

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI  
ON THE 20<sup>TH</sup> DAY OF DECEMBER, 2022, BEFORE HER LADYSHIP AFIA N.  
ADU-AMANKWA (MRS.) J.**

**SUIT NO. E3/5/21**

**JAMES DONKOR**

**PLAINTIFF**

**VRS.**

**GHANA RUBBER ESTATES LTD.**

**DEFENDANT**

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**JUDGMENT**

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Until his dismissal from the defendant company on 4<sup>th</sup> January, 2021, the plaintiff was an employee of the defendant, having been employed by her in February 2017 as a driver's mate. The defendant summarily dismissed the plaintiff for assaulting a colleague worker, one Mad. Lydia Assifuah. The plaintiff contends that the defendant's failure to offer him the opportunity to examine the persons who testified against him was a breach of his right to a fair hearing and, therefore, a breach of the rules of natural justice. He has, therefore, sued the defendant for the following reliefs:

*"a). Declaration that the dismissal was unlawful insofar as his right to a fair hearing was breached.*

*b). Loss of salary from date of dismissal to date of Judgment.*

*c). Order by the Court to re-instate the Plaintiff.*

*d). Compensation for unlawful dismissal from employment.*

*e). Cost including legal fees.*

*f). Any other order to be given by the court".*

It is the defendant's case that the plaintiff assaulted one Mad. Assifuah in the course of his employment, resulting in her sustaining a broken nose and an injury to her mouth. The defendant contends that the investigation into the assault and his subsequent dismissal complied with the Collective Bargaining Agreement between the defendant and the General Agricultural Workers Union, of which the plaintiff was a member. The defendant further contended that the plaintiff had the opportunity to cross-examine the witnesses who testified against him if he intended to do so. He, however, failed to do so because he knew he had misconducted himself and therefore did not deem it necessary to cross-examine any person.

The following issues were adopted for resolution:

- i. Whether or not the plaintiff assaulted one Madam Lydia Assifua, a tapper, in the course of his employment.
- ii. Whether or not the plaintiff was given the opportunity to cross-examine any of the witnesses that testified against him before the committee.
- iii. Whether or not the plaintiff's right to a fair hearing was breached by the defendant.
- iv. Whether or not the plaintiff is entitled to his claims.

It is a fundamental principle of the law of evidence that the burden of persuasion on proving all facts essential to any claim lies on whosoever makes the claim.

**Section 10(1) of the Evidence Act, 1975, NRC 323** defines the burden of persuasion as:

*"(1) For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court."* and

**Section 11** (1) of the Act, supra, defines the burden of producing evidence as:

*(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue."*

This being an action for wrongful dismissal of employment, the plaintiff assumes the burden of proving the terms of his employment and how the dismissal is in breach of the terms of his employment. Where a plaintiff fails to satisfy the court on these points, his claim must fail. In the case of **Tagoe vrs. Accra Brewery Ltd [2016] 93 GMJ 103 @ 123**, the Supreme Court stated thus:

*"...in a claim founded on wrongful termination of employment contract, the plaintiff assumes the initial burden of producing evidence to satisfy the court about his terms of employment and that the termination of his appointment was contrary to terms of his appointment or existing law. The Defendant would then be obliged to produce evidence to justify the termination".*

To meet the test of sufficiency, the plaintiff (or the party with the burden of producing evidence) is entitled to rely on all the evidence on the issue and need not rest only on his evidence to prove his point. The plaintiff did not proffer any evidence in proof of his terms of employment. All he claimed was that he was employed by the defendant in February, 2017 as a driver's mate and was not given a fair hearing during the investigations of his alleged assault. The defendant was gracious enough to tender in evidence as exhibit "1", the Collective Agreement, which is the agreement signed between the defendant and the General Agricultural Workers Union of which the plaintiff is a member. The Collective Agreement is the contract of employment between the parties and governs their employment relationship. Where a Collective Agreement exists between an employer and employee, the agreement is the yardstick in

determining the lawfulness or otherwise of the termination of the employee's contract. This is so because by **section 105(1), (2) and (4) of the Labour Act, 2003, Act 651:**

*"105. Effect of collective agreement*

*(1) An agreement concluded by a trade union through a standing negotiating committee or a joint standing negotiating committee shall, so far as the terms of the agreement permit, apply to the workers of the class specified in the certificate.*

*(2) The provisions of a collective agreement, concerning the terms of employment and termination of employment, and personal obligations imposed on, and rights granted to, a worker or employer, shall be regarded as terms of a contract of employment between each worker to whom the provisions apply and the employer.*

*(4) The rights conferred on a worker by a collective agreement shall not be waived by the worker, and if there is a conflict between the terms of a collective agreement and the terms of a contract not contained in the collective agreement, the collective agreement shall prevail unless the terms of the contract are more favourable to the worker; and it is immaterial whether or not the contract was concluded before the collective agreement.*

Thus, once an employer follows the procedures as laid out in the Collective Agreement and follows the mandatory requirements regarding the hearing under the agreement, the termination of the contract is valid. In examining the employment contract within the framework of disciplinary actions, Ansah JSC, in the case of **Kobi vrs. Ghana Manganese Co. Ltd [2007-2008] SCGLR 771** stated as follows:

*“In looking for justification for the action of the company, where a collective agreement existed between the employer and the employees, that must be the yardstick or the acid test to apply...As stated, when the parties have provided for certain eventualities and procedures in a collective agreement, they ought to apply fully so as to justify any action by the parties to the agreement. The binding efficacy of collective agreement... must never be whittled away.”*

In his pleadings, the plaintiff complained about certain procedural improprieties regarding the investigations into his alleged assault of a co-employee. He contended that he was not given a fair hearing during the investigations in that he was not given the opportunity to examine the witnesses who testified against him. He also denied assaulting his co-employee. The defendant contended otherwise, claiming that he was summarily dismissed for assaulting a co-employee and failed to cross-examine the witnesses when he was given the opportunity.

The letter summarily dismissing the plaintiff, dated 4<sup>th</sup> January, 2021, was tendered in evidence by the plaintiff and the defendant as exhibits “A” and “2”, respectively. In exhibits “A” and “2”, the reason assigned for his dismissal was that:

*“On Monday, December 14, 2020, you assaulted Mad Lydia Assifuah a tapper at ED5 which resulted in her sustaining a broken nose and mouth...The investigations conducted confirmed that you assaulted the said victim in the performance of your duty, which such action is deemed as Gross Misconduct. In the light of the aforementioned, you are summarily dismissed with immediate effect in accordance with Article 14(3)(a)(xi) of the Collective Agreement...”.*

Thus, the basis for the plaintiff's dismissal was because of his assault against Mad. Assifuah, which offence was a gross misconduct under the Collective Agreement. Summary dismissal is governed by Article 14 of the Collective Agreement.

Article 14 (3) states:

*"3) Summary Dismissal*

*a) The following are considered to be acts of Gross Misconduct:*

*i) Accepting or offering bribes or other acts of dishonesty.*

*ii) Fraud, stealing or damaging Company property willfully.*

*iii) Drunkenness and refusal to go for alcoholic/drug test.*

*iv) Gross insubordination.*

*v) Malicious damage to or Destruction of Company or other Employee's property.*

*vi) Committing deliberate acts likely to cause danger to the lives or safety of other people.*

*vii) Divulging trade secrets or other confidential information to an unauthorized person or breach of Company rule.*

*vii) Malingering.*

*ix) Abuse of medical facility.*

*x) Unexcused absenteeism, or vacation of post without permission for five (5) continuous working days in a month*

*xi) Physical assault and/or battery on Company premises*

*These examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this clause.*

*b) In all cases involving termination of employment and summary dismissal, there shall be a committee comprising representation from the Human Resource Department, the relevant department and the Local Union to*

*investigate those cases and make recommendations to management. This is to guard against arbitrary administration or discipline.*

4) *Suspension*

*i. In all cases where an employee is alleged to have committed an act of gross misconduct an investigation will take place. Immediately the investigations start, the employee will be suspended from duty on three-quarters (3/4) pay pending the final disposition of the case. The Union will be informed accordingly.*

*ii) In all cases involving investigations, copies of the statement made by any employee will be given to that employee. Further, the employee may request the presence of a Union Representative before giving a statement.*

*iii) Final disposition to be given within thirty (30) calendar days of the date of the offence otherwise he will be paid full time pending the final determination of the case.*

*iv) In the event that the employee is finally exonerated, he will be paid the full rate for the period of suspension. However, if his guilt is established, dismissal will be effected from the date of suspension.*

b) *The decision to dismiss an employee or terminate his employment will not be taken without reference to the Human Resource Manager.*

The principle is that where a worker is dismissed summarily and the employer cannot justify that the dismissal conforms with the terms of the contract of employment, as in this case, Article 14 of the Collective Agreement, the dismissal would be wrongful, and the courts would be clothed with power to strike down any such dismissal which is contrary to the Collective Agreement. As explained by Ansah JSC in the case of **Kobi vrs. Ghana Manganese Co. Ltd., supra:**

*"It was time the 'traditional rule' epitomized by Aryee v State Construction Corporation (supra), was reconsidered because it had the potential of resulting in oppression by the employer and creating docility in the employee. With the fear of losing his job at any time depending on the whims and caprice of his employer who may dismiss him at will, staring at him perpetually, the worker enjoyed no security of tenure. He would become a malleable tool in the hands of his master and do his bidding. However, his consolation was that a collective agreement may require that the employer could only terminate an employment; upon certain contingencies, namely, the employee being found guilty of an offence in a schedule of offences in the collective agreement; or the laws of the land or statute regulating employment in the land for the time being; or declared redundant under special conditions".*

The plaintiff has denied assaulting Mad. Lydia Assifuah. The issue, then, for consideration is whether the evidence presented to the defendant's disciplinary committee is reasonably capable of supporting the decision of the defendant to summarily dismiss the plaintiff for assault. This would entail resolving the question of whether the plaintiff assaulted Mad Lydia Assifuah.

In recounting how the incident occurred, the plaintiff testified that Lydia wore her mask improperly on the day in question, contrary to the defendant's clear directive to do so. When he asked her to wear the mask properly, she rained insults on him and his family. She then threw a rubber container she was sitting on at him. In using his hand to deflect it, the container hit her nose.

PW1, Kwasi Asan Baiden, a driver of the defendant company, testified that the plaintiff was his mate. The defendant rolled out a policy in line with the laws of Ghana that every employee who boarded the bus should wear a mask, failing which the driver and the mate would be sanctioned accordingly. His mate, the plaintiff, reported an employee, Lydia Assifuah, who had consistently refused to



wear the nose mask. On the fateful day of the incident, it had been the fourth time such a report had been made to him. The witness recounted that on the day of the incident, they stopped at a transit point to pick members to work, and the plaintiff made a complaint to him. He confronted Lydia as to her reasons for refusing to wear her nose mask properly. Whilst talking to her, the plaintiff passed by and Lydia shifted her attention to him. Lydia insulted the plaintiff using uncultured words like "Stupid man", "You are a dog", "A man like wood, if you try me, and I will let them sack you". Sitting on a margarine container, Lydia got up and threw the container at the plaintiff. The plaintiff resisted it with his hand, and it bounced back to her hitting her nose.

The victim at the centre of the controversy, Lydia Assifuah (DW2), testified that she was a tapper at estate Division 5 of the defendant's plantation at N via Takoradi. On 14<sup>th</sup> December, 2020, she joined the plaintiff's truck which shuttled the workers on the plantation. When the truck got to Kyekyewere, she alighted to buy food. As she bought the food, the car was about to move so she had to run to board the bus. In the process, her nose mask dropped to her chin. The plaintiff saw her nose mask down her chin and started to rain insults on her telling her to get down from the truck among other things. She explained to the plaintiff that she could not tie her nose mask around her neck because she was in a moving vehicle and would do so when the vehicle slowed down or stopped. Several attempts to explain to the plaintiff were not successful. Instead, the plaintiff resorted to raining insults on her. The verbal confrontation continued until they reached Estate Division 5, at Kyekyewere near Agona Nkwanta. Upon arrival at Division 5, the plaintiff immediately reported the issue to his boss, Mr. Baiden. In her attempt to explain to Mr. Baiden, the plaintiff continuously followed up with a series of unpalatable words on her denying her the opportunity to be heard by Mr. Baiden. As Mr. Baiden approached her for her to speak to him, the plaintiff quickly passed by Mr. Baiden, so he could not speak to her. In anger, he physically assaulted her. Even though she was bleeding profusely from her nostrils, the plaintiff did not desist

from physically assaulting her but continued to do so even when eyewitnesses at the scene were pleading on her behalf. She sustained a broken nose, and an injury to her mouth due to the assault meted out to her by the plaintiff. She was rushed to the GREL Clinic at Abura, where she received treatment.

Whereas the plaintiff insists that the margarine container hit DW2 in his attempt to deflect it when DW2 threw same at him, DW2 contended that the plaintiff assaulted her, resulting in bleeding from her nose. It is not exactly known whether this was the evidence adduced before the committee. It is the defendant's case that a committee was set up to investigate the assault charge against the plaintiff. However, the defendant did not deem it necessary to tender the proceedings and the committee's report, which formed the basis of management's decision to dismiss the plaintiff in evidence. However, two of the committee members testified before the court.

Edem Kojo Nyampong, the defendant's Labour Relations Manager, testified on the defendant's behalf. He testified that he was the chairman of the committee set up to investigate the incident. He and two other persons were appointed to sit on the committee to investigate the incident. One of the members was the union secretary named, Mohammed Saeed. Under cross-examination, the defendant's representative testified that even though the findings of the committee included, among other things, that there was a scuffle between the plaintiff and DW2, they could not determine who was the cause of the scuffle. He further testified that:

*"From the investigation, we realized that immediately the vehicle arrived at the office (Division 5) the plaintiff went straight ahead to report the case to the driver. The driver then went straight to Lydia to enquire what really happened. In the enquiries, they were still exchanging words. Lydia said somethings. The plaintiff said he disliked a lady who has the guts to insult a man. Based on these, the plaintiff got more provoked. He turned and*

*immediately he did, he heard other workers shouting for help. Before he could turn, the lady was bleeding and her nose was broken. The plaintiff told the divisional manager emphatically that he got very provoked and as a result, there was some form of assault. This was exactly what the lady said. Based on all these, there was evidence of the scuffle."*

DW1, Austin Kafui Owusu, the fleet supervisor of the defendant company and a member of the committee, testified and corroborated the testimony of the defendant's representative regarding how the committee conducted its investigation into the incident. Under cross-examination, he testified in the following words:

*"The incident occurred on the dawn of the said date that is 14/12. The matter was reported to Victor Agbenoo on the dawn as he was the site manager. He then called the driver, plaintiff and the victim Lydia. He interviewed them as to what transpired and based on the information he gave Victor was the basis for his interdiction. Victor in his statement to the committee said that the plaintiff said he was provoked by Lydia's conduct and beat her mercilessly. And the statement of the plaintiff was said in the present of driver and Lydia. Victor in reporting the incident to the management cited the confession of the plaintiff and article 14 of the Collective Bargaining Agreement was activated and plaintiff interdicted pending the outcome of investigation. Based on that, management constituted a committee based on the provision of the Collective Bargain Agreement of which I was a member. The Labour Relations Manager was a member of the committee and Mohammed Saeed was the worker's representative on the committee. I also was a member from the department where the plaintiff worked."*

It is not in doubt that DW2 was injured and had to be treated by the doctor. DW2 tendered in evidence as exhibit "4", the medical officer's report concerning her

injuries. The plaintiff does not deny that it was through his actions that DW2 got injured. In deflecting the margarine container DW2 had thrown at him, it bounced back to hit DW2. This may be a plea of self-defence as he deflected the margarine container to defend himself against the commission of a criminal offence, which is assault against him by DW2. From the witnesses' account of what transpired between the plaintiff and DW2, no one witnessed the plaintiff assault DW2. PW1 gave the impression that he witnessed DW2 throwing the margarine container at the plaintiff. However, under cross-examination, he explained that when he got to Division 5 office around 4:40 am, the plaintiff reported DW2's conduct in not wearing a nose mask to him. He came to the back of the truck to speak to Lydia. Whilst talking to her, she started hurling insults at the plaintiff. He left them to his cabin only to hear a sound with DW2 complaining that the plaintiff had assaulted her. Clearly, PW1 did not witness DW2 throwing the margarine container at the plaintiff. According to DW1, there was evidence led at the committee sitting that the plaintiff admitted assaulting DW2. DW1 indicated that one Mr. Victor Agbenoo, the site manager testified before them that in interrogating the plaintiff when the incident was reported to him, the plaintiff admitted that he was provoked by DW2's conduct and beat her mercilessly. The plaintiff has challenged this fact. It would appear that Victor Agbenoo's testimony played a crucial role in the committee's adverse findings against the plaintiff. Mr. Agbenoo did not testify before the court. Thus, what DW1 stated regarding what he told the committee was hearsay and cannot be relied upon. The committee's report, which may have contained Mr. Agbenoo's testimony, was also not tendered in evidence. As it stands now, it is DW2's word against the plaintiff that he assaulted her by beating her mercilessly. This court is not the forum to receive evidence regarding the plaintiff's assault on DW2. What is to be determined is whether the decision reached by the committee that the plaintiff assaulted DW2 is borne out by the evidence adduced before the committee. Hence, the defendant's failure to produce or tender the committee's report in

evidence poses a serious challenge to the determination of this issue. As it is the defendant's claim to have heard the appellant through the committee it set up, it should not have been difficult for her to produce the record of proceedings and the committee's report. The report would have contained the evidence of all the witnesses who testified before the committee to enable the court to decide whether the evidence on the report bears out her decision to summarily dismiss the plaintiff for assaulting DW2. The court is unable to determine if sufficient evidence was led before the committee to find the plaintiff guilty of assault in the absence of the committee report. This failure would enure to the plaintiff's benefit. Alternatively, it is the defendant's case per its paragraph 2 of its statement of defence that:

*"Defendant denies paragraph 5 of the Statement of Claim and in answer thereto contends that Plaintiff assaulted one Madam Assifuah a Tapper at Defendant's Plantation at Abura near Agona Nkwanta and this happened in the course of his employment which resulted in her sustaining a broken nose and an injury to her mouth. The injury caused the victim to bleed profusely."*

By positively asserting that the plaintiff assaulted Mad. Assifuah, the defendant, had made an allegation of the commission of a crime by the plaintiff. The position of the law is that where an allegation is made of the commission of a crime, the standard of proof is beyond a reasonable doubt. See section 13(1) of NRCD 323 and **Adwubeng vrs. Domfeh [1997-98] 1 GLR 282**. Thus, as long as the defendant had made an allegation of the commission of a crime by the plaintiff, then it behoved on her to prove that allegation beyond a reasonable doubt. As it stands now, no one saw the plaintiff hit DW2. The plaintiff has denied the allegation claiming that he only deflected the margarine container DW2 attempted to hit him with. In the light of this denial, and with no positive proof of anyone seeing him hit DW2, it cannot be said that he assaulted DW2. I find that the offence of

assault was not proved against the plaintiff, warranting his dismissal by the defendant.

The plaintiff further alleges that he was not given a fair hearing in that he was not allowed to cross-examine the persons who testified against him. He testified that due to the allegation of assault against him, he was suspended from duty on 14<sup>th</sup> December, 2020 with a salary reduction. Prior to his suspension, an investigation was conducted into the alleged claim by the authorities in accordance with the company's regulations. During the said investigation, he was not allowed to cross-examine any witness who testified in the alleged assault.

The defendant's representative testified that both the plaintiff and the victim were brought before the committee for investigations to commence. After hearing the plaintiff, the victim and their witnesses, the committee gave the plaintiff and the victim the opportunity to cross-examine the witnesses, but the plaintiff refused to do so. After the committee had concluded its investigations, the plaintiff was found guilty of assault and dismissed from duty on 4<sup>th</sup> January 2021. He contended that the steps taken by the committee complied with the Collective Agreement and that the defendant did not infringe on the plaintiff's right to a fair hearing. His evidence, in essence, was corroborated by DW1.

Let me begin from the outset to state that the defendant set up a committee to investigate the alleged assault against the plaintiff pursuant to article 14(3)(b) of the Collective Agreement. The committee comprised the defendant's representative, the Labour Relations Manager, who was the chairman of the committee, DW1, the fleet supervisor and the union secretary, Mohammed Saeed. The Collective Agreement requires the committee to comprise a representation from the Human Resources Department, the relevant department and the local union. Mohammed Saeed represented the local union, whilst DW1 represented the relevant department as he was the fleet supervisor. I am not too sure if the defendant's representative, the Labour Relations Manager was a

representative of the Human Resource Department. The defendant did not explain these matters. However, in the absence of any complaints from the plaintiff regarding the composition of the panel, it would be deemed to have been properly constituted.

DW1 confirmed that the plaintiff was not allowed to cross-examine persons who testified against him. This is what transpired under cross-examination.

*Q: So you mean that the plaintiff was never given the opportunity to cross-examine those persons that testified against him.*

*A: No. That was not how the investigation was conducted. The plan was to interview all the parties involved. At that moment because of the tension and fracas between them, the committee decided to meet them separately. In answering questions during the sitting, every information we didn't understand from the other party was put in the form of a question so that the committee could ascertain the facts.*

This would contradict his previous evidence and that of the defendant's representative that the plaintiff was given the opportunity to cross-examine the witness but failed or refused to do so. But that notwithstanding, the fact that the plaintiff did not cross-examine the witnesses did not mean that he was not given a fair hearing. Even though the Collective Agreement requires investigation to be carried out concerning an employee's alleged misconduct, it did not provide an established procedure as to how the disciplinary committee was to investigate such offences. Thus, once the plaintiff was allowed to react to the charges laid against him, that should satisfy the requirement of fair hearing. The underlying principle of natural justice is that the affected person should be allowed to be heard. It does not suggest that a committee should always be set up for him to appear to be heard except where there is a contract between the parties, and it provides that he should appear before a committee.

Thus, in the case of **Justice Awuku Sao vrs. Ghana Supply Company Ltd [2009] SCGLR 710**, the Supreme Court held that once the plaintiff was given a chance to answer the charges, it should satisfy to give him a hearing. The court stated as follows:

*"Both the trial and the appellate courts were of the view that in the absence of any requirement in the service contract between the plaintiff and the board for the setting up of disciplinary proceedings, what was essential for determination is whether the plaintiff was given an opportunity to react to the charges laid against him. We are in agreement with the proposition, for if the plaintiff was given a chance to answer to the charges even if not directly to the board or to a body set up by it, this should satisfy the requirement of natural justice."*

The fact that the committee heard the plaintiff should suffice. As the defendant's representative testified, the testimonies of other witnesses were also put to him to answer.

Even though the plaintiff in both his pleadings and evidence, did not make mention of this, his counsel has submitted that the defendant failed to comply with the provisions of the Collective Agreement by failing to provide the plaintiff a copy of his statement, which he made before the committee. Article 14(3)(4)(ii) of the Collective Agreement states:

*"In all cases involving investigations, copies of the statement made by any employee will be given to that employee. Further, the employee may request the presence of a Union Representative before giving a statement."*

Regarding the plaintiff's statement, Both DW1 and the defendant's representative confirmed that no copy of his statement was given to the plaintiff. DW1 testified that the plaintiff's statement was read over to him in a language he



understood in the presence of the union secretary, and he signed. The plaintiff's copy formed part of the report submitted to management. The defendant's representative explained that the final document was given to management for decision-making. The submission by counsel for the defendant that the plaintiff's copy was given to him at the time he was given the report to sign, which he gave back to the defendant to form part of the report to management, was farfetched. The provision connotes that a copy is given to the plaintiff for keeps. Thus, when the members of the committee stated that the statement was given to him to sign, they did not mean that a copy of it was made available to him. Their testimonies are an indication they understood it to mean that a copy should be made available to the plaintiff. It is clear that this provision was not complied with. Where parties have provided for certain procedures in a collective agreement, those procedures ought to be fully complied with to give efficacy to any action by the parties based on the agreement. In that regard, I find as a fact that the decision of the defendant to dismiss the plaintiff cannot be supported given that it failed to fully comply with the procedures as laid out in the Collective Agreement.

On the whole, the plaintiff has made a case out that his dismissal by the defendant was unlawful. In the first place, no evidence supports the offence of assault levelled against him. Further, the defendant failed to comply with the provisions of the Collective Agreement regulating their relationship by failing to give him a copy of the statement he made during the investigations. Accordingly, I declare that the plaintiff's dismissal was unlawful.

One of the reliefs of the plaintiff is an *"Order by the Court to re-instate the Plaintiff"*. The question is whether the plaintiff is entitled to this remedy. At common law, nobody can be compelled to work for an employer if he does not wish to do so. Conversely, no employer can be compelled to continue to engage a person in his employment. Therefore, an employer or employee may decide to end the

employment contract relationship provided the laid down rules and procedures have been adhered to, including notices to be given for the termination. An employee cannot be awarded an order for his restatement into a job from which he has been removed unlawfully unless a public law element requires otherwise. As explained in the case of **Kojo Hodare Okai vrs. Attorney-General & 2 Others [2003-2005] 2 GLR 22:**

*"The remedy of reinstatement is merely another name for the specific performance of a contract of employment of whose breach the plaintiff herein is complaining. In Cheshire and Fifoot at, page 608 it was said :*

*"Since it is undesirable and indeed in most cases impossible to compel an unwilling party to maintain continuous personal relations with another, it is well established that a contract for personal services is not specifically enforceable at the suit of either party' ...*

*Simply put, the rule of mutuality in contract performance or enforcement is that both parties must have equal rights or a chance to enforce it against the other. If only one person has the right or opportunity to enforce, then there is the absence of mutuality. It is this orthodox position that is usually touted by offending employers that since an unwilling employee cannot be forced into the employ of an employee, then it will be unfair to insist on an employer working with a particular employee. To this school of thought, therefore, the remedy for wrongful dismissal, if so found, is not an order for re-instatement that will be specific performance but rather damages."*

As regards public officers, the court held at page 35 of the report that:

*"The cumulative effect of article 191 and the constitution, 1992 is that unlike an ordinary employee's contract of employment, a public officer has a security of tenure and is insulated from arbitrary dismissal or reduction in rank at the whims and caprice of anybody except for just cause. And*

*where any individual or state seeks to dismiss any public official without just cause, any citizen or for that matter the court, pursuant to article 3(4)(a) of the constitution, 1992 can step in to stop this unconstitutional act."*

Thus, in **Quayson vrs Attorney General [1981] GLR 295**, the court pointed out at page 299 of the report that:

*"It would be discriminatory to refuse to restore a public officer to his post if the recommendation of the commission of inquiry that led to his forced removal was set aside as being wrong in law. It was also precisely against such unjust dismissal or removal like that of the appellant from that article 155(b) of the constitution, 1979, provided that 'No member of the public services shall be dismissed or removed from office or reduced in rank or otherwise punished without just cause.'" That provision would be meaningless if a public officer could not be restored to his former post where the court found that his removal was unjust and capricious. The court will therefore order reinstatement of the appellant to his former post."*

The plaintiff is not a public officer whose employment is regulated by statute. He is not entitled to be reinstated into the defendant company. What the plaintiff is entitled to is damages for wrongful dismissal. See the case of **Hemans v. Ghana National Trading Corporation [1978] 1 G.L.R. 4**. The principle is to place the plaintiff as far as money could do so in the position he would have been but for the breach. See **Royal Dutch Airlines (KLM) vrs. Farmex Ltd. [1989-90] 2 GLR 623**. But it should be noted that the damages must be assessed as compensation to the plaintiff for the loss he has sustained and not as punishment of the defendant's wrong in terminating his employment. In regards the measure of damages, the Supreme Court in the case of **Narley-Tokoli & Others vrs. Volta Aluminium Co. Ltd (No. 2) [1989-90] 2 GLR 341** stated thus:

*"The measure of damages for wrongful dismissal from employment was not to be confined to only loss of wages or salary but in addition the employee*

*was to receive his entitlements under the contract of employment. The plaintiffs were therefore entitled to receive their salaries from the dates they ceased to receive them to the dates of their respective de facto termination, including an additional twelve months' salary (as awarded by the High Court in the exercise of its discretion) as damages for wrongful dismissal as at the respective dates of the de facto termination of their employment. As the termination of their employment was held to be void and of no legal effect they remained employees de jure and would therefore, be entitled to earned leave allowances, bonus, long service awards, including food packages and all other benefits said to be enjoyed on a so-called gentleman agreement basis; all of which should be converted into cash if feasible as at the respective dates of the plaintiffs' de facto dismissal. They were also to receive their entitlement under article 40 of the collective agreement. However, in calculating their entitlements, account should be taken of any period within which any employee had obtained employment within the relevant period covered by the award."*

Applying this principle to the facts of the case, the plaintiff should be entitled to receive his salary from the date he ceased to receive it to the date of his defacto termination, i.e. 4<sup>th</sup> January, 2021. The plaintiff led no evidence regarding this aspect of the case. The letter summarily dismissing him indicated that his provident fund and terminal benefits would be paid to him less any indebtedness to the company. As long as the plaintiff never mentioned this, his benefits were presumed to be paid to him. The plaintiff testified that he was suspended from duty on 14<sup>th</sup> December, 2020 with a salary reduction. Per article 14(3)(4)(i) of the Collective Agreement, an employee under investigation is suspended on three-quarters salary pending the final disposition of the case. As the plaintiff was silent on this issue, it is also presumed that the difference in the salary was paid to him as part of his terminal benefits.

Regarding the assessment of damages, Dr. Date Bah JSC who spoke for the Supreme Court in the case of **Ashun vrs. Accra Brewery Ltd. [2009] SCGLR 81** set out the law on the assessment of damages as follows:

*'Put in other words, the measure of damages is the quantum of what the aggrieved party would have earned from his employment during such reasonable period, determined by the court, after which he or she should have found alternative employment. This quantum is, of course, subject to the duty of mitigation of damages. These principles outlined above, however, hold true in relation to only contracts not affected by public law provisions.'*

Thus, an employee wrongfully dismissed was required to make a reasonable effort to secure a comparative job. The plaintiff led no evidence on his present circumstances, i.e. whether he had secured a job or not. He also did not inform the court about his efforts in securing alternative employment. The plaintiff may have been under the impression that he was entitled to recover his salary from the date of his dismissal to the date of judgment as endorsed on his writ. But that would mean that he would have been foisted on the defendant and paid for no work done during the period of his dismissal to the date of judgment. Being a driver's mate at his previous employment, six months would have been a reasonable time for him to find alternative employment. The plaintiff is therefore entitled as damages for wrongful dismissal to the payment of six months' basic salary, which he was earning at the time of his dismissal in January 2021. The plaintiff's reliefs "b" and "c", being the payment of loss of salary from date of dismissal to the date of judgment and the order of reinstatement, are dismissed.

**(SGD.)**

**H/L AFIA N. ADU-AMANKWA (MRS.)  
JUSTICE OF THE HIGH COURT.**

**COUNSELS**

Benedicta G. Kesse (holding Stephen Kesse's brief) for the Plaintiff.  
D. D. Gwira Jnr. for the Defendant.

