

IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL COURT DIVISION
TRADE DISPUTE
IN THE MATTER OF SECTION 136 (1) (2) OF THE ANTI-CORRUPTION ACT NO. 12 OF
2008
IN THE MATTER OF THE ROAD TRAFFIC ACT 2007
IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO 32 OF 1991
IN THE MATTER OF THE ROAD TRANSPORT AUTHORITY ACT NO. 4 OF 2006 (TRAFFIC
WARDEN CORPS DISCIPLINARY REGULATIONS 2013)
IN THE MATTER OF THE ROAD TRANSPORT AUTHORITY ACT 1996

BETWEEN:

JAMES AIAH DAUDA
 SOLOMON GBASSY SESAY
 MOHAMED ABAYOMI TEJAN
 FREETOWN

- PLAINTIFFS

AND

THE ANTI-CORRUPTION COMMISSION
 THE ANTI-CORRUPTION COMMISSIONER
 CATHEDRAL HOUSE
 3 GLOUCESTER STREET
 FREETOWN

- DEFENDANTS

AND

THE EXECUTIVE DIRECTOR
 SIERRA LEONE ROAD TRANSPORT AUTHORITY
 KISSY ROAD
 FREETOWN.

Counsel:-

I P. Mammie Esq for the Plaintiff

M. Sowe Esq & for the Defendant
E. K. Amara Esq

JUDGMENT DELIVERED THIS 28th DAY OF May 2018 BY THE HON JUSTICE F. BINTU ALHADI J.

JUDGMENT

The Plaintiffs action commenced by Originating Summons dated 6th February 2017 with a supporting affidavit and exhibits attached thereto. The questions posed to the Court for its determination were as follows to wit:

1. Whether the Plaintiffs (who are Public Officers) and who were found guilty of offences other than corruption are ineligible to work for their former employer?
2. Whether the recommendation of the Anti-Corruption Commissioner that public officers who have been found guilty for offences other than corruption should not be reinstated is not a violation of their constitutional/civil right?
3. Whether the Sierra Leone Road Transport Authority cannot reinstate employees whom it considered to have diligently worked for her even though they were found guilty for other offences than corruption?
4. Whether the Anti-Corruption Commissioner has the constitutional authority to prevent the Road Transport Authority from reinstating former employees found guilty of offences other than corruption?

The 1st Defendant caused an appearance to be entered by submitting itself to the jurisdiction of the Court; whilst the 2nd Defendant did not cause an appearance to be entered nor in anyway submitted itself to the jurisdiction of the Court. As such the 2nd Defendant is in contempt of the Court.

The Plaintiffs and the 1st Defendant filed affidavits in relation to this application.

SUBMISSIONS BY I. P. MAMMIE ESQ

Mr I. P. Mammie submitted that the authorities he referred to had one commonality; and that is that there are clear rules as to how an employee can be dismissed by an employer.

He stated that the refusal by the Sierra Leone Road Transport Authority (SLRTA) to reinstate the Plaintiffs, contravenes the provisions that are contained in the Collective Bargaining Agreement.

He also said that when the Plaintiffs were suspended and put on half pay and after the Court's verdict, they were not given any information as to their status of their employment. He argued that they had not done any wrong which should prevent them from being reinstated into their place of work.

Mr Mammie asserted that the Anti-Corruption Commission (ACC) has no jurisdiction over the SLRTA, since they are two separate entities established under two separate Acts of Parliament. He opined that the ACC can only advise the SLRTA; and the SLRTA can do what it wants to do in accordance with its powers.

SUBMISSIONS BY E. k. AMARA ESQ. – COUNSEL FOR THE 1ST DEFENDANT

Mr. Amara on the other hand, argued that all of the Plaintiffs were charged under section 127 (1) (a) of the Anti-Corruption Act of 2008; which states that "No person shall without justification or lawful excuse, obstruct or hinder or assault or threaten a person acting under this Act," and they were convicted in 2015 as "public officers" which they never appealed. He further argued that section 127 of the said Act which creates the offence of obstruction is not generally listed under Part IV of the Act where the other offences are listed and is not included under the section of offences.

He maintained that the Plaintiffs were "Public Officers" at the time and were charged under the ACC Act; and therefore cannot be reinstated by the SLRTA because of section 135 (2) (a) of the said Act; which states that "the Public Officer referred to in subsection (1) ceases to be suspended if the conviction is overturned on appeal, but he shall be dismissed if the time period for appealing against the conviction expires without the conviction being appealed".

He asked that the Court dismiss the application in tandem with section 135 of the said Act; and that if the Plaintiffs had received any money after their conviction, such monies be paid back into the Consolidated Fund.

DECISION OF THE COURT

I have carefully considered the matter at hand and these are my findings:

1. First of all, the appropriate and applicable law in this matter, is The Road Transport Authority Act No. 4 of 2006, short title – The Traffic Warden Corps Disciplinary Regulations 2013. Had the Authority failed to incorporate a disciplinary regulations or code of conduct into its management structure, then I would have said that Government Notice No. 214 - The Regulation of Wages And Industrial Relations Act No. 18 of 1971 and Government

Notice No. 352 - The Regulation of Wages and Industrial Relations Act No. 18 of 1971 would have been applicable; but this is not the case.

2. Secondly, I note that on the 17th of September 2013 the Plaintiffs/~~Applicants~~ were suspended, on half pay, from duty due to criminal proceedings being taken against them by the Anti-Corruption Commission for obstruction of justice in respect of ~~one~~^{two} of the Plaintiffs and obstruction of justice and assault on police officers in the course of their lawful duties by the other Plaintiff. They remained on suspension even after they were each convicted and fined.
3. I presume the Employer, Sierra Leone Road Transport Authority (also referred to as "SLRTA") is of the view that since its employees, who are Traffic Warden Corps and also the Plaintiffs herein, have been convicted in a court of law, and as a result, their services have been automatically terminated; or they have been dismissed without notice and due process is necessary. If this is the case, then the Employer/SLRTA is mistaken. It is mistaken because on its own, a criminal conviction is not an adequate reason to discipline or dismiss an employee. Consideration needs to be given to what effect the charge or conviction has on the employees suitability to their job and their relationship with their employer, work colleagues and customers. In other words, there has to be due process. Sections 9 (1), 10 (1),(2), 11 (a)(c), and (2) of The Traffic Warden Corps Disciplinary Regulations 2013 aforesaid should be enforced. This should be the employer's first port of call.
4. So, even though an employee has been convicted of an offence, the decision as to what action to take in the end to do with his/her employment status, lies first with the employer ensuring that the employee goes through internal due process. Nothing has been produced and brought to the attention of the Court that, a Senior Supervisor has conducted or caused an investigation to be carried out into any contravention of the Authority's Disciplinary Code; in accordance with Section 9 (1) of the said Regulations.

5. I also note that the Applicants were suspended and put on half salary for the duration of the criminal proceedings. This action is in contravention of the said Disciplinary Regulations at Sections 10 (1) and (2) which did not state that salary should be half nor did it say that salary should be suspended or terminated on conviction.

6. In Bank of Ireland v James Reilly [2015] IHC 241 the Court noted that suspension is an extremely serious measure which can cause irreparable damage to an employee's reputation and stated that it should only occur after 'full consideration of the necessity for it pending a full investigation.' The court gave some useful guidance on the circumstances in which an employer may exercise the right to suspend such as: to prevent repetition of conduct complained of; to prevent interference with evidence; to protect individuals at risk from such conduct or to protect the employer's business and reputation; and many other reasons depending on the circumstances of the case.

7. Employers should note that, whilst dismissing an employee because they have been charged or convicted of a criminal offence may constitute a fair reason, it is not necessarily the case. They may seek to argue that, it is gross misconduct, indeed it may be listed as an example of misconduct or gross misconduct in its disciplinary policy; or similarly, that a conviction breaks the trust and confidence that is essential in the relationship between an employer and its employee; British Home Stores Limited v Burchell [1978] IRLR 379. However, employers are urged to err on the side of caution and make sure that the reason for the dismissal is fair and that they carry out a thorough and fair procedure; British Home Stores Limited v Burchell [1978] IRLR 379.

8. Although the ^{Plaintiffs} ~~Applicants~~ were convicted and sentenced; which they served by paying fines; this does not constitute an automatic dismissal from their employment. The Court in its criminal jurisdiction found them guilty of criminal offences and convicted them; but did not deal with their employment status under Employment Law. Their employment status is yet to be dealt with firstly, in accordance with the SLRTA's Disciplinary Procedures, Terms of Contract, Code of Ethics and so on. After going through this due process, ^{the} ~~both~~ parties then have a right to complain to

the Ombudsman if dissatisfied; and any further dissatisfaction or grievance could be addressed by the Industrial Court of the High Court.


9. To terminate an employee charged with a criminal offence, employers must show that there is some connection between the charge and the employers business. If the employer objectively analyses the situation under its disciplinary procedures in the standard way, the result should be a solid, defensible employment decision. Fairness of a dismissal will depend not only on the reason but also on whether or not a fair procedure was followed.
10. For instance, no evidence was adduced to show that there was compliance with Sections 9 (1), 10 (2), 11 (a) and (c), (2) (a), 12, 14, and the rest of the said statute. It was not shown whether any internal enquiry was conducted by the Authority for any serious breach of discipline on the ~~Applicants~~^{Pleasants}, before or after they were put on half pay; which in itself was illegal; which would have led to a decision by the Authority as to whether they were to be cautioned, dismissed, terminated or any other action.
11. Furthermore, for the SLRTA to have reached such a conclusion, the conduct/misconduct of the ~~Applicants~~^{Pleasants} employees must have fallen under Section 13 of the said Disciplinary Regulations. In my opinion, I see nowhere under section 13 were the conduct/misconduct of the ~~Applicants~~^{Pleasants} Employees apply. For instance, there was no fighting of another employee within the premises or precinct of the Authority as prescribed by section 13 (d) of the said Regulations.
12. Also, an employer should assess whether its policies, procedures and employment contracts adequately deal with termination in circumstances where the employee has been charged or convicted of an offence and where the charge or conviction results in the employee being unable to continue employment. My examination of the Traffic Warden Corps Disciplinary Regulations 2013 does not bear this. It is not detailed and comprehensive nor does it adequately deal with the issues.
13. In conclusion and in response to the questions posed in the application before me,

Questions 1 & 3 carry the same response. It is for the Disciplinary Committee of the SLRTA to address the issues and ensure that due process of a disciplinary hearing is performed.

Questions 2 and 4 are related. The Anti-Corruption Commission can make recommendations but it cannot prevent the SLRTA from acting on a decision of its own Disciplinary Committee after due process would have been followed.

14. In view of the above mentioned, I make the following Orders:

- (i) Sierra Leone Road Transport Authority (SLRTA) is to comply with The Traffic Warden Corps Disciplinary Regulations of 2013 with particular emphasis on the due process of a hearing and the submission of a report to the Director, Road Safety and Enforcement. It is only when this due process has been satisfied, can a decision be made by the Authority on what disciplinary action is to be taken or not taken.
- (ii) Sierra Leone Road Transport Authority is to pay arrears of salary due to the ^{Plaintiffs} Applicants. This means full salary from the date of suspension to present.
- (iii) Costs of Le 20,000,000 (Twenty Million Leones) is awarded against the Sierra Leone Road Transport Authority and is to be paid into Court for contempt.
- (iv) Costs to be borne by the 2nd Defendant, Sierra Leone Road Transport Authority to be taxed if not agreed upon.

(v) liberty to apply


Hon. Justice F. Bintu Alhadi J.