IN THE SUPREME COURT OF SIERRA LEONE

S.C. CIV. APP. NO. 5/81

CORAM:

The Hon. Mr. Justice E. Livesey Luke, Chief Justice - Presiding

The Hon. Mr. Justice C.A. Harding - Justice of the Supreme Court

The Hon. Mr. Justice O.B.R. Tejan - Justice of the Supreme Court

The Hon. Mrs.Justice A.V.A.Awunor-Renner - Justice of the Supreme Court

The Hon. Mr. Justice M.S. Turay - Justice of Appeal

BETWEEN:

EMMANUEL B. SMITH - APPELLANT

Vs.

TEXACO AFRICA (S.L.) LTD. - RESPONDENTS

Dr. W.S. Marcus-Jones for Appellant

J.H. Smythe, Q.C. and with him Mr. Manley-Spain for the Respondents

JUDGMENT DELIVERED THIS 4TH DAY OF JULY, 1985

TEJAN, J.S.C.: The Appellant was an employee of the Respondents in January, 1961, in Liberia, and in June 1965, he was transferred to the branch of the Respondents' Company in Sierra Leone when he had become a Senior Mechanic. In 1970, he was promoted to the post of Superintendent of Maintenance. On 11th November, 1974 the Respondents' workshop was burgled, officers of the Criminal Investigation Department were called, and after the appellant had checked the items in the store, he was taken to the C.I.D. where he was detained for a whole day and night. In January, 1975, the appellant had cause to query one Mr. Scott a fitter in the employment of the Respondents. The query which is exhibit "A" is in the following terms:-

"To: E.M. Scott (Workshop Fitter)

From: E.B. Smith

Date: January, 8, 1975.

/2.....

Please explain and give reasons why you failed to repair the following faults on the Company's vehicle WR 1251 assigned to you since 6th of January 1975.

(1) The Radiator (2) The Exhaust Pipe. Further you opened the racker cover and dismantle the Caburator switch which I think was uncalled for.

Please explain.

(Sgd.) E.B. Smith

CO.IN

Operations Supervisor."

A copy of exhibit "A" was sent to the Operations Supervisor. Mr. Scott replied to exhibit "A" on the same day. The reply is exhibit "B" and reads as follows:

"To: E.B. Smith, Maintenance Foreman

From: E.M. Scott

Date: January 8, 1985.

I received your Memorandum dated 7th January, 1975 with regards your observation on my Job.

(1) On your return from leave there was nothing between us as things were normal. After a week a case arise about a coil rope missing from the Jetty, and when it was alleged that you told the marine crew that I sold the rope when very well you know that you took it. I was being asked about it and my answer was no, failing to answer that which I have not done, I was being in mind of you and you avoided not even given me jobs: I only took jobs for myself.

In the case of the Bedford Lorry, the driver reported the defects to me, straight away I started working on the vehicle and told the driver to tell Mr. Smith about the vehicle and

/3.....

that I am working on it. After my discovery of all the faults I reported them to you; your reply was I dont care to know. I went as far as to tell you about the lamps ordered were not the correct ones you told me to fit them as it is, your attention was being drawn by me about the bulbs that were not available and you said nothing. Also Cylencer and Radiator which were not done by the welders, you said nothing again, instead you keep on shouting and I was molested. We have garage hands but by then they were not available a day the rest of the two hours are spent as house boys.

On Sundays they work as houseboys and paid by Texaco. First and foremost there was nobody to carry the Cylencer to the Welders.

With these few explanations of mine I think things would come to normal and co-operation.

(Sgd.) E.M. Scott

c.c. D.M.

Operations Supervisor"

The appellant wrote to the District Manager. The letter is exhibit "C" dated 9th January, 1975. The letter explained the circumstances of how a particular houseboy was employed and how the houseboy used to press his suits on few Sundays.
For clarity, it is necessary to quote Exhibit "C" which is in the following terms:-

"To: The District Manager

From: E.B. Smith

Date: January, 9, 1975.

Fitter E.M. Scott was queried by me with two letters dated 7th and 8th of January, 1975.

/4.....

Instead of answering the query he brought up allegation that (i) Workshop boys work six hours a day and (ii) One Sunday they went and work as my house boys and they are paid by Texaco.

These allegations are wrong and to explain further I have workshop boy who used to work as houseboy to me. Before he started with me he was working with a European who had long retired from S.A. Coore. My wife engaged him. He later complained that the payment was small because he had wife and children. Because he was very good my wife asked me to help him get a casual job. So he started with Pa Pratt. Because he can iron properly few days Sundays I would ask him to press my suits when they used doing and after a dash that is all but sending men from the Terminal to work at my house is totally incorrect. Because my wife has two to three boys on hiro who does all her business

(Sgd.) E.B. Smith."

c.c. Operations Supervisor"

Another query which is exhibit "D" dated January, 1975 was sent to Mr. Scott. It reads:-

"I have observed that you have been very reckless with all jobs assigned to you and also you idle your time chatting in the main stores down the marine etc.

(ii) On the 6th January in the morning WR1461 was assigned to you for repairs. The radiator was dismantled and left unrepaired.

You got the welder and plater idle while you leiter the compound.

If your attitude does not improve in future you will face disciplinary actions.

(Sgd.) E.B. Smith

C.C. Operations Supervisor
D - 2"

/5.....

In consequence of exhibits "B", "C" and "D" one Mr. Manley was asked to carry out an investigation. After Mr. Manley has presented the report of his investigation, the appellant was summarily dismissed by letter dated 17th January, 1975. The letter which is exhibit "E" is in the following terms:

"Personnel

E.B. Smith

Dear Sir,

Due to gross misconduct and negligence in the execution of your duty, brought to light in a recent investigation at our terminal, we have to advice you that as from 11.45 hours on January, 18th (Eighteenth) 1975 you are summarily dismissed from Texaco Africa Limited, Freetown.

Will you please present yourself to the Accounts office on Tuosday, January 21st, to collect any monies due you.

Yours very truly,

Texaco Africa Limited

(Sgd.) G. Cooper

District Manager."

Following his dismissal, the appellant on the 19th March, 1975 commenced proceedings against the Respondents by the issue of a writ of summons claiming damages for breach of contract, wrongful dismissal and wrongful detention of goods. In their statement of defence, the Respondents pleaded that they would contend that the appellant was well aware of the charges of gross misconduct and negligence in the execution of his duty made against him and was given the opportunity to defend himself, and would also contend that the dismissal was justifiable on the grounds of gross misconduct and negligence in the execution of his duties.

The case was heard by M.E.A. Cole, J (as he then was) on 20th November, 1975 and subsequent dates. The learned Judge, after carefully listening and examining the evidence of both

/6....

the appellant and respondents, on 17th March, 1977 dismissed the appellant's claim for detinue but gave judgment for the appellant for wrongful dismissal, and made the following awards:

Leave allowance	Le. 75.00
Rent allowance	33.00
Transport allowance	5.00
Night allowance work days	90.00
Night-do-Sundays	180.00
Salary -do-	28.00
General damages	Le.2025.00
TOTAL	Le.2436.75

It is against that judgment that on the 21st day of April, 1977, the Respondents appealed to the Court of Appeal on the following grounds:-

"(1) That the trial Judge erred in law in failing to consider whether there was sufficient evidence which the Appellant had believe in good faith they would have been justified in dismissing the Plaintiff from their services.

(2) That the trial Judge wrongfully assessed the evidence.

(3) That the decision could not be supported having regard to the evidence.

(4) That the trial Judge applied wrong principles of law in considering the meaning of "Unlawful Dismissal".

The appeal was heard by S.B. Davies, J.A. (as he then was) Warne and Navo JJA. On the 31st day of March, 1981, S.B. Davies J.A. (as he then was) delivered the judgment of the Court. The Court agreed with the findings and conclusions of the trial Judge in every issue with the exception of the issue regarding 2(12 volt batteries). The appeal was allowed and the judgment of the Court below was set aside with costs in that Court as well as in the Court below.

/7.....

The appellant (Smith) being dissatisfied with the Judgment of the Court of Appeal, on the 15th day of June, 1981 appealed to this Court on a number of grounds. These grounds are:

(1) That the summary dismissal of the Appellant was bad and unfair by reason of the fact that the decision to dismiss was based on the findings of a secret investigation which was not brought to the appellant's notice, and in which he was not given an opportunity of testifying or defending himself.

(2) That at the time of the appellant's dismissal the withdrawal of three batteries from store on charge slip No.2395 was not the reason constituting "gross misconduct and negligence" as justifying the dismissal. The Court of Appeal therefore erred in law in finding that the withdrawal of the batteries was sufficient misconduct to entitle the Respondents to dismiss the Appellant summarily.

(3) That the Court of Appeal were wrong in law in equating authority to withdraw, with actual withdrawal and in holding that the Plaintiff's signature on the charge slip No.2395 was irregular.

(4) That the Court of Appeal were wrong in finding that the Respondent had satisfied the burden of proof cast upon it by law to justify the dismissal of the Appellant.

(5) That the Court of Appeal were wrong in law in disturbing the specific findings of fact by the learned trial Judge and describing them as "inferences" to be drawn from facts."

/8.....

Dr. Marcus-Jones for the appellant contended that the procedure adopted by the Respondents in the conduct of the investigation carried out by Mr. Manley breached the rules of natural justice. To deal with this contention, it is necessary to consider the circumstances which culminated in the dismissal of the appellant. I have already quoted exhibits "A", "B", "C" and "D".

As a result of exhibits "B", "C" and "D" the respondents decided to engage the services of the Searchlight Agency (of which one Mr. Manley was the head) to investigate. A room in the respondents' place of business was allocated to Mr. Manley for this purpose. Mr. Manley then proceeded with his investigation in this manner: Several employees of the respondent Company were called separately into the room in the absence of the appellant who was unaware that his conduct was being investigated. Each employee was interrogated and a written statement obtained from him. The appellant was not called into the room to enable him to admit or deny the statement of the other employees.

On the 13th January, 1975, Mr. Manley interrogated the appellant who made a statement which is exhibit "S". Exhibit "S" is very illuminating, and it explained lucidly and in detail all the allegations which might or might not have been made against him. In his statement the appellant said inter alia:-

> "I fully remember one day when I was leaving for town, Mr. Isaac Williams called me and asked me to collect three (3) 12 volt batteries from Lucas House. He did not give me the local purchase order. The L.P.O. had already been taken to Lucas House. The batteries had already been filled and charged before I got there. I collected the batteries and handed them over at the stores. The batteries were in the store for sometime and Mr. Williams asked me to draw the batteries from the store for Aspet 4. I told Mr. Williams that those were not the batteries for Aspet 4. I told him that the batteries add

/9.....

up to 36 volts and the batteries used by Aspet 4 are five by 6 volts heavy duty. Mr. Williams told me that it will be alright, and that it costs less to run Aspect 4 as the batteries are only for the lights. I withdraw the batteries from the stores and place them in the workshop. Sometime after, Mr. Williams came to me in the workshop for one of the batteries in order to start his car. Mr. Williams further said that someone had used his battery on the barges and had spoilt it and that he was therefore going to claim the one he was borrowing. I told him that he would have to inform the Manager. Mr. Williams replied that he was not afraid of that so long he could prove that they had used his own battery. Mr. Williams took the battery away. I never asked him for the battery again as I expected he would have seen the Manager. I did not want to involve myself with Mr. Williams as Mr. Floode had told me that Mr. Williams was his assistant and every order he gives I have to carry them out.

....."

It is apparent from the evidence that the appellant was unaware that his conduct was being investigated, that the charges alleged against him were not brought to his notice, and that he was not afforded the opportunity to either admit or deny what was said by the other employees who also made statements. Since the statements were not put in evidence, it is impossible for any of the courts to say that the statements were either favourable or unfavourable to the appellant. In any event, the manner in which Mr. Manley carried out the investigation was improper and violated all the important rules of natural justice.

/10....

In this connection, it is relevant to quote the dicta of Pearce L.J. in RIDGE v BALDWIN (1962) 2 W.L.R. 716 at page 727. He said inter alia:

> "Assuming, however, that the defendants did have a duty to inquire judicially or quasi-judicially did they fail in this duty? The requirements of natural justice do not form a code. They may vary according to the exigencies of the situation. But always three things are needed: good faith (which is not herein in question) a knowledge of the man charged of the substance of that which is being put against him, and an opportunity of answering it."

Lord Jenkins summarised the authorities on the rules of natural justice in UNIVERSITY OF CEYLON v FERNANDO (1960) 1 W.L.R. 223. He quoted with approval the words of Tucker L.J. in RUSSEL vs DUKE OF NORFOLK (1949) 1 All E.R. 109 and said inter alia at page 231.

> "There are, in my view, no words which are of Universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

Taking the entire evidence into consideration, it is quite clear firstly, that the appellant was not informed that his conduct was under investigation; secondly, that he was not informed of the substance of any charge or charges against him; thirdly, he was not given an opportunity of challenging any allegations made against him by the other employees interrogated.

/11.....

In the circumstances, I am of the opinion that the respondents were in breach of the rules of natural justice in conducting the investigation which led to the dismissal of the appellant. I therefore hold that in those circumstances the dismissal of the appellant was wrongful.

Having arrived at this conclusion, it is not necessary to consider the other grounds of appeal. However I shall deal briefly with the ground on which the Court of Appeal allowed the appeal. The Court of Appeal in setting aside the judgment of the Court below laid great emphasis on the issue of batteries which were alleged to have been irregularly issued by certain employees of the Respondents' Company. With respect, the Court of Appeal did not seem to advert their minds to the evidence of Mr. Floode, the Operation Supervisor of the Respondents' Company. The evidence of Mr. Floode clearly indicated that the issue of batteries was not one of the grounds of complaints against the appellant. In my opinion therefore, the Court of Appeal erred in basing their decision on the issue of batteries.

I would therefore allow the appeal, set aside the judgment of the Court of Appeal, and restore the judgment of the High Court with costs in the three Courts.

.....
(Hon. Mr. Justice O.B.R. Tejan, J.S.C.)

I agree .....
(Hon. Mr. Justice E. Livesey Luke, Chief Justice)

I agree .....
(Hon. Mr. Justice C.A. Harding, J.S.C.)

I agree .....
(Hon. Mrs. Justice A.V.A. Awunor-Renner, J.S.C.)

I agree .....
(Hon. Mr. Justice M.S. Turay, J.A.)