294.09 in the absence of evidence establishing that the amount paid to co-appellee Paye for annual leave was less than the amount to which he was entitled. The appellant maintained that the claim for unpaid leave allowance was an affirmative claim that the claimant was required to establish by sufficient evidence. It further argued that if the documents necessary to prove the claim were in the appellant's possession, the co-appellee could have sought a subpoena duces tecum to compel their production. Regarding the thirteenth-month salary, the appellant contended that the trial judge erred when he affirmed the award of US$37,466.04 based upon the reasoning that "annual" means twelve months and, therefore, any annual gross salary quoted to the co-appellee necessarily represented twelve months' salary exclusive of the thirteenth month. The appellant argued that the evidence, including its calculations and the co-appellee's compensation records, demonstrated that the thirteenth-month salary was already incorporated into the stated annual gross salary.

As to pension, the appellant argued that the trial judge erred in affirming the Hearing Officer's determination that co-appellee Paye was entitled to retirement compensation under a pension policy allegedly adopted in 2020. The appellant maintained that the trial judge improperly relied on an unsigned communication purportedly dated March 18, 2015, and that there was no evidence that the Ministry of Labor had received it. The appellant further argued that co-appellee Paye had retired before the alleged policy was adopted and implemented and, therefore, that the policy could not properly be applied to him.

After due consideration of the pleadings, the evidence presented during the investigation and before the trial court, the trial judge's ruling, the appellant's bill of exceptions, the parties' briefs, and the arguments advanced before this Court, we identify the following determinative issues for resolution:

1. Whether the investigation established that co-appellee Paye was entitled to the US$37,466.04 awarded as compensation for an allegedly unpaid thirteenth-month salary provided for in his employment letter;

2. Whether the investigation established that co-appellee Paye was entitled to the US$20,294.09 awarded as accumulated unpaid leave allowance; and

3. Whether the trial judge committed reversible error when he affirmed the Hearing Officer's order directing the appellant to pay co-appellee Paye pension benefits.

We shall now proceed to address these issues in the order presented.

Regarding the first issue, the evidence before the Hearing Officer shows that co-appellee Paye's claim for a thirteenth-month salary is principally grounded in his interpretation of the terms of his employment agreement. In both his complaint and his testimony during the investigation, he maintained that his employment contract entitled him to an additional month's salary each December, separate and apart from his regular annual compensation. He contended that, rather than paying him the additional salary contemplated by his employment agreement, the appellant divided his annual compensation by thirteen and paid him the resulting amount each month, thereby depriving him of the additional one month's salary to which he claimed entitlement.

In support of this contention, co-appellee Payne referred to his 2019 compensation. He testified that his gross annual salary, including the alleged thirteenth-month salary, was US$80,801.00. According to him, this figure meant that his monthly salary should have been approximately US$6,733.00. He nevertheless acknowledged that the appellant paid him a monthly gross salary of US$6,215.00. His contention was that the appellant deliberately reduced his monthly salary to US$6,215.00 in order to accommodate the thirteenth-month payment.

The appellant, however, presented a contrary account. Through its sole witness, Jean Thompson, the appellant maintained that co-appellee Paye received the compensation contemplated by his employment agreement, including the thirteenth-month salary. The witness testified that, beginning in December 2010, co-appellee Paye received two salary payments in December—one for his regular December salary and the other for the additional month's salary. She further testified that the co-appellee's salary was periodically adjusted, beginning with an April 2011 adjustment from US$3,300.00 to US$3,520.00, and that subsequent adjustments were reflected in his compensation statements and pay records.

The central question, therefore, is not whether the co-appellee's employment agreement contemplated a thirteenth-month payment. Rather, the determinative question is whether the appellant established by the evidence that it fulfilled that contractual obligation by actually paying the co-appellee the additional month's salary throughout the period in question. 1LCLR 1:25.5 provides that the burden of proof rests on the party who alleges a fact, except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party.

In resolving this question, we must first determine what constituted the co-appellee's monthly salary. Ordinarily, an employee's monthly salary may be established by the terms of the employment agreement, the applicable salary schedule, or the employer's regular payroll and pay-slip records. In the case before us, the employment letter placed co-appellee Paye's initial monthly salary at US$3,300.00 and contemplated periodic salary adjustments. The evidence further establishes that his salary was subsequently adjusted from time to time, eventually reaching US$6,215.00 immediately prior to his retirement. The significance of these salary adjustments is that they do not, in themselves, establish that the appellant altered or eliminated the co-appellee's entitlement to the thirteenth-month payment. To the contrary, the evidence indicates that the thirteenth-month payment was adjusted correspondingly as the co-appellee's regular salary increased. Thus, the fact that the co-appellee's monthly salary changed during the course of his employment does not support his assertion that the appellant failed to pay the additional month's salary.

More importantly, the documentary evidence introduced by the appellant includes the co-appellee's pay slips, which reflect his monthly gross salary. The records therefore provide a more reliable basis for determining the amount constituting his monthly salary than the co-appellee's retrospective calculation of what he believed his monthly salary should have been. The co-appellee's reliance on his 2019 annual compensation does not overcome this documentary evidence. He testified that his gross annual salary for that year was US$80,801.00 and reasoned that, when divided by twelve months, the resulting monthly compensation should have been approximately US$6,733.00. He then argued that the appellant's payment of US$6,215.00 per month demonstrated that the appellant had withheld a portion of his monthly salary to finance the thirteenth-month payment. We do not find this reasoning persuasive.

The pay slips in the certified records establish that co-appellee Paye's gross monthly salary in 2019 was US$6,215.00, which was the same as his 13th-month pay. All previous pay slips from 2010 show his gross monthly pay, which was equal to his 13th-month pay. There is no evidence in the record, such as a letter of employment, compensation schedule, or otherwise, demonstrating that his agreed monthly salary for 2019 was US$6,733.00. Moreover, from 2010 to 2019, the appellee's pay slip consistently showed his gross monthly salary, which was equal to the 13th-month salary paid to him, without any protest whatsoever from the appellee. Consequently, the Court cannot simply accept co-appellee's calculation merely because he divided his stated annual compensation by twelve. The proper inquiry must begin with the actual salary established by the employment records, as evidenced by his pay slip, in the absence of any evidence to the contrary, and then determine whether the additional payment required under the employment agreement was made.

The evidence further establishes that, in December 2019, co-appellee Paye received two salary payments, each in the amount of US$6,215.00, one representing his regular December salary and the other representing the additional month's salary. This evidence is particularly significant because it directly corresponds with the contractual obligation upon which the co-appellee's claim is based. The appellant's payroll records therefore demonstrate that, in December 2019, the co-appellee received his regular monthly salary plus an additional payment in the same amount.

The co-appellee's argument that the appellant merely divided his annual compensation by thirteen does not, without more, establish that the additional December payment was not made. Indeed, his own testimony confirms that he received thirteen salary payments in a year. His disagreement is essentially with the manner in which the appellant calculated and presented his annual compensation. But a disagreement over the method of calculation cannot establish nonpayment of a contractual benefit where the payroll records demonstrate that the additional payment was actually made.

We therefore find that the evidence does not support the Hearing Officer's conclusion that the appellant failed to pay co-appellee Paye the thirteenth-month salary provided for in his employment agreement. The documentary evidence, particularly the pay slips, coupled with the testimony that the co-appellee received two salary payments in December every year, establishes that the appellant fulfilled its obligation in this regard. The appellant having produced evidence establishing annual payment of the 13th-month salary to the appellee, as contained in the appellee's letter of employment, the labor court judge erred when he confirmed the hearing officer's ruling that the appellant failed to pay the appellee his 13th-month salary.

Regarding the second issue, the question is whether the investigation established that co-appellee Paye was entitled to the US$20,294.09 awarded as accumulated leave allowance. The co-appellee maintained that he was entitled to a leave allowance which the appellant failed to pay throughout his employment. In support of this contention, his witness, Bright Atta Baah, testified that employees of the appellant were entitled to a leave allowance equal to the average of their annual salary. The witness further testified that, during his tenure with the appellant, employees did not receive leave allowances and that there were several controversies concerning allowances within the company.

The appellant, on the other hand, disputed the claim and maintained that co-appellee Paye had been paid his leave benefit. The appellant's Human Resources Business Partner, Jean Thompson, testified that the co-appellee received his full leave benefit. We begin by observing that the burden rested upon the co-appellee, as the claimant, to establish the factual basis of his claim. His assertion that he was entitled to a leave allowance, standing alone, was insufficient to warrant an award. He was required to establish not only the existence of the entitlement, but also the amount allegedly unpaid and the basis upon which the amount claimed was calculated.

The evidence in the record establishes that leave pay became available to the appellant's employees following the employees' protest in 2018. The testimony of both the co-appellee's witnesses and the appellant's witness supports the conclusion that, prior to that period, employees of the appellant generally did not receive leave pay. This evidence, however, does not establish that co-appellee Paye was thereafter entitled to the specific amount of US$20,294.09 awarded by the Hearing Officer. The records further show that, beginning in 2018, co-appellee Paye received leave pay reflected in his pay records. Thus, the documentary evidence demonstrates that the appellant began making leave-related payments to the co-appellee during the period in which such payments became available to employees.

The co-appellee nevertheless seeks to have the payment of the 2018 leave allowance treated as creating a retroactive entitlement for the years preceding the implementation of the leave-pay arrangement. We are not persuaded by this argument. Section 18.1(b) of the Decent Work Act of 2015 provides for the accumulation of annual leave during an employee's continuous service, subject to the statutory limitation that an employee may not accumulate more than three years' entitlement to annual leave. The statute does not, however, provide that the subsequent introduction or payment of a leave allowance automatically operates retroactively to create an entitlement for periods during which such allowance was not available as part of the employment package.

In the case before us, the evidence establishes that leave pay was introduced following the employees' 2018 protest and that the co-appellee thereafter received it. There is no sufficient evidence establishing that the appellant was contractually or statutorily obligated to make retroactive leave payments for the entire period claimed by the co-appellee. Moreover, and most significantly, the appellant's witness expressly testified that co-appellee Paye was paid his full leave allowance. This testimony was not effectively rebutted by evidence demonstrating either that the payment was incomplete or that an identifiable balance remained outstanding. This Court has consistently held that where a party makes an allegation which calls for a response, the failure of the opposing party to rebut that allegation may be deemed an admission. Inter-Con Security v. Miah and Yarkpawolo, 38 LLR 633 (1998); Ministry of Lands, Mines and Energy v. Liberty Gold and Diamond Company et al., decided January 10, 2014.

Applying this principle to the case before us, the appellant's testimony that the co-appellee was paid his full leave allowance remained unrebutted. The co-appellee did not present sufficient documentary or testimonial evidence establishing that the amount paid to him was deficient or that an outstanding balance of US$20,294.09 remained due. The existence of an entitlement and the existence of an unpaid balance are separate matters. The latter must be established by evidence.

Accordingly, we hold that the investigation did not establish, by sufficient evidence, that co-appellee Paye was owed accumulated leave allowance in the amount of US$20,294.09. The Hearing Officer therefore erred in awarding that amount to the co-appellee, and the trial judge likewise erred when he affirmed the award.

The third and final issue is whether the trial judge committed reversible error when he affirmed the Hearing Officer's order directing the appellant to pay co-appellee Paye pension benefits beyond those available under the National Social Security and Welfare Corporation (NASSCORP) scheme.

Co-appellee Paye's own testimony established that the appellant had begun preparing a pension policy for its employees, but that the initiative had not been finalized. He testified that he derived his claimed pension entitlement from the appellant's global policy, which he asserted required the appellant to pay employees ten percent (10%) of their earnings as a pension benefit, with the total entitlement to be determined by the local employer. He also acknowledged that the appellant paid social security contributions on his behalf to the National Social Security and Welfare Corporation. Thus, the co-appellee's essential argument is that, in addition to the NASSCORP benefit, the appellant's alleged company pension scheme independently entitled him to a separate pension benefit. In support of that position, he relied upon section 2501 of the then-operative Labor Practices Law, The Management of the Liberia Coca-Cola Bottling Company *v.* Natt, Supreme Court Opinion, March Term, A.D. 2021, and the appellant's letter to the then Minister of Labor indicating an intention to establish a company pension scheme.

The record before us, however, does not establish any separate contractual or company pension agreement between the appellant and co-appellee Paye that obligated the appellant to pay him pension benefits in addition to those provided by NASSCORP. Although the co-appellee testified that a pension policy applied to senior managers and that a ten-percent figure could be derived from the appellant's global policy, the record does not contain the policy itself, its precise terms, its applicability to co-appellee Paye, or any contractual basis upon which the appellant could be held liable for the amount ordered by the Hearing Officer.

The Hearing Officer nevertheless ordered the appellant to pay co-appellee Paye pension benefits in accordance with the company's "current existing pension scheme." The difficulty with this determination is that the record does not establish the existence of an enforceable agreement between the parties under which the appellant assumed an independent obligation to pay the pension benefits awarded. Nor does the communication relied upon by the Hearing Officer and the trial judge sufficiently establish such an obligation. The appellant challenged that document on the grounds that it was unsigned and that there was no evidence establishing receipt by the Ministry of Labor. The appellant further maintained that the pension policy upon which the co-appellee relied was adopted and implemented after his retirement and, therefore, could not properly be applied retroactively to him.

The evidence presented did not sufficiently establish either a contractual pension obligation independent of the NASSCORP scheme or a company policy applicable to co-appellee Paye at the time of his retirement. The fact that the appellant may have contemplated or discussed a pension scheme for its employees does not, without more, establish that the appellant assumed a legally enforceable obligation to pay co-appellee Paye the specific pension benefit awarded by the Hearing Officer. A court cannot impose a monetary obligation upon a party where the evidence does not establish the legal source of that obligation.

The appellee having failed to produce evidence that there exist at the time of his employment a pension scheme and to which he contributed, the Labor Court also erred when he confirmed the Hearing Officer's ruling that the appellant was entitled to pension payment other than that paid by NASSCORP.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the ruling of the Labor Court Judge is reversed. The Clerk of this Court is hereby ordered to send a Mandate to the court below, commanding the Judge of the National Labor Court to resume jurisdiction over this case and give effect to the judgment of this Opinion. Costs are ruled against the appellee. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR ALBERT S. SIMS APPEARED FOR THE APPELLANT. COUNSELLORS M. WILKIN WRIGHT, ABRAHAM WADE SIMPSON, AND FODAY M. KAWAH APPEARED FOR THE APPELLEE.