

IN THE HIGH COURT OF SIERRA LEONE
(INDUSTRIAL AND SOCIAL SECURITY DIVISION)

BETWEEN:

OSMAN B. CONTEH – PLAINTIFFS
AND FIVE OTHERS

AND

FREETOWN TERMINAL LIMITED – DEFENDANT

Counsel:

E. Kargbo Esq. for the Plaintiffs

W. Nicol Esq. & F. Forster (Ms) for the Defendant

**JUDGMENT DELIVERED THIS 15TH DAY OF APRIL 2024 BY HONOURABLE MRS.
JUSTICE JAMESINA E. L. KING J.A.**

Introduction

1. The Plaintiffs' claim was referred to the Industrial Court by the Minister of Labour and Social Security (hereinafter referred to as the Ministry) by letter dated 31st January 2022 pursuant to section 35(1) of the Regulation of Wages and Industrial Relations Act No. 18 of 1971, and Rule 5 of the High Court (Industrial Court Division) Procedure Rules 2000, Statutory Instrument No. 15. of 2000. A summons dated 15th February 2022 was issued for the hearing and determination of the dispute referred.

2. The Plaintiffs are Osman Conteh Employee No. 56, Desmond Cole Employee No. 190, Samuel Wilson Employee No. 85, Emmanuel Browne Employee No.188, David Kanneh Employee No.214 and Alhaji Turay Employee No. 272. They were former employees of the Defendant. They were terminated by the Defendant by letters dated 29th October 2021 which took effect on 1st November 2021.
3. The Plaintiffs submitted their complaints to the Ministry who held two meetings with the parties. Following their meeting of 24th November 2021, the Ministry on 30th November 2021 wrote to the Plaintiff and stated their observations after considering the documents from the parties and applicable collective agreement. The Ministry's observations and recommendations were as follows:
 - That complainants (Plaintiffs) were terminated without any stated reason
 - That there was no evidence to prove that complainants committed an offence that warranted instant termination
 - That management did not follow the disciplinary procedure (query, warning letter etc)
 - That in the absence of any stated reason(s) for the termination of complainants, it is therefore deemed as unfair and involuntary loss of employment.
 - That Management (the Defendant) reviews the decision of termination to redundancy as compromise settlement and effect payment of redundancy compensation.
4. The Defendant's Solicitors responded by letter dated 6th December 2021 which stated that the said employees were not summarily dismissed but legally terminated in accordance with the provisions of the Laws of Sierra Leone. The letter stated that their client (the Defendant) is at liberty to terminate the services of any employee in its service without cause, provided full terminal benefits and entitlement are paid to the said employee. It referred to provisions regarding termination in the Collective Bargaining Agreement and stated that the Plaintiffs were paid their full benefits including one month's salary in lieu of notice as required under the law and cannot accept the Ministry's recommendation since neither of the scenarios of the provisions relating to redundancy applied.

Summary of the evidence of the parties

5. The Plaintiffs gave evidence in support of their claim and were cross-examined. The first Plaintiff Mr. Osman B. Conteh and the labour officer gave evidence before Hon. Justice Sengu Koroma JSC (sitting in the Industrial Court) and the rest of the Plaintiffs testified before me. The evidence of the Plaintiff and the facts of their individual cases are similar. They worked for the Defendant since 2011 until November 2021 and they worked in various capacities. They all said they had received one month's salary in lieu of notice and end of service or terminal benefits.
6. They believed they had been terminated as a result of redundancy as they had not been guilty of any offence or breach of the Defendant's code of conduct nor were they investigated for any misconduct, and no reason had been given for their termination. They therefore claimed redundancy benefits in addition to the benefits they already received from the Defendant. They told the Court about the Ministry's efforts to get the Defendant to pay them redundancy benefits which had failed and therefore asked the Court to order the Defendant to pay such benefits to them.
7. They were all unemployed and confirmed that the Defendant was still in existence with other employees occupying the positions they previously had.
8. Osman Kargbo, a Senior Labour and Employment Officer who testified narrated the Ministry's intervention in this matter and the meetings the Ministry held with the parties. He complained that the Defendant refused to attend other meetings called and did not give one month's notice to the Plaintiffs (see penultimate line of the Judges Notes at page 14). He stated that the difference between summary dismissal and termination is that with the former you are not paid benefits while with the latter, you are. During cross-examination he was shown the termination of employment provision in the CBA and stated that there was no procedure mentioned. He also said that for termination the employee must have committed minor offences after three warning letters and after that the Employer can terminate. He told the court what redundancy is. (see page 17 of the Judges Notes). He is of the view that the Plaintiffs are entitled to redundancy benefits. He was re-examined and stated that the Plaintiffs are not in court for dismissal.

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9. Ms. Clorinda Morgan the Defendant's Human Resource Manager testified on behalf of the Defendant. She confirmed all of the evidence of the Plaintiffs except that she insisted both in examination in chief and under cross-examination that a redundancy had not occurred and that the Plaintiffs were lawfully terminated in accordance with the applicable Collective Agreement, having received salary in lieu of notice and end of service benefits. She stated that the Defendant was not liable to pay the Plaintiffs redundancy benefits. She stated that there has been no recent change to the Defendant's business.
 10. In addition to the oral evidence of the parties several documents were tendered in evidence which included the letters of termination, correspondence between the Ministry and the Defendant's Solicitors and the Collective Bargaining Agreements with terms and conditions applicable to the Plaintiffs.

Summary of Submissions by Counsel for the Parties

11. Both Counsel for the parties submitted written closing addresses and made oral submissions referring to various authorities listed at the end of this decision. The Plaintiffs' Counsel written submission is dated 5th September 2023 and that of the Defendant is dated 15th May 2023.
12. Counsel for the Plaintiffs stressed that the Plaintiffs loss of employment was involuntary and not as a result of any fault on their part. He relied on the Ministry's view that the Defendant did not follow the procedure for involuntary loss of work which is redundancy and disregarded this recommendation. He submitted that the termination was therefore unlawful. He noted that the Defendant's business did not cease but they still employed employees to work in the positions occupied by the Defendant. He stated that the Plaintiffs were terminated as a result of their activities in the Union. He submitted that the cases referred to by Counsel for the Defendant in his written address are distinguishable, in that in those cases the employers followed the procedures and that in this case procedures had not been followed as there was no investigation done in accordance with the Collective Bargaining Agreement. He referred to several authorities set out in his written address. He urged the Court to find in favour of the Plaintiffs claim.
13. In his submissions, Counsel for the Defendant relied on the evidence of the Defendant to the effect that the Defendant had complied with the relevant provisions of the CBA in terminating the employment of the Plaintiffs. He

further stated that this was confirmed under cross-examination that the Plaintiffs were not summarily dismissed or made redundant but that their services were lawfully terminated. He further submitted that there is no legal requirement whatsoever that a reason must be stated in the termination letters or that warning letters should have been given, nor was there a need for a disciplinary committee to be set up as there were no disciplinary actions being taken by the Defendant. He submitted that the termination of the Plaintiffs was lawful, they received a termination letter, one month's salary in lieu of notice and their terminal benefits in full. He concluded that they were not entitled to redundancy compensation or any damages whatsoever and their claim must fail.

ANALYSIS & DECISION

14. The Plaintiffs claim against the Defendants their former employer, redundancy benefits as a result of unfair termination and involuntary loss of employment. It is not in dispute that the terms and conditions of their employment is embodied in the relevant Collective Agreements. It is the Plaintiffs case that the Defendant did not follow the terms in the Collective Bargaining Agreement in that they were terminated without a stated reason; they did not commit an offence or breach the Defendant Code of Conduct, the Defendant did not follow disciplinary procedures in that it did not issue any warning letter or carried out an investigation before terminating them.
15. All of Plaintiffs' employment came to an end by a letter of termination from the Defendant dated 29th October 2021 as follows:

"Dear Mr. Conteh

TERMINATION OF EMPLOYMENT

I write to confirm that your employment with Freetown Terminal Ltd is hereby terminated with effect from 1st November 2021.

End-of-service benefit and all payments due you for the period that you have worked, will be paid in accordance with the terms and conditions of service of Freetown Terminal Ltd, and the Labour Laws of the Republic of Sierra Leone.

Please contact the Finance Department to complete the process.

We would like for you to handover any company issued property to the Human Resource Department and sign the discharge form, before collecting your severance pay.

Yours truly

Bertrand Kerguelen

General Manager

Freetown Terminal Ltd

Sierra Leone”

16. The above letter relates to the 1st Plaintiff, however all the letters addressed to the other Plaintiffs were in similar terms. The Ministry responded to the Plaintiffs complaints and after several meetings and correspondence it made recommendations to the Defendant to pay redundancy compensation to the Plaintiffs. The Defendant did not comply with its recommendations.

Whether the Plaintiffs are entitled to redundancy benefits?

17. For the terms and conditions of their employment, the Plaintiffs produced and relied on the Collective Bargaining Agreement (CBA) for Public Utilities for Employees below supervisory level published on 11th March 2019. The Defendant produced and relied on the Collective Bargaining Agreement for workers in Public Utilities dated 9th August 2022. Both are published in the Sierra Leone Gazette. Both have similar provisions with respect to grievance procedure, discipline, summary dismissal, termination of employment and redundancy. I will highlight some of the relevant provisions similar in both CBAs.

“Termination of Employment

Where employment is terminated by the employer, he shall give one month’s notice in writing to the worker or one month’s salary in lieu of notice in respect of salaried staff.The employer shall comply with Article 34 if the worker is eligible”. (See 15B in 2019 CBA & 16B in CBA 2022)

“Redundancy is defined in this Agreement as the involuntary loss of employment through:

- (i) *No fault of the worker by reason that his employer has ceased or intends not to carry on the business or part of it for which the worker was employed, or has ceased or intends to cease operating business at the particular place at which the worker was employed, and that the worker shall not be replaced by another worker.*
- (ii) *A change in the method of operation or administration of the business of any part thereof which results in either a reduction in the workforce requirements of the employers concerned or change in the type of skills qualifications and experience which a worker must possess to perform his duties.” (See Article 16 of CBA 2019 and Article 17 of CBA 2022).*

18. Where a redundancy is pursued by the employer in addition to certain steps to be followed before the workers are eventually declared redundant, the employer shall pay redundancy compensation calculated on the basis provided in the said CBAs depending on the number of years the worker has continuously served the employer. The CBAs require redundancy compensation to be paid to in addition to end of service benefits provided the affected employee is entitled to the latter.

19. All of the Plaintiffs claim redundancy compensation. Mr. Cole one of the Plaintiffs stated that he wants the redundancy package because it is higher than the termination package. He further stated he is entitled to the redundancy compensation because no reason was given why he was terminated. Other Plaintiffs testified in those same terms.

20. Counsel for the Plaintiffs cited several authorities he relied on for his submission that there was a breach of the Plaintiffs' contract for their involuntary loss of employment and that they were not only entitled to receive end of service benefits, but in addition they are entitled to redundancy compensation and serious damages for breach of contract. He maintained that Articles 15 and 16 of the 2019 CBA are mandatory provisions to be complied with by the Defendant.

21. Having regard to the definition of redundancy as set out above in the CBA, the main issue for determination is whether the Plaintiffs were declared redundant either expressly or impliedly, or whether the evidence point to a redundancy. If a redundancy had occurred that led to the involuntary loss of employment, then the Plaintiffs are entitled to redundancy compensation and their claim will succeed. On the other hand, if there was no redundancy, then they are not entitled to their claim.

22. Based on the redundancy provisions above, in order to ascertain whether a redundancy has occurred the following questions must be answered:-
- a. Has the Defendant's business or part of it ceased or has it ceased to operate its business at the place the Plaintiffs were employed?
 - b. Are the positions held by the Plaintiffs vacant after their departure from the Defendant's employment?
 - c. Is there a change in the method, operation or administration of the Defendant's business or part of it which resulted in the reduction of their workforce or has there been a change in the skills qualification and experience required to perform the job?
23. The evidence indicates that the answers to the above questions are in the negative, and I am led to believe that a redundancy has not occurred in the Defendant Company.
24. The only witness of the Defendant, the Human Resource Manager Mrs. C. Morgan stated that the Defendant has a concession managing the container section of the port. She confirmed that there has been no recent change in the Defendant's operations since October 2021 and no part of the business has been closed down recently. She was cross-examined extensively and confirmed that there were staff currently serving as shipping foreman, welders, supervisor, driver for finance controller and generator attendant which were the positions held by the Plaintiffs prior to their termination.
25. Further under cross examination she stated that redundancy is when the positions cease to exist and currently all of the positions do exist. She stated that there was no redundancy and the Plaintiffs were terminated under the CBA and paid all terminal benefits including one-month salary in lieu of notice
26. The Plaintiffs in their evidence also confirmed that there were workers currently in the Defendant's business holding the same positions and carrying out the same functions they were performing.
27. The witness from the Ministry as well as letters written to the Defendant by the Ministry were convinced that a redundancy had occurred and as a result the Plaintiffs were entitled to benefits. Short of saying that the Plaintiffs had experienced an involuntary loss of employment both the witnesses and the Ministry failed to provide the Court with the facts justifying a redundancy as provided in the CBA.

28. Furthermore, I find that redundancy was inapplicable to the Plaintiffs employment, based on the letters issued to them which was quite explicit that they had been terminated. There is therefore no evidence that there was a redundancy in the Defendant's business or any part thereof or that the Plaintiffs were made redundant.

Whether the Plaintiffs can be lawfully terminated without any reasons/investigation or disciplinary procedure?

29. Both CBAs, have a clause regarding termination of employment as set out above which allows the employer to terminate the worker's employment by giving one month's notice in writing or one month's salary in lieu of notice. In the instant case the Defendant points to this clause as justification for its termination.

30. This clause can be found within the Article relating to summary dismissal which may have given the impression that the Plaintiffs had been summarily dismissed which is not the case. However, though embedded in the same Article, termination by an employer is separately dealt with and is guaranteed under the clause headed termination. Termination by an employer and the procedures to be adopted are distinct and different from summary dismissal. With termination, there is no requirement to give a reason for the termination of a worker or employee. What is required when terminating is the giving of notice or salary in lieu of notice of termination. An employee or worker who has been terminated is also entitled to terminal or end of service benefits as long as that person has served the requisite period provided in the CBAs.

31. An employee or worker who is summarily dismissed is not entitled to notice of termination or payment of end of service benefits. It is clearly a disciplinary measure. Most importantly, summary dismissal should only be effected after thorough investigation when the worker is guilty of serious misconduct or of any serious breach of the employer's safety regulations. The investigation relates to the worker or employee's conduct and the CBA has a non-exhaustive list of examples of offences for which the worker is liable to be dismissed.

32. The Plaintiffs and their Counsel maintain that the Defendant is in breach of this clause dealing with summary dismissal in the absence of an investigation and the fact that no reason has been given for the Plaintiffs' termination.

33. The Plaintiffs' Counsel submitted that the Defendant had not followed the procedure for summary dismissal as it did not carry out an investigation prior to termination of the Plaintiff. Counsel seemed to suggest during cross-examination that the termination was related to some of the Plaintiffs' involvement in the staff welfare association. This was not borne out in any of Plaintiffs' evidence. During cross examination of the Defendant's witness, she stated that the Association was dissolved about 2 years before the Plaintiffs' termination. If the Plaintiffs were summarily dismissed it is very unlikely that they will have received a month's salary in lieu of notice and their end of service benefits. Their letters expressly stated that they were terminated.

34. Therefore, the position of the Plaintiffs and their Counsel that a redundancy had occurred or that the Plaintiffs were summarily dismissed is without merit. They were terminated which is distinct from summary dismissal. This is why there is no allegation of misconduct on the part of the Plaintiffs. The employer when exercising his right to terminate has no obligation to give a reason for termination and as long as there is compliance with the provisions the termination is lawful.

35. In this case, the Defendant, the employer is only entitled to give to the Plaintiffs a month's notice of termination or salary in lieu thereof and pay end of service benefits. All of the Plaintiffs admitted in evidence that they were given one month's salary in lieu of notice as well as their end of service benefits.

CONCLUSION

36. On a balance of probabilities, I find that the Plaintiffs were lawfully terminated under the provision "Termination of Employment" in the CBAs and their claim for redundancy benefits or compensation must be dismissed and accordingly fails. The Defendant should be entitled to costs of the action. However, given that the Plaintiffs are unemployed, each party shall bear their costs.

37. In view of the above, I make the following orders in respect of this action:

1. The Plaintiffs claim for redundancy benefits and damages for unfair termination is dismissed.
2. No order as to costs.

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HON. MRS. JUSTICE JAMESINA E. L. KING J.A.

List of Authorities referred to on behalf of the parties

Labour law 6th Edition by Simon Deakin & Cillian S. Morris p. 5 para. 1.3 under Collective Bargaining and labour Standards, also p 131

Maund v. Penwith District Council (1984) ICR 143 C.A.

Smith & Woods Employment Law 12th Edition p.525 and 526

Employment law 4th Edition by Gmyneth Pitt at page 79

Phibson on Evidence 15th Edition at page 56 para. 4 -03 which refers to Constantine Line v Imperial Smelting Corporation

The Modern Law of Evidence 3rd Edition by Adrian Keane at page 73 under the heading "The Standard of Proof-Civil Cases"

Miller v Minister of Pensions (1947) AER 372

JESSIE ROWLAND GITTENS STRONGE VS. SIERRA LEONE BREWERY CIV. APP7/79 (1980) SLSC
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KOBEA and Others v TEMA OIL REFINERY AKOMEA-BOATENG & Others v TEMA OIL REFINERY (CONSOLIDATED) (CA 4/2003) and 2004 Volume 2

Halsbury's Laws of England Volume 16 Fourth Edition at paragraph 667