IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA

CORAM: WOOD (MRS), CJ (PRESIDING)
OWUSU (MS), JSC
DOTSE, JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS) JSC

CIVIL APPEAL
NO. J4/9/2010
26TH MAY, 2010

OPARE YEBOAH & 8 ORS … PLAINTIFFS/APPELLANTS/APPELLANTS

VRS

BARCLAYS BANK GHANA LIMITED … DEFENDANT/RESPONDENT/RESPONDENT

J U D G M E N T

WOOD (MRS), CJ:-

The salient facts leading to the institution of the action, from which this appeal culminates, are indeed quite simple. The 1st-8th appellants worked at various branches of the respondent bank as employees; and served also as local union executives of the 9th appellants, the Industrial and Commercial Workers Union. On the 26th February, 2008, the respondent bank, purportedly acting under article 17 of the collective bargaining agreement (CBA) between themselves and their employees, issued out letters to the 1st – 8th appellants, dismissing them retrospectively from their employment, that is, from the 11th January, 2008, the date on which the respondent put them on notice of summary dismissal; viz, notice of the bank's intention to dismiss them without pay in lieu of notice. The respondents' action was triggered by an alleged

illegal activity instigated by the 1st -8th appellants, working in concert with others, on the 14th of November, 2007. The alleged actions as particularised in letters notifying them of the respondent's intention of summary dismissal, and which notices were served on them prior to the actual letters of dismissal, were that the appellants "did declare, instigate, incite, lead and or support others to resort to an illegal action in complete contravention of the Labour Act 2003, and the Collective Bargaining Agreement (CBA) between the respondent bank and its employees."

Not surprisingly, the respondents who disputed the charges, on receipt of the notices, on 22nd January 2008, instituted an action challenging their legality. However, both the court of first instance and Court of Appeal, which determined the action and appeal respectively, in well reasoned and well thought out decisions, found against the appellants. The end result is this appeal which is based on the following grounds:

(1) The learned justices of the Court of Appeal erred when they held that articles 15 and 17 of the collective bargaining agreement between the parties were separate and that there was no obligation on the defendant to proceed under article 15 before invoking article 17.

(2) The learned justices of the Court of Appeal erred when they held that the defendant bank had an unlimited discretion to invoke either article 15 or 17 or both on the facts and circumstances of any given situation and that the defendant bank properly invoked article 17 in the instant case.

(3) The learned justices of the Court of Appeal erred when they held that the appellants in the instant case did not reply to the letter purportedly issued under article 17(2) of the collective bargaining agreement between the parties summarily dismissing them when indeed there is evidence on the record that they did reply to that letter.

(4) The learned justices of the Court of Appeal erred when they held that a strike occurred at the respondent bank's premises on 14th November 2007.

(5) The learned justices of the Court of Appeal erred when they held that there was no victimization of the appellants in the instant case.

(6) The judgment is against the weight of the evidence on record."

GROUNDS 1 & 2

(1) The learned justices of the Court of Appeal erred when they held that articles 15 and 17 of the collective bargaining agreement between the parties were separate and that there was no obligation on the defendant to proceed under article 15 before invoking article 17.

In a matter as emotive as a case of summary dismissal, it is not surprising that the parties are not agreed on almost all the primary and secondary facts surrounding the disputed action. The central question in this controversy is whether or not the summary dismissal was lawful, as being in conformity with the collective bargaining agreement (CBA) between the parties, which was tendered at the trial as Exhibit A, articles 23 of the 1992 Constitution, as well as s.63 of the Labour Act, 2003, (Act 651). A number of subsidiary issues, including those raised in the grounds 1&2 of appeal, flow from this central question. The appellants argue that under the CBA, the mandatory procedures governing summary dismissals are those clearly outlined in the article 15 as well as the article 17. Appellant counsel contends that when both provisions are construed as a whole, that is, holistically, with the words being ascribed their natural and ordinary meaning, the inescapable conclusion that would be reached is that the respondents failed to comply with the mandatory provisions of article 15. The contention is that the suspension of an employee is a condition precedent to summary dismissal. In other words, that before the ultimate penalty of summary dismissal could be applied; the affected employee should first be suspended under article 15. The import of this argument is that the failure to suspend the affected employees, 1st-8th appellants, renders their summary dismissal under article 17 unlawful.

Additionally, the appellants' counsel urged that even if the respondents were at liberty to invoke only article 17, they were nevertheless enjoined under the CBA to serve the appellants a month's notice prior to their summary dismissal. These breaches of the

CBA, it was argued, are clearly in contravention of article 23 of the 1992 Constitution. I reproduce the submission made by counsel in this regard for its full import and effect.

"The combined effect of Article 17(2) and 17 (3) is that a notice of summary dismissal is to be issued which will take effect after one month from the date of the issue of the notice (that is, assuming the employee does not reply to the notice). However, in the instant case, the 1st – 8th appellants were actually dismissed immediately on the date of the purported notices that is upon immediate effect of exhibit C. They were asked to immediately hand over and vacate their desks. Indeed the defendant ensured that they were sacked from their offices on 11 January, 2008. Thus, whereas the provisions of Article 17(3) of the CBA contemplate the service of a one month notice to summarily dismiss the employee, the defendant actually effected the purported dismissals on the 1st – 8th appellants on the same day that is the day of the notice, 11 January, 2008 contrary to the provisions of the CBA which stipulates that the dismissal of the employee will only be effected after one month of the date of notice. "

Now, both the trial and appellate courts were of the opinion that the articles 15 and 17 are not intended to be applied conjunctively and further that they can indeed work independently of each other. More pertinently, they both concluded that it was within the respondent's right to proceed under article 17 alone, without recourse to article 15. To reinforce his argument, the appellant counsel submitted:

"Even the trial judge agreed that articles 15 and 17 ought to be read together and that the procedures under article 15 of the CBA ought to be exhausted before article 17 could be worked."

The learned judge had observed:

"It is my view, agreeing with counsel for the plaintiff that it is after the procedures under article 15 is completed that article 17 is invoked."

But I find Counsel's contention untenable. The learned judge's observation must be understood in its proper context. The learned trial judge was only, stating the broad principles regarding the nexus between articles 15 and 17. He proceeded to demonstrate that firstly, on a true and proper construction of the CBA, the respondent reserved the liberty to invoke article 17, without necessarily having to apply article 15.

He was, rightly of the view, that the respondents were under no obligation, in all instances, to go through the procedures outlined under article 15. Secondly, he found that on the peculiar facts of this particular case, the respondents were under no obligation to invoke the suspension procedure under article 15, it being reserved for those cases in which there was only a suspicion of serious misconduct, requiring full scale investigations. He expressed himself thus:

"Article 15 talks about an employee suspected of being guilty of any offence which will justify summary dismissal, the bank may suspend the employee while further investigations are carried out. The employee should be suspected of being guilty of the offence. After the investigations and the worker has been found guilty of a proven serious misconduct, then the procedure in Article 17 begins. It is only by reading the two Articles together as a whole that their real import could be discovered. This reasoning has the support of the Court of Appeal case of **Boateng vrs. Volta Aluminum Company Limited (1984-86) 1 GLR 733 at 738** where His Lordship Abban said:-

"In attempting to construe the termination provisions regard should be had to all the four termination clauses. That is the language used and all the provisions in the termination clauses should be looked at as a whole and every clause must be compared with the other and one entire sense made out of them. It is only by doing this that the true meaning and the intention of the parties could be discovered."

The learned judge explained further: "It is not in doubt that the defendants did not resort to Article 15 at all but proceeded to invoke section 17. Are defendants so entitled? Article 15 as already stated, talk of employee suspected of being guilty of any offence. What of situation where it is not a question of suspicion but it is a case of a person being guilty of the misconduct? What will be the purpose going through Article 15 if clearly the circumstances show that the worker is guilty of the offence? What of instances of "caught in the act? This question brings to mind the case of **Presbyterian Hospital vrs. Boateng (1984-86) 2GLR 381."**

On this critical issue, the position of their Lordships in the Court of Appeal is no different.

"In the instant case, the provisions of the CBA did not impose an obligation or limitation on the defendant bank's choice or discretion to invoke either Article 15 or 17 of the CBA in deciding the dismissal of its employees for misconduct. The defendant bank has an unlimited discretion to invoke either Article 15 or 17 or both on the facts and circumstances of any given situation. In the instant case, it opted for Article 17 and properly so in my opinion. In any case, the fact that no formal proceedings were conducted in the present case before the dismissal did not necessarily mean that the rules of natural justice had been flaunted."

It will be useful to reproduce the relevant articles 15-16 of the CBA as well as the notice of summary dismissal, exhibit C, given that on this crucial issue, the divergent views expressed by counsel on both sides of the legal divide, clearly demand that we construe these documents and give our opinion on the matter.

THE CBA

"Article 15 – SUSPENSION

If an employee is suspected of being guilty of any offence which would justify summary dismissal, the bank may suspend the employee from duty, while further investigations are carried out, the union shall be informed in writing.

While suspended from duty, the employee shall continue to report to his nearest branch on Tuesday and Thursday of each week and the employee shall leave an address with the employer at which he can be contacted within 24 hours.

During the period of suspension from duty, the employee shall continue to be paid his/her full salary. If any employee fails to comply with this instruction over a period of one week, the Bank shall be entitled to assume that the employee has abandoned his employment without notice, unless there are exceptional circumstances.'

Article 17 – SUMMARY DISMISSAL

Summary dismissal may be effected by the bank at any time in the event of any employee being guilty of proven serious misconduct or breach or non-observance of any of the provisions contained in Article 5, 8, 9, 10, 11 and 12. A copy of the dismissal letter shall be addressed to the Union.

If an incident is considered by the bank to merit the summary dismissal of an employee, that employee shall be given notice of it in writing outlining the nature of the offence. If reasonably possible, such notice shall be served on him personally, but if personal notice is for some reason not possible, service shall be effected by registered post to his last known address.

The employee may if he so chooses, reply in writing, but if no reply is received by the bank within one month from the time notice is deemed to have been served on him or if after receiving a reply from the employee, the bank considers summary dismissal still to be necessary, the employee shall be advised in writing that he has been dismissed as from the date notice was originally served on him.

(a) An employee who is summarily dismissed under 1 above, shall have the right of appeal to the Executive Committee within one month of the notification of summary dismissal.

(b)The union shall retain the right to negotiate on behalf of the employee

(See Article 43 – GRIEVANCE PROCEDURE)"

One of the critical issues arising from the grounds 1 and 2 of appeal is whether or not the notices of summary dismissal which were served on the appellants, of which the 1st appellant's was tendered at the trial as Exhibit C, and which is reproduced hereunder, were in fact not notices, but outright dismissal letters.

STRICTLY CONFIDENTIAL – ADDRESSEE ONLY
11 January 2008
Mr. Opare Yeboah,
Accra.

Dear Mr. Yeboah,

NOTICE UNDER ARTICLE 17 OF THE COLLECTIVE AGREEMENT (CBA) BETWEEN BARCLAYS BANK OF GHANA LTD AND INDUSTRIAL & COMMERCIAL WORKERS UNION (ICU)

I write to inform you that following the illegal strike action of Wednesday 14th November 2007, you are on notice of summary dismissal from the employment of the bank with effect from 11th January, 2008.

On Wednesday 14th November, 2007, in your capacity as a local union executive and working together with others, you did declare, instigate, incite, lead and/or support others to resort to an illegal strike action in complete contravention of the Labour Act, 2003, (Act 651) and the Collective Bargaining Agreement between the Bank and the ICU of which the local union is a member.

The illegal strike action took place a day after Management in a memo addressed to all local union executives, and dated November 13, 2007, indicated to you that its attention had been drawn to a meeting of union members called by executives of the union for November 14, 2007 and directing members to attend the meeting before reporting to post on the said day. Despite the warning by management contained in the said memo that such a meeting was unauthorized, not having been appropriately approved and the direction given to you and other members of the local union to immediately call off the meeting, failing which you will be held jointly and severally for any disruption to the business of the Bank, you went ahead with your meeting and plans, and caused an illegal strike action to occur on the day in question.

Under Act 651, legally approved procedures for mediation, arbitration and resorting to strike action have been provided for you and you are also enjoined by the CBA to respect strictly, provisions of Act 651. You however chose to ignore these legally binding guidelines with the view to intimidating and bringing pressure to bear on Management during negotiation of a collective agreement, as a result, of your actions, serious interference was caused to the business of the Bank and substantial financial loss, distress and

inconvenience to our customers and damage to the Bank's reputation were incurred for which the Bank holds you responsible.

Your actions not only resulted in an illegal strike action but also constituted a breach of warranty of your contract employment with the Bank for which the Bank is entitled to dismiss you summarily under the Labour Act, 2003, Act 651 and under the CBA

Consequently, notice is hereby given of the Bank's intention to dismiss you with immediate effect from January 11, 2008 and without pay in lieu of notice. You are to hand over all property of the Bank in your Branch of the bank except for personal Banking purposes. Your indebtedness to the Bank, which you will be required to settle in full immediately, will be communicated to you shortly.

You may choose to reply to this notice of summary dismissal or appeal to the Executive Committee (Country Management Committee) within one month of this notification. Please note that the Bank reserves the right to take further action against you as permitted under Act 651.

Yours Sincerely,
Laureen Lokko (Mrs.)
HUMAN RESOURCE PARTNER.

Cc: Managing Director, Barclays Bank Ghana Limited Head Office Accra
Chairman, Interim Management Committee of ICU

There is no dearth of local authorities on the legal principles which govern the construction of contractual documents such as the CBA. The fundamental principle is that the contract, that is, the various provisions must be construed as a whole; in totality; and liberally or generously; in a manner that would bring out its subjective

purpose. The linkages between the various provisions must also be carefully evaluated, so as to bring out the mutual intent of the parties at the time of the contract.

It is trite learning that, no one single provision is the source of subjective purpose. **Boateng v Volta Aluminum Co. Ltd. [1984-6]1GLR 733,** which some two decades later, this court affirmed as good law, in the case of **Agbesi v Ghana Ports and Harbours Authority [2007-2008] SCGLR 45**8, is authority for this principle. In the Boateng case, Abban JA as he then was, speaking on behalf of the court stated (at page 739):

> "In attempting to construe the termination provisions, regard should be had to all the four clauses. That is the language used and all the provisions in the termination clauses should be looked at as a whole and every clause must be compared with the other and one entire sense be made out of them. It is only by so doing that the true meaning and the intention of the parties could be discovered: This method of construction was adopted by Lord Halsbury LC in ***In re Jodrell' Jodrell v. Seale*** (1890) 44 ChD 590 where the Learned judge said at page 605:
>
> 'I am called upon to express an opinion on what is the meaning of this written instrument…For myself, I am prepared to look at the instrument such as it is; to see the language that is used in it; to look at the whole of the document, and not part of it; and having looked at the whole of the document, to see (if I can) through the instrument what was the mind of the testator'***"***

The leading Judge author, Aharon Barak explains the rationale behind these principles, in his book titled; "Purposive Interpretation in Law". At page 329, he writes:

> "A contract is an integrative framework. Its different parts are intertwined and intermingled. Its various branches influence each other. In interpreting a contract, a judge should, on one hand, view it holistically, as a whole, but on the other hand, evaluate the connections between its various provisions, as

part of the attempt to formulate the parties' joint intent." (C.A. 554/83 **"Ata" Textile co. v. Estate of Zolotov**, 41 (1) P.D. 282, 305 refers)

Applying these principles to the articles 15 and 17, I have very little difficulty in coming to the same conclusion as did the two lower courts on the crucial issue of whether or not these two provisions can never work independently of each other. Nothing in the articles when read in their totality, when purposively construed and the connection between the two provisions carefully evaluated, shows that a suspension under article 15 is a sine qua non to summary dismissal as envisaged under article 17. Indeed, it is not only the language of these provisions that lend itself to this construction, but the very structural arrangement of the articles 15 through 17, supports this construction. The arrangement reveals a disconnection between the articles 15 and 17. The article 16, which deals with termination of the employment relationship by either party, separates the two provisions. What is article 16 there for, if the argument is that a suspension, followed by an investigation must precede a summary dismissal? If indeed a summary dismissal can only be invoked after a suspension, the logical and natural order would have been for article 17 to come immediately after the article 15. In other words, article 17 ought to have taken the place of article 16. This is yet another reason why I think that the construction adopted by the two lower courts expresses the subjective joint will of the parties. I therefore affirm the concurrent findings by both the trial and appellate courts that the respondents are under no legal obligation to suspend an employee before summarily dismissing him or her. In this regard, I make reference to three decisions of this court which lay down the circumstances under which a second appellate court may interfere with the factual findings of two lower courts.

Achoro and Another v. Akanfela and Another [1996-97] SCGLR 209, at 214, in which we concluded that:

"In an appeal against findings of facts to a second appellate court like … [the Supreme Court], where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject matter of which was peculiarly within the bosom of the two lower courts or tribunals, this court will not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice, was apparent in the way in

which the lower tribunals had dealt with the facts. It must be established, e.g., that the lower courts had clearly erred in the face of a crucial documentary evidence, or that the principle of evidence had not been properly applied; or that the finding was so based on erroneous proposition of law that if that proposition be corrected, the finding will disappear … It must be demonstrated that the judgments of the courts below were clearly wrong."

The discernible principle in **Tuakwa v. Bosom [2001-2002] SCGLR 61** which further expatiates on the duty of a first appellate court, applies with equal force to that of a second appellate court. Speaking with one voice, we said:

"An appeal is by way of re-hearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of an appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that, on a preponderance of probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence… ".

This court had occasion to set out in some detail the principles that guide second appellate courts to depart from the concurrent findings of two lower courts. The court observed in the case of Adu v Ahamah [2007-2008] GSCLR 144 that:

"the practice is not a cast iron one and the reasons justifying a departure from the concurrent findings of fact as stated …are illustrative only: there may occur cases of such an unusual nature as will constrain the third appellate court …to depart from the practice."

I have critically examined the record. The appellants' case does not justify a departure from the findings of the two courts.

The intent of the parties to the CBA is that under article 17, summary dismissal be applied in cases of the stipulated acts of proven serious misconduct or breach or non observance of any of the provisions contained in article 5, 8, 9, 10, 11, and 12. Clearly, then in cases which merits the severe sanction of dismissal, a suspension becomes

imperative where the bank is met with suspected serious misconduct and which must therefore be interrogated for guilt to be proven or established. It does follow that the respondent Bank was perfectly at liberty to invoke article 17 without recourse to article 15. This they are at liberty to do; the only caveat being that when called upon to account for their action, as happened in this instant case, they would succeed in substantiating, inter alia, the facts on which the dismissal was grounded.

Furthermore, the argument that even if the respondents were at liberty to apply article 17, they nevertheless failed to comply with its mandatory requirements on what constitutes sufficient notice, is unsustainable. The contention is that the notices served on the appellants, are void, since they took effect on the same day that they were issued, contrary to the express provisions of the article 17(2) and 17(3) that a notice of summary dismissal must take effect one month from the date of the issue of the notice. Article 17 (3) does not deal with the effective date of a notice of summary dismissal as urged upon us, neither does any other provision. To the contrary, article 17 (4) speaks retrospectively, in that it stipulates that the effective date of summary dismissal is the date on which the notice of summary dismissal was originally served on the employee.

A bare reading of the Exhibit C proves it is a notice of their intention to exact the ultimate penalty of summary dismissal. It is not the actual dismissal letter. It did conform to the provisions of article 17 of the CBA. If that were not so, they would not have been paid their January and February salaries; the respondents would not have sent them the 4th of February reminder urging them to respond to the notices; neither would they have subsequently served them with the actual letters of dismissal. I also find that the dismissal letters conformed to the mandatory requirements of the CBA, as relates to their effective dates. The 2nd appellant's letter has been reproduced for clarity.

> 4th February 2008
> Mr. Samuel A Anarwat
> Accra.

Dear Mr. Anarwat,

SUMMARY DISMISSAL – ARTICLE 17 OF THE COLLECTIVE BARGAINING AGREEMENT BETWEEN BARCLAYS BANK OF GHANA LIMITED AND THE INDUSTRIAL & COMMERCIAL WORKERS UNION (ICU).

We are writing to express our extreme disappointment that, following the notice of summary dismissal issued to you on January 11, 2008 and our further letter of February 4, 2008, you have chosen not to avail yourself of the due process under Article 17 of the Collective Bargaining Agreement (CBA) governing our relationship.

For the avoidance of doubt, Article 17 reads as follows:

"1. *Summary dismissal may be effected by the bank at any time in the event of any employee being guilty of proven serious misconduct or breach or non-observance of any of the provisions contained in Article 5, 8, 9, 10, 11 and 12. A copy of the dismissal letter shall be addressed to the Union.*

2*. If an incident is considered by the bank to merit the summary dismissal of an employee, that employee shall be given notice of it in writing outlining the nature of the offence*.

3. *If reasonably possible, such notice shall be served on him personally, but if personal notice is for some reason not possible, service shall be effected by registered post to his last known address.*

4. *The employee may, if he so chooses, reply in writing but, if no reply is received by the bank within one month from the time notice is deemed to have been served on him or if after receiving a reply from the employee, the bank considers summary dismissal still to be necessary, the employee shall be advised in writing that he has been dismissed as from the date notice was originally served on him.*

5. (a) *An employee who is summarily dismissed under 1 above, shall have the right of appeal to the Executive Committee within one month of the notification of summary dismissal.*

(b) *The union shall retain the right to negotiate on behalf of the employee*

(See Article 43 – GRIEVANCE PROCEEDURE)."

No reply has been received from you in line with Article 17 (4) of the CBA.

In the absence of your reply, we are left with no choice but to advise you of your summary dismissal with effect of the date notice was originally served on you. (Emphasis supplied)

Your outstanding liability to the Bank as at the date of this letter stands at Ghana Cedis – 20, 500.31 the breakdown of which is as follows:

Housing Loans: Ghana Cedis – 20, 643.77 DR

Head Office Savings Scheme 143.46 CR

Please make arrangements to settle your indebtedness within the shortest possible time.

Yours Sincerely,

Laureen Lokko (Mrs.)
HEAD OF HUMAN RESOURCES.

Cc: Managing Director, Barclays Bank Ghana Limited Head Office Accra

Chairman, Interim Management Committee of ICU

Aboagye v Ghana Commercial Bank Ltd. [2001-2002] SCGLR 797, and the more recent authorities of **Laguda v Ghana Commercial Bank [2005-2006] SCGLR 388** and **Kobi and others v Ghana Manganese Company Limited [2007-2008] SCGLR 771**, affirm the time honoured proposition that procedures outlined in

contracts of employment, such as the CBA, must be followed to give a summary dismissal validity. I do find from the record, as did the two lower courts, that in this case, the mandatory requirements under the CBA were fully complied with.

Every contract of employment has its own rules on disciplinary and grievance procedures. There cannot be a one- size- fit- all procedure for all employment relationships. The important matter is that within the context of any given case, the procedure outlined, does assure and does indeed offer employees the opportunity to be heard. The article 17 of the CBA, under which notices of summary dismissals are issued, has its own inbuilt mechanisms and procedures for employees under threat of dismissal. It offers them the opportunity to be heard. In this particular case, it was the appellants' prerogative to make good use of the offer or opportunity or forever hold their peace.

Therefore, contrary to the appellants' protestations, they were not denied a hearing. An invitation was extended to them under the Exhibit C, to respond to the allegation that they had engaged in illegal activity. They chose to spurn the respondents' invitation and never put in a reply. For this reason they cannot now complain of a breach of the audi alteram partem rule, nor the article 23 of the 1992 Constitution. It is important to reiterate that article 23 is referable to public bodies and authorities only and is therefore not applicable to private relationships such as the one under consideration. I fully endorse the appellate court's sound conclusion on this crucial issue. Their Lordships reasoned:

> "Fortunately, however, the contract of employment of the 1st – 8th plaintiffs contained a provision in Article 17 (2) and 17(4) of the CBA compelling or mandatorily requiring the defendant bank to comply with the rules of natural justice, in particular the audi alteram partem rule before dismissing an employee for serious misconduct. The evidence in the record of appeal unequivocally and overwhelmingly demonstrates that the defendant bank complied strictly with Article 17 (2) and (4) by giving the plaintiffs more than enough notice of the charges or offences against them (see exhibit C) The 1st – 8th plaintiffs were given as many as 30 days notice and invitation to make their statements in explanation of the charges against them or any question and answer any arguments put forward in exhibit C – the notice of summary dismissal. The 1st – 8th plaintiffs were given more than enough opportunity

to state their case or defend themselves on these charges. They refused and or deliberately failed to do so or to take advantage of that opportunity even after several reminders from the defendant bank and even after their formal summary dismissals the 1st – 8th plaintiffs were again given the opportunity to exercise their right of appeal in accordance with Article 17 (5) of the CBA. The said plaintiffs again failed or refused to avail themselves of all these opportunities. See exhibits J to O and further Y – BB."

This leads me to the oft used omnibus ground of appeal:

"The judgment is against the weight of evidence." and

GROUND 4 of appeal, namely,

"The learned justices of the Court of Appeal erred when they held that a strike occurred at the respondent bank's premises on 14th November 2007."

It was urged that the record does not support the finding that the appellants engaged in an illegal strike. Again, I would not disturb the findings of the learned trial judge which was affirmed by the appellate court as these are clearly supported by the record. On this issue, the learned trial judge reasoned:

"Did the plaintiffs do anything for which they should be dismissed? The defendants maintain that they did. What they did should be clear from the notice, for that is what is required by Article 17. In summary it is that:-

1. They resorted to illegal strike action.

2. That they were warned not to hold the meeting on the 13th of November 2007 which meeting was not approved by management and therefore unauthorized.

3. That by their action serious interference was caused to the business of the Bank and substantial loss, distress and inconvenient to the customers and damage to the Bank's reputation.

4. That their action resulted not only in an illegal strike but also constitute a breach of employment.

Did any of these happen? According to the plaintiffs there was a meeting of the 14th of November, 2007 but it was not a strike. They met to brief members of the results of the negotiations. This was confirmed by Mr. Larnyoh of the ICU, the mother union. Kenneth Antwi testified for the defendant. He told the Court of dispatch of the memo (Exhibit 1) warning the plaintiffs not to organize the meeting since it was unauthorized. Management has not approved of the meeting and that if it came on it will lead to disruption of the defendant's services and impact negatively on the bank. According to Mr. Antwi despite this warning the meeting came on. Mr. Antwi in addition testified to the various branches that the plaintiffs belong to, gave details of what he saw and what happened on that day 14th November, 2007 at the defendant premises. He said when he got to the office he saw Mr. Opare Yeboah directing other members of the union to the Canteen. He requested to talk to talk to him but Mr. Yeboah told him to talk to the Chairman of the Local Union, Mr. Anarwat. Mr. Anarwat was talking to some people on the phone telling them they are on strike. When Mr. Anarwat was able to talk to him, he said defendant had declared a deadlock they therefore needed to go on strike. Mr. Antwi told the Court defendant Bank opens to the public at 8.30 am and closes at 4.30 pm. His discussion with Mr. Anarwat was between 8 and 8.30 am. Mr. Anwti said they made calls to the other branches to find out what was happening there and the category of staff belonging to the Union i.e. BI and MC were not at post. At 10.30 am there was drumming and dancing with lots of people around. At the head office also all category of BI and MC were absent. Lunch was served them and they departed at 4.30 pm. Even though Mr. Antwi was the only person who testified for the defendant I will believe his evidence. For the authorities have emphasized that it is the credibility of the evidence that matters but not the number of witnesses. We may look at the cases of:-

1. **Logs Lumber vrs. Oppon (1977) 2 GLR 263.**
2. **Kru vrs. Saoud Bros and Sons (1975) 1 GLR 4b.**
3. **Ayiwah vrs. Badu (1963) 1 GLR 86.**

The Labour Act defines strike in its interpretation section.

It states:-

"Strike means any action by two or more workers acting in concert which is intended by them to restrict in any way the services they normally provide to the employer to diminish the output of the service with a view to applying coercive pressure upon the employer, and includes sympathy strike and those activities commonly called a work-to-rule, a go-slow or a sit down strike".

I will find that on the 14th November there was the gathering at the Canteen of the defendant by the plaintiffs and others at which there was drumming and dancing and that the group dispersed at around 4.30 pm. I will find that on that day workers of the category BI and MC withdrew their services in some of the branches and head office and these were as a result of the actions of the plaintiffs. The plaintiffs acted in concert is seen from their common stand in refusing to respond to the letters the defendants sent to them to explain their conduct. In fact, that all the plaintiffs participated in this strike is not doubted by their own counsel when in cross examination he asked:-

"Q But it was at a meeting addressed by these 1st to 8th plaintiffs and also a representative of the ICU?

A: I was not there……."

Applying the facts of the case to this definition of strike I will find that indeed the plaintiffs did instigate and caused an illegal strike on the 14th day of November 2007. Illegal because it offends section 168 of the Labour Act. I find it doubtful whether plaintiffs' contention that there was not a strike action but a meeting can be a good defence applying the facts and circumstances of the case to the definition of strike provided under the Labour Act quoted herein."

These findings were affirmed by the appellate court. That a kpanglogo group was in attendance at the bank premises was uncontroverted. There is also

evidence on the record that the respondent Bank's investigation revealed that the illegal activity was going on in other branches of the Bank. What would a kpanglogo group be doing on the premises of a bank on a working day during working hours, if as the appellants would want us to believe, they were meeting the employees merely to brief them on ongoing negotiations? Why did they choose to go on with an unauthorised meeting, in brazen defiance of the warning contained in Exhibit 1 that they would be held responsible if they failed to call off the meeting? Management through Exhibit 1, had instructed the appellants to call off the planned meeting, given the timing, the fact that they had not sought management's approval, coupled with the obvious fact that it would lead to a disruption of the bank's services. Why are they now complaining?

GROUND 3

"The learned justices of the Court of Appeal erred when they held that the appellants in the instant case did not reply to the letter purportedly issued under article 17 (2) of the collective bargaining agreement between the parties summarily dismissing them when indeed there is evidence on the record that they did reply to that letter".

Is the exhibit H a reply? First, I would like to reiterate that it would be totally wrong, indeed, unconstitutional, in my view, to hold that a reply must be under the hand of an affected employee and not a legal practitioner. Employees served with notices of intention to dismiss, have every constitutional right to engage counsel to represent their interests, even at that stage. The only rider is that any reply submitted on their behalf, must contain some minimum information as I shall demonstrate shortly.

Therefore the legitimate question is did the Exhibit H reply, that is, respond to the substantial charge laid against the appellant employees? I should think the Exhibit H, when read as a whole, as we are enjoined to, does not qualify as a reply to the notices. I would not attempt to lay down a hard and fast rule as to

the format in which any purported reply should take; or the words that must be used in formulation of a reply. The CBA does not impose any such obligations on employees and therefore it would be unlawful to place any such liability on them. I would be rewriting the contract for the parties if I did. That is certainly not part of our remit. Suffice it to say that it is the substance of the written response and not the form which is essential. Expressed differently, irrespective of the format or the language used, to qualify as a reply to a notice given under article 17 within the terms of the CBA, must contain some minimum information. It must respond directly to the substantive charge or charges on which the dismissal were be based. The employee has one month within which the notice is deemed to have been served on him or her to reply. In other words, the employee must, within one month of receipt of the notice, state, in writing, his or her answer, or defence to the offence he or she is alleged to have committed for the Bank's consideration and a possible review or confirmation of the summary dismissal.

It is on these bases, that I conclude that Exhibit H is not a reply as envisaged under article 17. That the eight appellants had no intention of replying to the Exhibit C is borne out by the following facts. They chose first to sue the respondents on 22nd January 2008, before even writing the Exhibit H, the following day. It certainly was within their constitutional right to sue in vindication of their rights, but then that is the clearest evidence that they had no intention of submitting a response or reply as understood within the meaning of article 17 of the CBA. True, the appellants denied the illegal strike charge in the Exhibit H, but they did so as an aside only. In substance, the Exhibit H is a letter declaring their intention to engage respondents in courtroom litigation. They did not hide their intentions. They had sued the respondents for wrongful dismissal, and were prepared to pursue that path, unless as demanded by them, the respondents withdrew the notices. I thought this was more of an ultimatum, than a response to a charge. If they had submitted a proper reply, would the respondents have sent a reminder?

Finally, I find no merit in the argument that the dismissal was unlawful, it being an act of victimization. The appellants contend that they were being victimized for daring to institute a civil action against the respondents in relation to what is described as an "Out of Cycle" policy being implemented by the respondents. The learned trial judge's findings and conclusions on the question point to a mere matter of suspected of victimization, nothing more. Both courts found no positive evidence of proven victimization, and I would hesitate to interfere with that finding.

I would conclude that the appeal fails and the same must be dismissed. I would want however to add my voice to the appeal made by the trial judge urging the respondents to keep the door of negotiations open. It would be helpful however to remind the appellants that it is the spirit of humility and repentant attitude which fling open iron gates.

G. T. WOOD (MRS)
CHIEF JUSTICE

R. C. OWUSU (MS)
JUSTICE OF THE SUPREME COURT

J. V. M. DOTSE
JUSTICE OF THE SUPREME COURT

N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

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