

Rehearing governs appeals | Appellate reviews record | Weigh probability strength | Argue facts, law | Higher court binds | Article 129(3) applies | Supreme Court autonomous | Law questions binding | Likeness guides principle | Follow or distinguish | Ratio decides case | Limitation ends rights | Possession rights protected | Capacity affects writ | Endorse rep capacity | Null writ, no capacity | Capacity not merit-based | Justice over form | Prevent trial ambush | Entity has capacity | Assess evidence reliance | Test for miscarriage | Remove inadmissible evidence | Reassess valid evidence | Common law ends | Labour Act governs | Section 105, Section 17, Section 19, Section 62, Section 63(4), Section 64(2)(c) applies | No reasons needed | Collective terms better | Collective overrides s.17 | Contract ousts common law | Better terms apply | Section 105(4) prevails | Actual conflict needed | Avoid conflicting terms | Termination equals dismissal | Sue for termination | Employer proves fairness | Act needs reasons | Contract not bondage | Either may terminate | Second appeal limits

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

**CORAM: BAFFOE-BONNIE JSC (PRESIDING)
 OWUSU (MS), JSC
 KULENDI, JSC
 ACKAH-YENSU (MS), JSC
 ASIEDU, JSC**

**CIVIL APPEAL
NO. J4/19/2023**

27TH MARCH, 2024

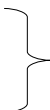
**GENERAL TRANSPORT, PETROLEUM &
CHEMICAL WORKERS' UNION OF TRADES
UNION CONGRESS**



**PETITIONER/RESPONDENT/
RESPONDENT**

VRS.

**HALLIBURTON INTERNATIONAL
INCORPORATED GHANA BRANCH**



**RESPONDENT/APPELLANT/
APPELLANT**

JUDGMENT

MAJORITY OPINION

KULENDI JSC:

1. We have before us an appeal against the judgment of the Court of Appeal dated the 14th of April, 2022 which affirmed the ruling of the National Labour Commission (hereinafter referred to as “the Commission”) delivered on the 15th of September 2020, wherein the Commission declared as unfair, the termination of one Margaret Jacqueline Adjimah, a field service representative formerly in the employ of the Appellant company.
2. The generally agreed facts that birthed this appeal are that, on the 4th of May, 2018, one Margaret Jacqueline Adjimah, then a Field Service Representative employed by the Appellant, was issued with a letter of termination. The said letter, which was to take immediate effect, brought to an end her employment with the Appellant and authorized the payment to her, of one month’s salary in lieu of notice.
3. Due to the nature of the contentions of the respective parties, and the relevant legal principles implicated in the instant suit, it is essential that we reproduce extensive relevant portions of this letter:

“4th May 2018

Dear Margaret,

TERMINATION OF EMPLOYMENT – Field Service Representative – Drilling Fluids

We write to inform you that we have terminated your employment with Halliburton International Inc, Ghana Branch. The termination of your employment is effective as of today, 4th May 2018.

Under your employment contract and the Collective Bargaining Agreement, we are required to give you one month's notice of termination or one month's salary in lieu of notice. We hereby give you one (1) month's salary in lieu of notice to terminate your employment.

As required by law, the Company will pay you any outstanding remuneration, inclusive of your benefits, as per the attached termination package.

Please, return all documents and copies concerning the Company's business and confidential customer and Company disclosures acquired during your employment with the Company. And kindly return all Company property in your possession."

This letter can be found on page 105 of the Record of Appeal.

4. On the 7th of May 2018, upon being notified of this development, the General Transport, Petroleum & Chemical Workers Union Of Trade Union Congress (GTPCWU), the Respondent herein, wrote to the Appellant to request the Appellant company to furnish them with details of what happened during the course of Margaret Adjimah's work "that warranted the termination" and also the processes carried out by Appellant before the decision to terminate her employment.

5. The Respondent Company responded to the said letter later that day and affirmed their position that the termination was effected according to law, her contract of employment and the stipulations of the Collective Agreement.

6. The very next day, being the 8th of May 2018, the Respondent wrote to the Appellant referencing a meeting that had ensued between the parties earlier that day at the Appellant's premises, where they expressed their dissatisfaction with the steps taken by the Appellant prior to the termination of Miss Adjimah. In this letter the Respondent contended that the procedure prescribed under Article 8 of the Collective Agreement was not adhered to. The Respondent then demanded the immediate reinstatement of their member.

7. The above letter went unanswered and this prompted the Respondent to file an official complaint with the National Labour Commission, on the 5th of June 2018. In this complaint, the Respondent recounted the factual progression we have narrated above and re-affirmed their foundational argument that Margaret Adjimah was unfairly terminated without recourse to the prescribed procedure.

8. Upon being served with the complaint, the Appellant, on the 13th of July 2018, filed their response to the complaint and anchored their defence on the primary fact that the

termination was done according to the process stipulated by the applicable law, and the Collective Agreement.

9. Thereafter, the Appellant's response was served on the Respondent, which, in turn filed their reply to the Appellants response on the 25th of July 2018. In their reply, the Respondent identified Margaret Adjimah as a founding member of GTPCWU from about 2013. Furthermore, the Respondent, whilst disputing the fairness or justness of Margaret's termination, admitted that one (1) month's salary had in fact been paid to Margaret's bank account. They were however of the opinion that this could not reasonably have constituted the entirety of her entitlements. The Respondent in their reply then quoted the entire portion of Article 8 of the Collective Agreement, which according to them ought to have been adhered to, in the termination of Margaret Adjimah.

10. The Respondent company then concluded their reply as follows:

"The Respondent therefore states that if the employer's decision is allowed to stay, it would have damaging consequences on the Union Management relationship as the employer would from there on terminate any unionized worker in Halliburton Ghana which will result in dismantling the Union membership presence in Halliburton Ghana and would render the Collective Bargaining Certificate useless and the Oil and Gas Sector would be greatly affected. ..."

11. We must emphasize the fact that while the Respondent makes a passionate argument on the potentially debilitating effects of the termination on the Union and its effect in the Oil and Gas space, it noticeably stops short of alleging that Margaret Adjimah's termination was induced by her membership of the Respondent Union. At the end of this reply, the Respondent makes two prayers. We have noted that though placed under the heading of 'relief,' the first item identified is in fact, more of a further allegation than a prayer being sought from the Commission, nonetheless, they are reproduced as follows:

"1. The Employer has refused to pay the Petitioner her PF entitlement by not endorsing her claim form. (Find attached as Exhibit 3)

2. The Union is seeking the NLC to compel Halliburton Ghana to pay Margaret 5 months x the number of years served on her consolidated salary and in addition give her 3 months salary as handshake as redundancy package since going back to working with Halliburton Ghana will be counter productive."

12. On the 26th day of February, 2020, the complaint came up for hearing before the National Labour Commission and the parties were made to argue out their respective cases. The ensuing discourse between the parties and the commission provides much needed clarity to the gravamen of the parties' cases before the commission, and ultimately before this Court.

*"**Complainants Union:** This happened in 2018, when she had just finished her 28th days off duty in the Philippine chartered from off field and came back, supposing to get her 28 days' rest, the next day she was called back to relief someone who had a problem but when she got there on the 3rd day, chemicals was bought on board and was received by the one she went to relief, but she realized some irregularities and told them she cannot work with that chemical, however, she was insisted upon to work with the chemical.*

***Commission:** All what you are saying is not on our file.*

***Complainant Union:** Yes please but that was the beginning of the entire issue.*

***Commission:** Then you should have stated all that in the earlier petition.*

***Commission:** Actually, what is worrying us, as we read through this case, there wasn't any termination letter which gives reason, that was why we are quiet to hear, because we have not seen the termination letter. Do you have the termination letter? It is not on the file. We need to understand and know the reason for the termination of the appointment?*

...

***Commission:** That is why we wanted to see if there is no reason then we will know how to find out. Counsel do you have a copy of the letter, we need it to know the reason for the termination because the whole case evolved around her termination*

...

Commission: *Can we hear from the Respondent*

Respondent: *Mr. Chairman our issue is, she was laid off in accordance with the law in the Collective Agreement (CA) and the contract that she signed with the company at the time she was being employed and we know of Section 90 of the Labour Act which says where there is a Collective Agreement it prevails over the terms of the contract. But interestingly for this case the provision for termination is the same as the provision in the Collective Agreement.*

Commission: *What does the Collective Agreement say?*

Respondent: *Looking at Article 10:01 of the Collective Agreement (CA) (reads)*

...

Respondent: *It states of leaving the service of the company and 10.01 states termination and cancellation ... So it is clear from the provisions that there was no linkage for any other special provision or procedure other than given notice because both the employer and the employees are entitled to the same provision, based on that she was given one month's notice and her contract was terminated and her provident fund was paid to her. Our position for the termination was based on Article 10. From their reply to our response they requested for Provident Fund, but per information reaching us stated that it had been settled.*

Commission: *So it is only the termination now.*

Respondent: *Yes*

Commission: *I will like you to restrict yourself on just the termination.*

Complainant Union: *Section 8.1 of the Collective Agreement talks about discipline procedure, (reads) the objective of this discipline code and procedure is to regulate with the key principle, where the employer and employee be treated each other with mutual respect, to warn and the first offence must be made verbally in the presence of a union representative, second offence be given a written warning with a copy submitted to the*

judicial union but all these were not done, written warning and a copy submitted to the union was not done, union must be copied termination letter this too was not done, in her case, this is her first warning if only she has offended but our view is that she has not offended, she was authorized by someone to do a job she was not supposed to do, reasons being that the chemical she was asked to minister was not good.

Commission: *Before then you never wrote that it was about chemicals, so I don't know what you are talking about.*

Complainant: *This is the basis on which they terminated her.*

Commission: *But did they state it in the letter?*

Complainant: *It was a smart way to avoid us going through all this.*

Commission: *Just restrict yourself, they have stated that according to the rule, they can do that by giving one month notice, you have now complained that there must be reasons so that is where you should restrict yourself.*

...

13. We note from the exchanges reproduced above that the first prayer of the Respondent, concerning the payment of the Provident Funds entitlements, had been rendered moot by the time the parties were heard on the matter. That being the case, no further discussion needs to be made on that issue.

14. The Commission, after hearing the parties retired to caucus and after they reconvened, the following decision was delivered:

`Well, your position is of the Common Law which has now been expanded by two things, the Labour Law and the Collective Agreement. The Collective Agreement in part 8 tells you under what conditions you can terminate and 10 also tells you the notice you have to give, the said notice is not standing on its own. There must be reasons before the notice. If you go to the Labour Law, it goes beyond the Common Law where it says that for lawful termination, these ingredients have to be provided. So it's not just the question of "thank you very much" or I don't like your face thank you. If you have worked with someone after the

probation there must be a reason for the termination and once you have the reason then the notice is the point 10, so we have heard this case where most lawyers use the Common Law but this goes beyond that, particularly this case there was a Collective Agreement. We think the termination was unfair.'

15. Dissatisfied with this decision, the Appellant herein on the 11th of March, 2020 lodged an appeal at the Court of Appeal on grounds that the decision was against the weight of the evidence. Before the appeal could be heard however, the Commission, on the 15th day of September 2020, delivered a formal ruling wherein they found as follows:

"1. That Article 10.01 of the CA under which Respondent terminated the employment refers to notice for termination of employment and so this is in fulfilment only of Section 17 of the Labour Act, 2003 (Act 651)

2. Article 8 of the CA prescribed the Grievance Procedure in the event a staff is alleged to have committed an offence.

3. Section 62 prescribes the grounds for fair termination of appointment, but none of these grounds was proven by the Respondent to justify the termination of Complainant's employment."

16. Based on the above findings, the Commission came to the following conclusions:

"The Commission rules that the termination is unfair pursuant to Section 63(4) of the Labour Act, 2003 (Act 651). The Commission hereby orders the payment of compensation in pursuance of Section 64(2)(c) of Act 651 to the tune of one(1) year salary. The Respondent shall effect payment of the amount issued in cheque to the name of the Complainant and paid to the Commission within two weeks upon receipt of this ruling."

17. Subsequently, the Court of Appeal affirmed the decision of the National Labour Commission and held that the right procedure was not followed in terminating Margaret Adjimah under the Collective Agreement.

18. Upon scrutinizing the respective arguments filed by the parties in their written submissions, the Court of Appeal made the following findings:

"Since section 19 of Act 651 expressly provides that the common law position as codified in sections 15 to 18 of the Act become inapplicable when a Collective Agreement contains provisions which are more beneficial to the worker, it means that only termination of employment which is done without regard to these laid down disciplinary procedures, will not be considered as a fair one. In other words, any termination of employment, which does not religiously comply with the procedures laid down in Article 8 of the Collective Agreement, would be considered as unfair. In the instant case, the provisions for termination are those contained in Article 8 of the Collective Agreement which should have been followed..."

The interpretation being put on the Collective Agreement that termination could be done by giving one month's notice or a month's salary in lieu of notice, is anything but wrong. Article 8 of the Collective Agreement laid down elaborate procedures to be followed before termination and in the light of the provision of section 19 of the Labour Act, 2003 (Act 561), the Appellant could not terminate the employment without complying with the procedure laid down therein. As the Appellant has not shown that those procedures were followed, the termination could not be said to have been done in accordance with the provisions of the Collective Agreement."

19. The Court of Appeal, in affirming the decision of the Commission, said as follows:

"From the above analysis and for the reasons given, this court is satisfied that the appeal is without merit. It is therefore accordingly dismissed and the decision of the Commission dated 26th February 2020 is hereby affirmed."

GROUND OF APPEAL

20. It is against this backdrop that the Appellant has lodged a further appeal to this court on the following grounds:

a) *The Court of Appeal erred when it held that the common law position on termination of employment became inapplicable once there was a more beneficial provision in the Collective Agreement.*

Particulars of error

I. The Court of Appeal wrongly interpreted Section 105 of the Labour Act, 2003 (Act 651) vis-à-vis the peculiar facts of the case in arriving at the conclusion that the termination was unfair.

II. The Court of Appeal failed to consider that the two modes of termination provided under the Collective Agreement are both contractual rights available to the parties to employ in bringing the contractual relationship to an end.

III. The Court of Appeal failed to consider that since both methods constitute legitimate contractual rights, the employer can elect to choose whichever it deems appropriate to end the contractual relationship.

IV. The Court of Appeal failed to consider that Article 8 of the Collective Agreement (which it considered more beneficial to the employee), is only activated where a disciplinary offence is committed by the employee.

b) *The Court of Appeal misdirected itself on the application of the legal principles governing termination of employment.*

Particulars of misdirection

I. The Court of Appeal failed to consider that under the law, it is not mandatory for an employer to state reasons for termination of employment of its employees.

II. The Court of Appeal failed to consider that under the law, an employer can fairly terminate the employment of its employees by making payment in lieu of notice.

III. The Court of Appeal failed to consider that Article 10 of the Collective Agreement covers termination by payment of money in lieu of notice, which is an equal contractual right available to the employer under the Collective Agreement.

c) The Court of Appeal misdirected itself when it held that the Appellant wrongly relied on Article 10 of the Collective Agreement to justify the termination of Margaret Adjimah.

Particulars of misdirection

I. The Court of Appeal wrongly held that the Appellant could not terminate the employment of Margaret Adjimah without complying with Article 8 of the Collective Agreement.

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II. The Court of Appeal wrongly reasoned that any termination of employment which does not comply with Article 8 of the Collective Agreement is unfair.

III. The Court of Appeal failed to consider that the Appellant had an equal contractual right under Article 10 of the Collective Agreement to terminate the employment of Margaret Adimah without stating reasons.

IV. The Court of Appeal failed to put sufficient weight on the fact that employment of the said Margaret Adjimah was not terminated as result of a disciplinary offence to activate the procedures under Article 8 of the Collective Agreement.

V. *The Court of Appeal failed to consider that the Appellant was not bound in law to waive its contractual right under Article 10 of the Collective Agreement and comply with the procedures detailed in Article 8 where no disciplinary offence had been committed.*

VI. *The Court of Appeal failed to consider that the terms of Article 10 of the Collective Agreement do not warrant the employer to give reasons for the termination to constitute a fair termination.*

d) *The cost of Thirty Thousand Ghana Cedis (GHS 30,000) awarded against the Appellant is excessive.*

e) *The judgment is against the weight of evidence on record.*

APPELLANTS CASE:

21. In its statement of case filed on the 14th of October 2022, the Appellant argued strenuously that under Ghanaian labour law, the employer is not required to assign reasons in every instance where the employment of a worker is terminated. Whilst the disclosure of such reasons was paramountly essential in instances where such termination was in the nature of a dismissal, the Appellant maintained that the common law, the Labour Act and the Collective Agreement between the parties contemplated and provided for a regime of termination which did not require the assignment of reasons.

22. The Appellant further argues that whilst it admits the effect and import of section 19 and 105(4) of the Labour Act in principle, there was no 'more beneficial provision' either in the Contract of employment or the Collective Agreement, because in the estimation of the Appellant, both agreements preserved the common law right of an employer to terminate the employment of an employee upon giving the requisite notice or payment in lieu of such notice.

23. Consequently, the Appellant contends that the Court of Appeal misdirected itself when it held that sections 17-18 of the Labour Act, and by extension, the common law right of an employer to terminate the employment of an employee without assigning reasons, was inapplicable in respect of Margeret Adjimah because 'more beneficial' terms were agreed the Collective Agreement.

24. In furtherance of the above, the Appellant argues that their right to terminate without cause, and for that matter reasons, by giving the requisite notice or the payment of salary in lieu of such notice was incorporated not only in the contract of employment, but also in the Collective Agreement.

25. The Appellant similarly took issue with the Court of Appeal's finding that Article 10 of the Collective Agreement merely stipulated the process by which termination could be effected under Article 8 of the said Agreement. The Appellant argued that Article 10 ought to be construed independently of Article 8 because the process stipulated in Article 8 pertains only to instances where disciplinary issues were implicated. It was further argued that the Collective Agreement offered two equally viable alternatives for terminating the employee: one under Article 8, where the said termination was done pursuant to a predefined disciplinary process, and another under Article 10, which could be employed independent of any disciplinary issue, exercising common law and contractual right of either party to terminate the employment relationship upon giving the due notice. The Appellant contends that whilst in all instances of termination under Article 8, the employer was mandated to disclose the reasons for same, this duty did not apply where the termination was being effected pursuant to Article 10.

RESPONDENT'S CASE:

26. The Respondent on the other hand, on the 7th of November 2022, filed a statement of case in spirited defence of the judgment of the Court of Appeal. The Respondent argues vociferously that the Court of Appeal was right in finding that, by virtue of sections 19 and 105(4) of the Labour Act, the common law right of the employer to terminate merely upon giving notice was inapplicable, in light of the "more beneficial provisions" found in the Collective Agreement.

27. Furthermore, the Respondent maintains that the argument of the Appellant to construe Article 10 independent of Article 8 was incongruent with established legal principles on the construction of deeds and documents which clearly prescribed that documents must be read as a whole. Consequently, the Respondent avers, as the Court of Appeal did, that a conjunctive reading of Article 8 and Article 10 of the Collective Agreement would reveal that the two provisions are interrelated, in that Article 8 prescribes an elaborate disciplinary process that an employee was to be subjected to, after which, if the company was so minded, could resort to termination in the manner provided for under Article 10.

28. The Respondent argues at page 10 of their submissions as follows,

'It can be gleaned from the said Article 8 of the Collective Agreement that it sets out an elaborate procedure that the Appellant is obliged to follow at all times before triggering any form of termination of the employment.... It is therefore incumbent for Article 10.01 of the Collective Agreement which the Appellant seeks to rely on as basis for the termination of the employment of members of Respondent, to be read together with Article 8.'

ANALYSIS:

29. We are of the considered view that the following issues arise in this case;

- I. Whether or not the Collective Agreement between the parties contained more beneficial provisions on termination for employees, within the contemplation of section 19 and 105(4) of the Labour Act, 2003 (Act 651)?
- II. Whether or not an employer reserves the right to terminate the employee without assigning reasons?

30. It is our considered view that a determination of these two issues enumerated above, shall effectively resolve the dispute between the parties and settle this appeal. And we shall deal with the above issues *seriatim*.

31. Much has been made of the applicability of the common law right of termination held by both the employer and the employee, in the face of “more beneficial” provisions in the contract of employment. Whilst the Appellant argues that the said principle is not invoked in the instance case, the Respondent, re-echoing the findings of the Court of Appeal, contends that this case falls squarely within the confines of this principle and therefore ought, as the Court of Appeal did, to be strictly enforced.

32. For the purpose of this case, we find section 17 of the Labour Act, 2003 (Act 651) of utmost relevance. The said section, which is captured under the heading, “*Notice of Termination of Employment*” states:

(1) A contract of employment may be terminated at anytime by either party giving to the other party,

(a) in the case of a contract of three years or more, one month’s notice or one month’s pay in lieu of notice;

(b) in the case of a contract of less than three years, two weeks’ notice or two weeks’ pay in lieu of notice; or

(c) in the case of contract from week to week, seven days’ notice.

33. This section encapsulates the essence of the common law right of either an employer or employee to terminate an employment relationship at will, upon the provision of the appropriate notice or payment in lieu of such notice. Strictly, an employer, in exercise of this right, need not assign reasons for the termination of an employee under this section.

34. In the case of **Kobea and Others v. Tema Oil Refinery and Akomea-Boateng and Others v. Tema Oil Refinery [2003-2004] SCGLR 1033**, this Court found as follows;

“At common law, an employer and his employee are free and equal parties to the contract of employment. Hence either party has the right to bring the contract to an end in accordance with its terms. Thus, an employer is legally entitled to terminate an employee’s contract of employment whenever he wishes and for whatever reasons,

provided only that he gives due notice to the employee or pays him his wages in lieu of notice. He does not even have to reveal his reason, much less to justify the termination..."

35. Section 19 of the Labour Act however provides thus:

The provisions of sections 15, 16, 17 and 18 are not applicable where in a collective agreement there are express provisions with respect to the terms and conditions for termination of the contract of employment which are more beneficial to the worker

36. We find that the clear import of section 19 is that where the provisions of a contract of employment offer a more favourable alternative or a more robust process for termination, or provide more convenient conditions or more rigorous safeguards against the wanton or arbitrary exercise of this common law right to terminate the employment of the employee, section 17 shall be rendered inapplicable, and an employer shall be bound to observe to the letter, whatever more advantageous process was prescribed in the contract of employment for the termination of an employee.

37. The overall effect of this provision is that the parties may by contractual discretion, abolish the application of this common law right of termination, by adopting more favourable processes or procedures for same. What constitutes "more beneficial terms and conditions" in a contract of employment may vary given the context and this may range from a provision that increases the stipulated notice period required for termination to even providing that an employer must in all cases state reasons for terminating the employment of the employee.

38. The net effect of the above to the instant case is that, if the terms of the Contract executed between the Appellant and Margaret Adjimah offered more beneficial provisions to the mode stated in section 17, it is that option that the Respondent ought to comply with.

39. At the Labour Commission, the Respondent attached the employment contract of the said Margeret Adjimah as "Exhibit A". The said contract was executed on the 30th of March, 2012 by one Frances Victoria Asah-Addo, HR and Administration Manager of

the Respondent Company on the one part and Margerat Jacqueline Adjimah on the other part. At page 6 of the 7 paged contract of employment, the last paragraph provides as follows:

“Either the COMPANY or the EMPLOYEE may terminate this Agreement by giving one month notice or pay one month’s base salary in lieu of notice to the other party.”

40. It goes without saying that this provision identically mirrors the provision of Section 17(1)(a) above, therefore its terms cannot be said to be ‘more beneficial’ than that prescribed in the Labour Act. We therefore find that, having merely replicated the terms of the Labour Act, the common law right of an employer to terminate an employment upon giving due notice, was preserved in the contract of employment executed between the Appellant and Magaret Adjimah.

41. The above notwithstanding, the Respondent argues that, under section 105(4) of the Labour Act, where the relationship of an employer and an employee is regulated by a Collective Agreement negotiated and executed by a Union to which the said employee belongs, the terms within the Collective Agreement, in the event of a conflict, take precedence over the terms of the Contract of employment and this position prevails irrespective of whether or not the said contract of employment is executed even after the Collective Agreement.

42. The said section 105(4) provides as follows:

“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.” (emphasis ours)

43. In principle, at least, we find the arguments canvassed by the Respondent on the effect and import of this section as being legally sound. The above section categorically superimposes the more beneficial terms of a Collective Agreement over contrary terms

within a contract of employment and it is immaterial whether the said contract was executed before or after the collective agreement was negotiated and agreed on.

44. Therefore, as has been copiously urged by the Respondent, where there exists a conflict between the Collective Agreement and the contract of employment, the terms in the former agreement ought to be preferred and applied, the only caveat being that where the terms in the contract were more favourable to the employee, the contractual terms would prevail.

45. We must however hasten to add that this position canvassed above can only be invoked in situations where there is an actual conflict between the terms of the collective agreement and those of the contract of employment. Which necessarily implies that the implicated provisions within the collective agreement and the contract of employment must be incapable of reconciliation or synergy. The terms must be so antithetical to each other such that the only possible resolution to the impasse created would be to prefer one against the other. This standard rises beyond a face value perception or appearance of conflict and requires that for this principle to be invoked, the “conflicting provisions” ought in every sense of the term, to be inconsistent with or contradictory to each other.

46. The general disposition of a judge in the construction of deeds or documents is to construe documents in a manner that avoids conflicts or inconsistencies. However, where the judge encountered provisions that were irredeemably inconsistent with each other, then the relevant rules on the conflicting provisions, such as section 105(4), in the case of a conflict between provisions in a Collective Agreement and those in a contract of employment, ought to be deployed to resolve the inconsistency.

47. Both parties before us had admitted to the existence and application of a Collective Agreement which regulates that relationship between the Appellant and the various members of the Respondent union in its employ. Incidentally, both parties tendered copies of the same Collective Agreement before the Commission, the Appellant tendered the said agreement as “Exhibit B”, whilst the Respondent tendered same as “Exhibit 2”.

48. Further, both parties have agreed that the implicated Articles of the Collective Agreement, the construction of which is relevant for a full and final determination of this matter, are Article 8 and Article 10 of the Collective Agreement.

49. We have painstakingly reproduced the salient portions of Article 8 of the Collective Agreement, which is captioned, "***disciplinary procedures***" below:

"8.01 The objective of this disciplinary code and procedure is to regulate discipline in the workplace with the key principle that the employer and the employees should treat each other with mutual respect.

WARNING

- a. *For a first offence against reasonable rules of the company, an employee must be given a verbal warning in the presence of a Union representative.*
- b. *For a second offence or more serious infraction of stated rules, the employee will be given a written warning with a copy submitted to the Divisional Union.*
- c. *For a third offence or more serious infraction, the employee may be dismissed.*

SUSPENSION

No employee covered by this Agreement shall be arbitrarily dismissed. In all cases where Management of the Company may conclude that an employee's conduct may justify dismissal or suspension, the company shall suspend such employee for five (5) working days. A written notice of such suspension including the reason thereof and whether or not it is the company's intention to dismiss shall be given to the Union and the employee affected at the time of suspension.

If the employee or the Union feels that the employee affected has been unjustly dealt with, the employee or the Union may request and be granted a hearing of the case by the company within the five (5) days period of the suspension. At this hearing, all the

facts concerning the case shall be made available to the company and the union. After such hearing or if no such bearing is requested, the company may conclude whether the suspension shall be affirmed, modified, extended, revoked or converted into dismissal

Among the offences that may justify warning, suspension and termination of employment or summary dismissal of the employee are the following:

Warning/Termination

- (a) *Without reasonable excuse, he fails to perform his duty properly.*
- (b) *He/she contravenes any of the company rules*
- (c) *He/she contravenes any of the company rules*
- (d) *He or she does anything prejudicial to the efficient running of the Company*
- (e) *He/she brings the company into disrepute*
- (f) *Drunkenness while on duty or habitual drunkenness*
- (g) *Altercation followed by blows during business hours.*

Summary Dismissal

Unauthorised absence from more than five (5) consecutive times

Embezzlement of Company's funds and or stealing

Conviction for criminal offence by a court of justice

A breach in the confidentiality of information, rules of the Company

Willful damage to company property

Suspension

- i. *An employee who fails to improve his/her work after training and retraining*

ii. *Absence from duty without justification or previous permission.*

iii. *Abandoning one's place of work without permission from one's Supervisor.*

50. Furthermore, Article 10, which is captioned "***Leaving the Service of the Company***" states as follows:

"i. Every employee is entitled to notice by the company in the event of termination other than dismissal for gross misconduct such notice shall be one month or payment in lieu of notice.

ii. Every employee who wishes to resign from the service of the company shall give the company one month's notice in writing of his intention to resign or pay one month's salary in lieu of notice to the salary ..."

51. We find, in reading the entire collective agreement as a whole, that Article 8 pertains exclusively to disciplinary infractions which could warrant a warning, suspension, interdiction or ultimately culminate in dismissal of the employee. We are not unmindful of the fact that in listing out the various offences under Article 8 which would warrant "*warning/termination*", the term termination and not dismissal is deployed.

52. Evidently it is this choice of expression that led both the Respondent Union and the Court of Appeal below to come to the conclusion that termination of any form could only be effected once the disciplinary process prescribed in Article 8 had been complied with. With due respect to our distinguished brother and sisters in the Court of Appeal, we are not convinced by these conclusions.

53. We are of the opinion that when the word "termination" was employed in Article 8 of the collective agreement, it related to the truncation of an employment relationship by reason of some disciplinary infraction committed by the said employee. Simply put, this form of termination, procured at the back of wrongdoing by the employee was equivalent to dismissal and therefore was substantially different from the technical sense in which the term was used in Article 10.

54. Similar to its usage in section 17 of the Labour Act, and in the contract of employment between the Respondent and Magaret Adjimah, “termination”, when used in Article 10 of the Collective Agreement related only to the determination of an employment relationship either by the employer or the employee without the need for ascribing any reason or fault and subject only to the provision of reasonable notice, or in the alternative, payment in lieu of same.

55. We are guided by the settled principles which prescribe that where the contextual employment of a word or expression necessitates more nuanced or technical construction, it is that nuanced interpretation which must be preferred even against the literal meaning of such words, texts or expressions.

56. Judicial Notice is taken of the fact that, it is not uncommon for the term “dismissal” and “termination” to be used synonymously.

57. Similarly, it is trite learning that the course of action for unlawful termination pertains not only to instances where the procedure prescribed in Section 17 of the Labour Act 2003(Act 651) is not complied with in bringing the employment of an employee to an end. But also, in instances where an employee is dismissed in a manner inconsistent with the applicable legal or contractual rules, conditions or prescriptions.

58. Furthermore, when used in the context of labour relations, termination could even subsume instances where the employment relation is brought to an end by reason of death or retirement.

For example, section 15 of the Labour Act provides as follows:

“A contract of employment may be terminated,

(a) by mutual agreement between the employer and the worker;

(b) by the worker on grounds of ill-treatment or sexual harassment;

(c) by the employer on the death of the worker before the expiration of the period of employment;

(d) by the employer if the worker is found on medical examination to be unfit for employment;

(e) by the employer because of the inability of the worker to carry out work due to

(i) sickness or accident; or

(ii) the incompetence of the worker; or

(iii) the proven misconduct of the worker."

59. Therefore, a contextually aware judicial disposition is paramount in interpreting the substance to be given to the word "termination" when used in law, in contracts of employment, or as in this case, in collective agreements.

60. We have noticed that the Court of Appeal, in its judgment invalidated the termination of Margaret Adjimah on grounds that the Appellant had failed to adhere to the process laid down in Article 8. This position therefore begs the question:

"What process was outlined in Article 8 to be complied with where the employer wanted to terminate an employee?"

61. In our bid to find a suitable response to the above enquiry, we found that only two broad procedures were outlined in Article 8. The first process, captured under Article 8(a), caters for instances is where, once an employee is found to have committed the offence, the employee first ought to be warned, and if the offence was repeated, the said employee would be issued with a written warning and finally, where the default occurred for the third time, the said Article 8(a) provides that, "*the employee may be dismissed.*"

62. The second process prescribes that where an employee acts in a manner that immediately justifies dismissal or suspension, the company ought to first suspend the employee for five days and provide written notice of such suspension to both the employee and the Union, complete with the reasons for the suspension or dismissal and further information on whether or not the company intends to dismiss the employee. This second process further prescribes that where the employee or the Union feels

unjustly treated, they reserve the right to request for a hearing of the case by the company within five days of the period of suspension.

63. It is salient to note that, it is only after these two processes had been prescribed, one commencing with a warning and culminating in dismissal; and the other commencing with a suspension and also culminating in dismissal, that the drafters then went on to outline which category of offences would fall under either of these two broad processes. Consequently, offences amenable to the first process were captured under the heading "WARNING/TERMINATION" and offences amenable to the second process were captured under the heading "SUMMARY DISMISSAL" and "SUSPENSION".

64. The overall import of this was that where an employee was found to have committed any of the offences covered under "WARNING/TERMINATION", he was to be taken through the process prescribed under Article 8(a) which stipulated that where an employee was found to have committed any of the understated offences, he or she was first to be warned, then issued with a written warning, and then in the case of an unrepentant defaulter who persisted in the wrongdoing, Article 8(a) provided that the said employee could be dismissed.

65. We therefore find that, though the term used in the heading was "WARNING/**TERMINATION**" this word, in the context of Article 8 and the Collective Agreement, meant dismissal and could therefore only be invoked as the ultimate sanction where the employee had been given an initial verbal warning and thereafter, a written warning.

66. Indeed, before the National Labour Commission this was the very import of the Respondent Union's case where it said as follows:

"Complainant Union: *Section 8.1 of the Collective Agreement talks about discipline procedure, (reads) the objective of this discipline code and procedure is to regulate with the key principle, where the employer and employee be treated each other with mutual respect, **to warn and the first offence must be made verbally in the presence of a union representative, second offence be given a written warning with a copy submitted to the judicial union but all these were not done, written warning and a copy submitted to the union was not done, union must be***

copied termination letter this too was not done, in her case, this is her first warning if only she has offended but our view is that she has not offended, she was authorized by someone to do a job she was not supposed to do, reasons being that the chemical she was asked to minister was not good."

67. The above response can be found at page 109 of the record of Appeal. But, as we have determined above, Article 8(a) prescribed first for an oral warning, followed by a written warning, and finally for dismissal. Infact, the exact phrasing adopted is, '*the employee may be dismissed*'. Consequently it is only where the term termination, as used in the caption 'WARNING/TERMINATION' is read to mean dismissal, that the relevant process to be complied with was Article 8(a), as was urged by the Respondent before the Commission.

68. Consequently, we are also of the informed view that dismissal effected pursuant to Article 8(a) was distinct from the other option of summary dismissal in Article 8(b) because this latter option was available to the employer only where more grievous or egregious infractions such as embezzlement or conviction for a criminal offence had been committed by the employee. Summary dismissal, in this sense, was subject only to the process set out in Article 8(b) and did not require the Appellant company to first issue a warning before steps were taken to dismiss the employee.

69. We find that this distinction is especially drawn out in Article 10, which commences by providing that 'every employee is entitled to notice by the Company in the event of termination ***other than dismissal for gross misconduct***'. This phrasing clearly vindicates the position that the drafters of this agreement were cognizant of the fact that dismissal and termination could be used synonymously, for which reason, they took the pains to distinguish 'termination' in the technical sense, from 'termination' occasioned through dismissal for gross misconduct.

70. Therefore, whilst Article 8 pertained to the disciplinary processes to be complied with by the Appellant prior to dismissing an employee for stated misconduct, Article 10 was a contractual affirmation of the parties rights, under law and contract to voluntarily bring the employment relationship to an end by giving the relevant notices or payment in lieu of such notice. This termination, contemplated by Article 10, was uninhibited by

the procedural constraints of Article 8 and therefore could be exercised without the requirement of assigning reasons, blame or ascribing fault on the part of the employee.

71. We have subjected the argument forcefully urged by the respective parties to much scrutiny and we are of the considered view that the evidence on record simply does not support the view canvassed by the Respondent that Articles 8 and 10 of the Collective Agreement when read together, were in conflict with provisions on termination encapsulated in the contract of employment and therefore ought to be observed by the employer in every instance of terminating the employee.

72. We are of a considered view that an inescapable condition which is *sine qua non* to the invocation of Section 105(4) of the Labour Act 2003(Act 651) is that, the provisions implicated under both the contract of employment and the collective agreement, which a party alleges to be in conflict must necessarily pertain to one and the same issue, but postulate divergent positions, prescriptions or directives on the said issue.

73. We find that a contextual reading of the impugned Articles reveal that whereas Article 8 exhaustively provided the processes and procedures for disciplining defaulting employees, Article 10 merely reiterates the common law position on termination that had been captured in contract of employment signed between the Appellant and Margaret Adjimah. The two Articles dealt with two completely different scenarios and therefore, there was no conflict between them which would invite the application of Section 105(4) of the Labour Act.

74. In the circumstances and by virtue of the foregoing, Grounds A and C of the appeal succeed.

75. In respect of the second issue identified, we have noted that though the Court of Appeal affirmed the decision of the National Labour commission, its conclusions were fundamentally different from those reached by the Commission.

76. Specifically, the Commission found that Article 10 was merely a contractual adoption of the **section 17** of the Labour Act, and that Article 8 only prescribed a disciplinary process to be applied in instances where the employee was found to have committed an offence. The Commission further concluded that the termination was

unfair because the Appellants had failed to invoke any of the designated grounds for fair termination enumerated under section 63 of the Labour Act. This conclusion was a development of their earlier position articulated on the 26th of February 2020 at the hearing of the dispute, where they pontificated that the prevailing position under the Labour Act outlawed the common law right of an employer to terminate the employment without assigning any reasons.

77. Though this position was not expressly endorsed by the Court of Appeal, it was not expressly renounced either, therefore it behoves this Court, being the apex Court of the land and the final determinant of legal issues, to pronounce on these sweeping statements which were made by the Commission in expectations that this decision offers much needed clarity to this issue which has since the passage of the Labour Act, been the subject of much contention and divergent views.

78. In a judgment of this case dated 15th November, 2023, with Civil Appeal No.:J4/50/2020 entitled **National Labour Commission v. Barclays Bank Ghana Ltd**, I had the singular privilege of articulating this Court's view on the contention that the Labour Act had done away with the employer's right to terminate without assigning reasons. In the said case, this Court held as follows:

"Our Parliament was fully aware of the existence and effect of these sections which proscribed the right if an employer to terminate without assigning cause or reason, and yet, they intentionally refused to adopt this portion of these Acts, this can only be gleaned as a testament to the fact that our Ghanaian Parliament did not consider the common law right codified under section 17 of the Act, to terminate without cause by giving the relevant notice, as being mutually exclusive to the concept of unfair dismissal.

Our Parliament adopted a concept of unfair dismissal which set out instances under which the Court could impugn a termination or dismissal as being unfair, but in doing so, it did not abolish the employer's right to terminate without giving cause or reason ...

Quite clearly therefore, the Labour Act itself acknowledges and endorses the employer's right to terminate at any time upon giving the employee the requisite notice, or paying the due remuneration in lieu of notice. Where the termination is effected under section 17 of the Labour Act, there are no further requirements for the employer to provide reasons for the termination.

Clearly, section 17 preserves the right of the employer to terminate the employment of the employee. This prerogative is conditioned only on the provision of the statutory notice period or the payment of the salary in lieu of the said notice. And indeed, since the passage of the Act, the Supreme Court has severally underscored the fact that the exercise of the employer or employee's right to terminate the contract under section 17 is not subject to the provision of any reason."

79. Consequently, we find that the view espoused by the Commission, which was tacitly endorsed by the Court of Appeal, is legally untenable and is not supported by the express terms of the Labour Act.

80. When commenting on the interplay between sections 17, 62 and 64, this Court, in the case the National Labour Commission vrs. Barclays Bank Ghana Ltd supra further opined that:

"Section 63 then provides several instances where the Court will consider termination as unfair; including instances where a worker is terminated due to the fact that the worker has joined or intends to join a trade union, due to the workers disability or illness, among a myriad of other instances.

Thereafter, section 63(4) provides that termination may be deemed unfair where the employer fails to prove either of two scenarios;

a. That the reason for termination was fair OR

b. That the termination was made in accordance with a fair procedure or this Act. (emphasis ours)

A simple reading of this section therefore reveals that an employer seeking to prove the 'fairness' of his termination of an employment agreement may prove either of three

things; that the reason for termination is fair, in that it falls under one of the permitted reasons under section 62; or that the termination was effected under a fair procedure, whether stipulated under the contract of employment or collective bargaining agreement between the parties, or that the termination was done in accordance with the Act.

Quite evidently therefore, section 63(4) itself acknowledges a dispensation of fair termination in instances where the termination is conducted pursuant to section 17 of the Act, which is one of the avenues open to parties under the Act.

In interpreting section 63(4) above, one cannot segregate the section into the various phrases and pick and choose. Section 63(4) states that "A termination may be unfair if the employer fails to prove that, (a) the reason for the termination is fair; or (b) the termination was made in accordance with a fair procedure or this Act. It would fly in the face of established principles of interpretation to dwell only on 63(4)(a) to propound that the law now requires that for all terminations, an employer must give reasons. This is because the use of the word "OR" in 63(4) is disjunctive and indicative of the fact that either of the other scenarios would give rise to fair termination.

The posturing of our Parliament, in refusing to follow the tone set by Article 4 of TEC82, to abolish the common law right of an employer to terminate without cause is further revealed in the unambiguous wording of Section 63(4)(b), which was clearly promulgated with section 17 in mind, to ensure that in instances where employers fell on section 17 to terminate without assigning any reason, such termination would not be deemed unfair."

81. As we have found above, Article 10 of the Collective Agreement was a reiteration of the right of the employer or the employee to bring the employment relationship to an end by giving the requisite notice or payment of a sum in lieu of notice. We therefore find the conclusion reached by the Commission that the termination was unfair, to be unsupported by the evidence and the law. Consequently, Ground B of the appeal succeeds.

82. Worthy of note is the fact that, in the ruling of the National Labour Commission dated 15th September, 2020, the Commission found that the termination of Margaret

Agyimah was unfair and purportedly based their decision on Section 63(4) of the Labour Act.

83. We have noted with deep concern, the burgeoning trend of Courts and the Labour Commission to indiscriminately brand termination effected under Section 17 of the Labour Act or provisions in the contract of employment which have the same or similar import as Section 17, as being unfair. Evidently, such blanket characterization is unsupported by the law and consequently is legally untenable.

84. The foregoing notwithstanding, we are not oblivious of the legal novation introduced into our Labour jurisprudence through the novel concept of unfair termination as captured under Section 62 and 63 of the Labour Act. Therefore, while we maintain that the terms of the Labour Act do not abolish the employer's common law contractual right to terminate upon giving due notice and without a requirement to assign reason, we recognize that this right is qualified by the provisions of Section 62 and 63.

85. In consequence, we are of the considered opinion that though an employer reserves the right to terminate the employment of an employee in the manner described above, such termination can and shall be deemed unfair where the animating motive or actuating reason for the exercise of the employer's prerogative to terminate was any of the grounds enumerated under Section 63(2).

86. Specifically the said Section provides as follows;

" 63. (2) A worker's employment is terminated unfairly if the only reason for the termination is

(a) that the worker has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union;

(b) that the worker seeks office as, or is acting or has acted in the capacity of, a workers' representative;

(c) that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment;

(d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;

(e) in the case of a woman worker, due to the pregnancy of the worker or the absence of the worker from work during maternity leave;

(f) in the case of a worker with a disability, due to the worker's disability;

(g) that the worker is temporarily ill or injured and this is certified by a recognized medical practitioner;

(h) that the worker does not possess the current level of qualification required in relation to the work for which the worker was employed which is different from the level of qualification required at the commencement of his or her employment; or

(i) that the worker refused or indicated an intention to refuse to do any work normally done by a worker who at the time was taking part in a lawful strike unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment.

(3) Without limiting the provisions of subsection (2), a worker's employment is deemed to be unfairly terminated if with or without notice to the employer, the worker terminates the contract of employment

(a) because of ill-treatment of the worker by the employer, having regard to the circumstances of the case; or

(b) because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the work place. "

87. Furthermore, Section 63(3) creates a regime of constructive termination to cater for instances where an employee, by reason of the actions or inactions of the employer, is forced to terminate his own employment. This concept is invoked when the employer engages in certain acts or creates certain conditions that make it practically impossible for the employee to be reasonably expected to continue in the employment, and therefore, induce or compel the employee to truncate the employment. In such

situations, the decision of the employee to terminate the employment under such toxic work conditions will be construed as a constructive termination of the employment by the employer and consequently, unfair.

88. In both instances, under section 63(2) and 63(3), the burden of persuasion and evidential burden lies on the employee to establish that his termination was sponsored exclusively by any of the above outlined grounds under Section 63(2) and 63(3) and it behoves the terminated employee to adduce sufficient evidence to establish the truth of his or her claim.

89. Quite clearly, the Respondent in this case failed to discharge this burden before the Commission. In fact, save the bare assertion that the termination did not comply with the said provisions and procedures, the Respondent, in their complaint to the Commission made no allegation as to what facts, motivations or reasons engendered the termination of Margaret Adjimah.

90. We note from the proceedings on record that at the hearing of the case, the Respondent made a belated attempt to link the termination of Margaret Agyimah to her prior refusal to perform certain tasks on chemicals which she considered unsafe. In reaction to this ill-fated bid, the Commission rightly instructed the Respondent to confine itself to the specific allegations made in the complaint. The Commission therefore, had no basis, either in law or on the facts, to reach the conclusion that the termination of Margaret Adjimah was unfair.

91. By reason of the foregoing, we are of the considered opinion that the termination of employment of Margaret Adjimah was fair and valid, and we so hold.

CONCLUSION:

92. In the premises, we find that this appeal has merit and hereby grant same. Therefore, the judgment of the Court of Appeal dated 14th of April, 2022 which affirmed the decision of the Labour Commission dated 15th September, 2020 is hereby set aside. Costs of GH¢5,000.00 is awarded against the Respondent in favour of the Appellant.

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS)
(JUSTICE OF THE SUPREME COURT)

B. F. ACKAH-YENSU (MS)
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

ASIEDU JSC:

[1]. My lords, on the 26th February 2020, the National Labour Commission ruled that the termination of the employment of Margaret Jacqueline Adjimah, the complainant herein, by Halliburton International Incorporation, the Appellant in this matter, was unfair. The Commission made orders for the payment of compensation to the said complainant. This ruling was as a result of a hearing in respect of a petition lodged by the Respondent herein, the General Transport, Petroleum & Chemical Workers' Union of the Trades Union Congress, against the Appellant. Dissatisfied with the ruling, the Appellant lodged an appeal with the Court of Appeal which, after hearing the said appeal, affirmed the decision of the National Labour Commission. It is against the judgment of the Court of Appeal, delivered on the 14th April 2022, that the Appellant had filed this appeal on various grounds stated in the Notice of Appeal. The Appellant

seeks from this court, by way of relief, an order setting aside, the entire judgment of the Court of Appeal.

[2]. In all, not less than five grounds of appeal have been filed. These are that:

“(a). The Court of Appeal erred when it held that the common law position on termination of employment became inapplicable once there was a more beneficial provision in the Collective Agreement.

(b). The Court of Appeal misdirected itself on the application of the legal principles governing termination of employment.

(c). The Court of Appeal misdirected itself when it held that, Appellant wrongly relied on article 10 of the Collective Agreement to justify the termination of Margaret Adjimah.

(d). The costs of thirty thousand Ghana Cedis awarded against the Appellant is excessive.

(e). The judgment is against the weight of evidence on record”.

It is proposed to determine grounds (a), (b), (c) and (e) together since they relate to the same issue as to the fairness or otherwise of the termination of the employment of the complainant by the Appellant company.

[3]. It has been submitted on behalf of the Appellant that the Court of Appeal misdirected themselves when they failed to consider that it was not mandatory in law for the employer to state reasons for terminating the employment of its employees, so long as the requisite notice is given. Counsel referred to terms in both the Contract of Employment between the Appellant and the complainant as well as the Collective Agreement between the Respondent and the Appellant to the effect that either party; that is, the company or the employee may terminate the employment by giving one-month notice or pay one month’s base salary in lieu of notice to the other party. Counsel also referred to section 17(1) of the Labour Act, 2003, Act 651 as well as the letter of termination of the complainant’s employment and submitted that there is no requirement in either the contract of employment or the Collective Agreement to the effect that reasons must be given by the Appellant for terminating the employment of the complainant. The only requirement, according to counsel, is that one-month notice

must be given or a month's salary in lieu of notice must be paid and that once the Appellant duly complied with this requirement, the termination of the employment of the Complainant was fair with the consequence that the Court of Appeal misdirected itself by concluding that the termination of the Complainant's employment was unfair.

[4]. The Respondent's counsel concedes the general position of the common law as espoused by decisions of our courts. The general position of the common law is that a contract of employment is neither a contract for life even though it may be for an indefinite period, nor is it a contract of servitude such that an employee may be taken as a servant for life. It is also the general position of the common law that an employee or an employer is not bound to give reasons for terminating a contract of employment. These fine principles of the common law are, however, subject to the terms of the contract entered by the parties in each case as well as provisions of Acts of Parliament. What this implies is that the parties to the contract of employment may agree on terms to bind them in the contract, and the attitude of the common law is to respect terms agreed upon by parties provided the terms are not intrinsically against public policy or contrary to generally accepted norms of society or the laws of the land. Again, whatever the position of the common law, Parliament, has power under the Constitution of the land to enact laws which promote good order and the welfare of the population including workers; such that when any such law is passed, to the extent that the position of the common law conflicts with it, the Act of Parliament prevails. Thus, in **KOBEAH AND OTHERS V TEMA OIL REFINERY; BOATENG AND OTHERS v TEMA OIL REFINERY (CONSOLIDATED) [2003-2005] 1 GLR 485**, this court stated per Twum JSC that:

"At common law, an employer and his employee are free and equal parties to the contract of employment. Hence, either party has the right to bring the contract to an end in accordance with its terms. Thus, an employer is legally entitled to terminate an employee whenever he wishes and for whatever reasons, provided only that he gives due notice to the employee or pays him his wages in lieu of the notice. He does not even have to reveal his reason, much less to justify the termination. Much of this is the positive application of the law of contract to employment relationships."

And, in **Kobi and Others vs Ghana Manganese Co. Ltd [2007-2008] SCGLR 771**, this court again held that:

“A contract of service is not a contract of servitude. Even if a contract of employment is silent on the question whether it is terminable, the common law implies a right to terminate the same by either side upon reasonable notice to the other. However, the right to terminate is dependent on the terms of the contract and must be exercised in accordance therewith.”

Again, in **Affran vs. SG-SSB Limited [2019-2020] 1 SCLRG 760**, this court, speaking through Kotey JSC, re-iterated the position of the law that:

“An employer has a right to terminate the employment of an employee for whatever reasons, provided the termination is in accordance with the terms and conditions of employment of the employee or the provisions of the Labour Act, 2003, Act 651”.

[5]. It bears emphasis that the terms of the contract of employment as well as the provisions of Acts of Parliament on the subject are always key to the determination of the question whether or not the termination of an employment contract was done fairly or unfairly. In this regard, and as pointed out already, the Contract of Employment between the Appellant and the Complainant makes provision for either the company or the employee to terminate the employment “by giving one-month notice or pay one month’s base salary in lieu of notice to the other party.” Subsequent to the contract of employment which was made on the 30th March 2012, the company entered into a Collective Agreement with the Respondent. Section 105 (1) and (2) of the Labour Act provides that:

“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.”

It is not disputed that the terms of the Collective Agreement herein apply to the Complainant in this matter. The Court of Appeal had been accused of not giving consideration to the position of the common law that, an employer was not bound to give reasons for the termination of the employment of his employee. In my view, this accusation is unfounded in that at page 184 of the record of appeal (ROA), the Court of Appeal actually referred to this principle of the common law as re-stated by the Appellant herein, and at page 189, the Court of Appeal concluded on this submission that:

“The common law position with regard to the termination of contracts of employment by the giving of notice and the payment of remuneration are captured in sections 15 to 18 of the Labour Act, 2003, Act 651 quoted above. Section 19 of the Act, however, provides that these provisions would be inapplicable to a contract of employment with regard to termination, where there exists a Collective Agreement, with express provisions, which are more beneficial to the worker. What this means is that whenever there is a complaint about unfair termination by a worker either before the Commission or a Court of law, what must immediately be looked at is whether there is a Collective Agreement, and if so, whether the provisions therein, in respect of the terms and conditions for the termination of the contract, are more beneficial to the worker. Once such provisions which are more beneficial to the worker, exist in a Collective Agreement, it means that the termination cannot be done in accordance with the common law principles codified under sections 15 to 18 of the Labour Act, 2003, Act 651 or in accordance with the contract of employment without recourse to the more beneficial provisions in the Collective Agreement.”

It is clear from the above that the Court of Appeal considered the position of the common law vis-à-vis the provisions of the Act of Parliament expressed in the Labour Act which gave effect to the Collective Agreement before arriving at its conclusion. The

charge under consideration, leveled against the Court of Appeal, is therefore unjustified and it is hereby rejected.

The current state of the law on labour relations does not admit of a blanket application of the common law without recourse to the provisions of the Labour Act, Act 651 section 19 of which states that:

“19. Exception

The provisions of sections 15, 16, 17 and 18 are not applicable where in a collective agreement there are express provisions with respect to the terms and conditions for termination of the contract of employment which are more beneficial to the worker.”

Sections 15, 16, 17 and 18 of Act 651 codify the principles of the common law on the employer and employee relations. Sections 15 and 17 of Act 651 for example codify the common law right of the employer and the employee to terminate the contract of employment at will without assigning reasons therefor, provided the required notice was given by the party wishing to terminate the engagement. Section 18(4) states in clear terms that “despite section 17 (1), either party to a contract of employment may terminate the contract without notice if that party pays to the other party a sum equal to the amount of remuneration which would have accrued to the worker during the period of the notice”. These are all general principles of the common law which govern contracts of employment. And, they constitute the starting point when one comes to consider whether the termination of a contract of employment has been made on fair grounds or otherwise.

However, section 19 provides that the equation changes once the parties to the employment contract move a step further by negotiating a Collective Agreement. Indeed, once a Collective Agreement is executed by or on behalf of the parties to the

contract of employment, then the relationship between the parties is governed not only by the contract of employment which they have concluded between them, but also by the Collective Agreement which they have brought into being. This principle is a creation of the Labour Act, Act 651, which no employer or employee has the right to ignore or dispense with. Section 1 of Act 651 expresses this view beyond doubt when it states that:

“1. Scope of application

This Act applies to all workers and to all employers except the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies specified under the Security and Intelligence Agencies Act, 1996 (Act 526).”

The effect of section 1 of Act 651, therefore, is that with the coming into force of the Labour Act, no employer has the right to wave, at an employee, only the common law principles governing employment relations as if that were the only law which regulates the relationship between an employer and an employee. The Labour Act has introduced changes to the common law on labour relations and therefore, both the common law principles and the provisions of the Labour Act ought to be respected by the parties to the contract of employment in so far as they bear on the contract of employment.

For that reason, section 105 (1), (2), (3) and (4) provides that:

“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.

(3) The provisions that have effect as terms of a contract of employment under subsection (2), shall continue to have effect after the expiration of the collective

agreement, so long as they have not been varied by agreement of the parties or in pursuance of this Act.

(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.”

From the provisions above, when one comes to examine an allegation of an unfair termination of employment, that exercise ought to be undertaken within the context of the contract of employment, the collective agreement, if any, as well as the provisions of the Labour Act, with the consequence that the court or the adjudicating body shall always apply in favour of the employee the terms which are most beneficial to him whether those terms are in the contract of employment or contained in the collective agreement. In other words, if there are terms in the contract of employment which are more beneficial to the employee as against similar terms in the collective agreement, the terms in the contract of employment shall be applied in favour of the employee, and if there are terms in the collective agreement beneficial to the employee as against similar terms in the contract of employment, the beneficial terms in the collective agreement shall be applied in favour of the employee. One may say that this position of the law is discriminatory against the employer; but it is part of what has come to be known as affirmative action aimed at addressing social and economic imbalance between the employer and the employee which finds expression in article 17 (4)(a) that, “nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide

(a) for the implementation of policies and programmes aimed at redressing social, economic or educational imbalance in the Ghanaian society”

[6]. It has been submitted by counsel for the Appellant that the provisions of the Collective Agreement supersede the terms of the contract only when there is a conflict between the terms of the contract and that of the Collective Agreement. I fail to agree

with this submission; in that, section 105(4) of the Labour Act confers an inalienable right on the employee to the extent that there exists a Collective Agreement. Hence, under section 105(4), even the employee is deprived of power to waive rights conferred on him by the terms of a Collective Agreement. The language of section 105(4) is to the effect that: **“the rights conferred on a worker by a collective agreement shall not be waived by the worker ...”**. The provision is cast in mandatory terms, and therefore, one does not require the existence of a conflict between the terms of a contract of employment and that of the Collective Agreement before the terms in the Collective Agreement take pre-eminence over the terms in the contract of employment. Thus, as pointed out, the terms of the Collective Agreement always take pre-eminence over the terms of the contract. It is only when the terms of a contract of employment are comparably better or favourable to the employee than the terms of the Collective Agreement, that Act 651 permits the favourable terms of the contract of employment to reign supreme over the terms of the Collective Agreement.

[7]. It has been argued on behalf of the Appellant that the Court of Appeal erred in reasoning that article 10 of the Collective Agreement is inapplicable in its finding that the complainant was unfairly terminated. Counsel submitted that “the Collective Agreement provides two modes of termination, which constitute legitimate contractual rights available to the employer to employ in bringing the employment relationship to an end. One of the modes of termination is the article 8 procedure which can be found at page 40 of the record of appeal. And, the other is the article 10, which is captured at page 43 of the record of appeal”. Indeed, in the judgment of the Court of Appeal, the court stated at page 199 of the record that:

“Article 8 of the Collective Agreement laid down elaborate procedure to be followed before termination, and in the light of the provisions of section 19 of the Labour Act, 2003, Act 651, the Appellant could not terminate the employment without complying with the procedures laid down therein. As the Appellant has not shown that those procedures were not followed (sic), the termination in the circumstance could not be said to have been done in accordance with the provisions of the Collective Agreement”.

Article 10.01 of the Collective Agreement repeats the common law position on the termination of employment which requires the giving of a number of days' notice or the payment of salary in lieu of notice before the termination of employment. It is this provision in the Collective Agreement that the Court of Appeal ruled to be inapplicable in the face of the provisions in article 8 of the Collective Agreement which sets out elaborate disciplinary measures or procedure to be followed before the termination or dismissal of an employee. Indeed, the contract of employment between the Appellant company and the complainant herein can be found at pages 11 to 17 of the record of appeal. At the last paragraph of page 16, one finds the provision on the termination of the employment. It states that:

"Either the company or the employee may terminate this agreement by giving one-month notice or pay one month's base salary in lieu of notice to the other party".

This provision which reflects the common law procedure or rule on the termination of employment is equally captured in paragraph 10.01 of the Collective Agreement which can also be found at page 90 of the record. Paragraph 10.01(i)(ii) of the Collective Agreement provides that:

- (i). Every employee is entitled to notice by the company in the event of termination other than dismissal for gross misconduct. Such notice shall be one (1) month or payment in lieu of notice.
- (ii). Every employee who wishes to resign from the service of the company shall give the company one (1) month notice in writing of his intention to resign or pay one (1) month salary in lieu of notice to the company. In the case of an employee on probation, the notice shall be one month or payment in lieu.

As already pointed out, the provision on the termination of employment contained in both the contract of employment and the Collective Agreement quoted above, reflect the common law position on the right of the parties to the contract of employment to terminate the contract. It is this position of the common law that are repeated in sections 15 to 18 of the Labour Act, 2003, Act 651, that the Act, in section 19 thereof makes inapplicable once the parties execute a Collective Agreement. As quoted above, section 105(4) also states in clear language that:

"..., 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."

It is provided in the Collective Agreement, especially on page 19 thereof which can be found at page 88 of the record of appeal, among others that:

"Among the offences that may justify warning, suspension and termination of employment or summary dismissal of the employee are the following:

- i.* Warning /Termination
 - 1) Without reasonable excuse he fails to perform his duties properly
 - 2) He/She contravenes any of the company rules.
 - 3) He/ She does anything prejudicial to the efficient running of the company
 - 4) He/She brings the company into disrepute
 - 5) Drunkenness while on duty or habitual drunkenness
 - 6) Altercation followed by blows during business hours."

This provision on Warning and Termination found in the Collective Agreement cannot be found in the contract of employment. Clearly, this provision with regards to offences that may attract warning or termination has no equivalent in the contract of employment and it sets out the kind of offences or misconduct that entitle the employer to warn and or terminate the employment of the worker. The provision conflicts with the common law position on the termination of employment set out in both the contract of employment as well as article 10 of the Collective Agreement. It is my opinion that, to the extent that the provision on the termination of the employment conflicts with the provision on the termination of employment contained in the contract of employment which is repeated in section 10 of the Collective Agreement, section 105(4) of Act 651 determines that the provision in the Collective Agreement which conflicts with the one in the contract of employment shall prevail and be accorded pre-eminence over the provision in the contract of employment, for the simple reason that this provision in the Collective Agreement is more favourable or beneficial to the employee . At any rate, the

existence of a Collective Agreement makes the common law rules on termination which is set out in the contract of employment, section 10 of the Collective Agreement and also captured in sections 15 to 18 of the Labour Act, inapplicable by virtue of the provisions in section 19 of the Labour Act.

[8]. In the view of Counsel for the Appellant, the employer is at liberty to choose to terminate under article 10, that is, the common law procedure of termination by the giving of notice as contained in the terms of the contract which is also captured in the Collective Agreement or going under the elaborate disciplinary procedures outlined under article 8 of the Collective Agreement. Counsel says that the procedure under article 8 is applicable where the termination is based on an allegation of the commission of a wrong or offence. In the words of counsel, the employer has the right to choose which of the two modes he will employ to bring the employment relationship to an end.

I find it difficult to bring myself to accept the proposition that the parties to the Collective Agreement agreed that when an employee has allegedly committed an offence, the elaborate procedure set out in article 8 of the Collective Agreement ought to be gone through before the employment of a worker could be terminated if the employee is found guilty. Nonetheless, an employee's employment could be terminated, even though it is not alleged that he has done anything wrong, by just giving the said employee one-month notice or one-month salary in lieu of notice. I find this to be a very preposterous interpretation to place on articles 8 and 10 of the Collective Agreement. This proposition misses the intention behind the provision in article 8 of the Collective Agreement which is to provide some form of security for the employee against unwarranted termination by the employer and an abuse of the common law procedure for the termination of a contract of employment.

[9]. It must be borne in mind that the complaint that was lodged with the Labour Commission was a complaint of unfair termination as opposed to wrongful dismissal or wrongful termination. See page 1 of the record of appeal. The difference between the two forms of complaint is that whereas unfair termination is a statutory cause of action introduced by the Labour Act, 2003, Act 651, wrongful dismissal or termination is a cause of action cognizable under the common law. One other difference between the

two causes of action is that under the common law, where an employee is able to prove that his dismissal was contrary to the terms of his contract of employment, his remedy lies in the award of damages whereas a successful proof that an employee's termination was unfair may trigger the power given to the Labour Commission under Act 651 to order re-instatement of the employee or the re-employment of the employee on the same terms of employment before the unfair termination or the payment of compensation as provided in section 64(2)(a). See *Affran vs. SG-SSB Limited* (supra) at page 779. Indeed, no employer has the right to unfairly terminate the employment of any employee. Thus, whereas an employee whose employment is solely governed by a contract of employment under the common law may be dismissed without cause by his employer and thereafter he may sue for damages should he perceive that his dismissal was wrongful, an employee whose contract of employment is governed not only by the contract of employment but also by a Collective Agreement cannot be terminated without cause. The combined effect of section 19 and sections 63(1) and 105(2) of the Labour Act, is apt on this. Section 19 makes it clear that once the employment of a worker is governed by a Collective Agreement, then the common law rules which have been re-enacted in sections 15 to 18 of the Act cease to apply. One is then enjoined to have regard to beneficial provisions in the Collective Agreement as far as the terms and conditions for termination of the contract of employment are concerned. It ought also to be re-emphasized that once Collective Agreement is executed, the terms thereof, by virtue of the provisions of section 105(2) of Act 651, become part of the terms of the contract of employment. Thus, the execution of a Collective Agreement containing beneficial terms, particularly with regards to termination of employment, automatically boosts up the overall terms of employment of an employee. Section 63(1) also provides that:

63. Unfair termination of employment

(1) The employment of a worker shall not be unfairly terminated by the worker's employer.

Under the Labour Act, Act 651, particularly section 63(2), it is provided that:

(2) A worker's employment is terminated unfairly if the only reason for the termination is:

- (a) that the worker has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union;
- (b) that the worker seeks office as, or is acting or has acted in the capacity of, a workers' representative;
- (c) that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment;
- (d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;
- (e) in the case of a woman worker, due to the pregnancy of the worker or the absence of the worker from work during maternity leave;
- (f) in the case of a worker with a disability, due to the worker's disability;
- (g) that the worker is temporarily ill or injured and this is certified by a recognised medical practitioner;
- (h) that the worker does not possess the current level of qualification required in relation to the work for which the worker was employed which is different from the level of qualification required at the commencement of the employment; or
- (i) that the worker refused or indicated an intention to refuse to do a work normally done by a worker who at the time was taking part in a lawful strike unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment.

(3) Without limiting the provisions of subsection (2), a worker's employment is deemed to be unfairly terminated if with or without notice to the employer, the worker terminates the contract of employment

- (a) because of ill-treatment of the worker by the employer, having regard to the circumstances of the case, or
- (b) because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the workplace.

Thus, a worker or an employee who is able to prove any of the circumstances stated in section 63(2) and (3) succeeds in his claim of unfair termination. However, if an employer is silent on the reasons for the termination, it may become cumbersome and almost impossible for the terminated employee to prove the reasons behind his termination. For that reason, a burden is cast by the Act on an employer to prove that the termination of the employment of an employee was fair. Thus, section 63(4) speaks in clear language that:

- (4) A termination may be unfair if the employer fails to prove that,
 - (a) the reason for the termination is fair, or
 - (b) the termination was made in accordance with a fair procedure or this Act.

To enable an employer, show that the termination of a worker's employment was fair, the employer is required to prove at least one of the three conditions stated below:

- (i). The employer is required to prove that the reason for the termination was fair, or that
- (ii). The termination was made in accordance with fair procedure, or that
- (iii) The termination was made in accordance with the provisions of the Labour Act.

It is clear from the Act, therefore, that the common law rule which empowers an employer to remain silent and not disclose the reason for the termination of employment is not applicable where a complaint of unfair termination is asserted under the Labour Act which demands, as shown above, that the reason for the termination be disclosed either before the Labour Commission or before a court of law. The argument by the Appellant that he is entitled to keep the reasons for the termination to his chest, which is the position under the common law, does not hold. That argument would have passed the test if the terminated employment under scrutiny was governed solely by the rules of the common law. Thus, to the extent that the contract of employment herein is also governed by a Collective Agreement, the Labour Act requires reasons to be given by the employer for the termination. From page 4 of the record of appeal, the answer given by the Appellant when the Appellant was requested to state the reasons for the termination of the complainant's employment was that the employment of the complainant was terminated "in accordance with the law, her contract of employment,

and the Collective Bargaining Agreement". In our view, the above answer given by the Appellant herein does not satisfy the requirement placed on the Appellant in section 63(4) of Act 651. Under section 63(4)(a), the employer/Appellant herein was required to show that the reason for the termination was fair or that the termination was made in accordance with a fair procedure or in accordance with the Labour Act. It is clear from the answer given that the Appellant has failed to disclose the reason altogether and therefore, making it difficult for an assessment to be made as to its fairness. It is also clear that the Appellant has failed to show that the termination of the complainant's employment was done in accordance with fair procedure or the Labour Act. The procedure by which one month's salary was paid to the complainant in lieu of notice which was adopted by the Appellant in terminating the employment of the complainant, was not available to the Appellant to start with and it was wrongful for the Appellant to purport to adopt that procedure in terminating the complainant's employment. This is so because, as explained above, that procedure was the procedure under the common law which was re-enacted under sections 15 to 18 of Act 651. However, since the contract of employment herein is governed by a Collective Agreement, then, as stated under section 19 of Act 651, the common law procedure re-enacted under sections 15 to 18, is no longer applicable.

[10]. The argument on behalf of the Appellant is that the procedure provided for under article 8 of the Collective Agreement which is titled "disciplinary procedure", found at page 40 of the record, is only applicable where "there is an offence or misconduct committed by an employee (which in this case is not applicable since Margaret Adjimah was not terminated as a result of a disciplinary offence). [See page 26 of Appellant's Statement of Case]. Further, the Collective Agreement provided for termination by notice or payment in lieu of notice. This provision is likewise replicated in the contract of employment. So, the Appellant was not bound to the procedure under article 8 when no disciplinary offence was not (sic) committed." In other words, the Appellant's submission is that where an employee has, allegedly, committed an offence or misconducted himself, he is entitled to be taken through the disciplinary procedure set out under article 8 of the Collective Agreement before being terminated, but where an employee has not committed an offence or has not misconducted himself, his employment may be terminated without resort to the procedure under article 8 of the

Collective Agreement but just by being given one month's salary in lieu of notice or one month notice.

This argument, with respect to counsel, runs contrary to good conscience. Under the Labour Act and as shown above, once a Collective Agreement exists with respect to a party's contract of employment and especially, where disciplinary procedure has been set out in a Collective Agreement, every employee to whom the Collective Agreement applies is entitled to the benefit of the disciplinary procedure set out under the Collective Agreement. In other words, where there exists disciplinary procedure which requires that an employee be heard before his contract of employment is terminated, the same shall inure to the benefit of the employee and therefore without being heard, the argument cannot be correctly made that an employee had been fairly dealt with or fairly terminated by being paid one month's salary in lieu of notice. The learned Justices of the Court of Appeal were therefore right when they held in their judgment at page 197 of the record that:

"Since section 19 of Act 651 expressly provides that the common law position as codified in sections 15 to 18 of the Act become inapplicable when a Collective Agreement contains provisions which are more beneficial to the worker, it means that only termination of employment which is done without regard to these laid down disciplinary procedures, will be considered as a fair one (sic.). In other words, any termination of employment, which does not religiously comply with the procedures laid down in article 8 of the Collective Agreement would be considered as unfair"

We need to add that the requirement that, a contract of employment can only be terminated in accordance with disciplinary procedures provided for under a Collective Agreement where such agreements exist, is but one of the changes which the Labour Act has made to the common law procedure for the termination of contract of employment. Thus, the termination of the employment of a worker who is subject to a Collective Agreement cannot be said to be fair where the worker is deprived of the benefit of disciplinary procedures outlined in the Collective Agreement.

This position of the law was affirmed by this court in the case of **George Akpass vs Ghana Commercial Bank Ltd (Unreported) Suit NO. J4/08/21, dated the 16th June 2021**, where the Court stated among others that:

“Where the termination is not by mutual agreement and the employer is compelled to terminate on other grounds provided for in the contract of employment such as ill-treatment or sexual harassment, medically unfit for the employment or inability of the worker to perform his role due to sickness, disability, incompetence or lack of qualification for the position employed or other reasons which do not merit summary dismissal, then the protocol envisaged under Act 651 is that the reasons for the termination must be clearly stated and must be seen to be fair. This is because though the employer has the power by contract and law to terminate on those grounds, that power has been curtailed by statute and can no longer be exercised arbitrarily or capriciously. It must justifiably be substantively and procedurally seen to be fair. Failing that acid test, the courts will have power to inquire into the fairness of the decision to terminate and pronounce on it. The missing link, however, in this novel provision is the measure of fairness and unfairness. This has not been provided for in Act 651 making it unclear and uncertain for employers and stakeholders to fashion out the appropriate framework to follow. It is in scenarios like this that the courts are called upon to develop the framework to guide the stakeholders how to assess the fairness or unfairness of their actions substantively and procedurally.”

[11]. Contrary to the submission on behalf of the Appellant that the judgment of the Court of Appeal is not supported by the evidence on record, there is ample evidence on record which substantially supports the judgment reached by the Court of Appeal. There is evidence that the employment of the complainant, Margaret Adjimah was governed by a contract of employment. There is evidence on record that subsequent to the contract of employment, a Collective Agreement was executed between the Appellant and General Transport, Petroleum & Chemical Workers Union of the Trades Union Congress. As already pointed out, once the employee is subject to a Collective Agreement, the terms of the Collective Agreement automatically become part of the terms of the contract of employment, with the consequence that any beneficial provision contained in the contract of employment especially with regards to the mode

by which the employment may be terminated, inures to the benefit of the employee. In the instant matter, the Collective Agreement contains in article 8 thereof, procedures which ought to be followed where the employer, Appellant herein, deems it fit to terminate the employment of the complainant. There is ample evidence on record that the Appellant refused to follow the procedure it has agreed upon in the Collective Agreement in terminating the employment of the complainant. There is evidence that instead, the Appellant chose to rely on the common law mode of terminating the employment of the complainant contrary to the clear provision of the law in section 19 to the effect that where a Collective Agreement exists, then the common law mode of terminating employment which is captured in section 15 to 18 of Act 651, shall not apply. There is evidence to the effect that the Appellant adopted and applied the common law procedure which is also repeated under article 10 of the Collective Agreement in terminating the employment of the complainant against the clear provisions of section 19 of Act 651. Consequently, we are satisfied that the Judgment of the Court of Appeal is amply and demonstrably supported by the evidence adduced before the National Labour Commission.

The position of the law is succinctly stated in a plethora of cases to the effect that where the judgment of the first appellate court is substantially supported by the evidence on record, then a second appellate court like this court shall not interfere with the judgment of the first appellate court. See *Koglex Ltd vs. Field* [1999-2000] 2 GLR 437; *In re Bonney (Decd)*; *Bonney vs. Bonney* [1993-94] 1 GLR 610 SC.

[12]. The Appellant has also argued that the costs of GH¢30,000.00 awarded in favour of the Respondent against the Appellant was excessive having regard to the fact that it was the Respondent that delayed the hearing of the appeal by not filing its written submission within stipulated time and had to apply for leave for the extension of time before it filed the written submission. While conceding that it filed its written submission after an order had been made extending time for the filing of the written submission, the Respondent contends that it was ordered to pay costs of GH¢2,000.00 to the Appellant. The award of costs is at the discretion of the court. This principle is given statutory backing in rule 1 subrule 1 of Order 74 of the High Court (Civil Procedure) Rules, 2004, CI.47 as amended. It must be placed on record that the time taken to dispose of a case is not the only factor that a court may take into consideration in

awarding costs to a successful party. Several factors are taken into consideration. Thus Order 74 rule 2(4) states that:

“In assessing the amount of costs to be awarded to any party, the Court may have regard to

(a) the amount of expenses, including travel expenses, reasonably incurred by that party or that party’s lawyer or both in relation to the proceedings;

(b) the amount of court fees paid by that party or that party’s lawyer in relation to the proceedings;

(c) the length and complexity of the proceedings;

(d) the conduct of the parties and their lawyers during the proceedings; and

(e) any previous order as to costs made in the proceedings.”

Indeed, costs is also designed to compensate a successful party with regards to expenses reasonably incurred during the litigation, including the court fees paid as well as other related expenses. Costs is also designed to provide reasonable remuneration for the lawyer of the party that emerged victorious. The implication is that the Appellant cannot hang on the inability of the Respondent to file its written submission on time for which it was ordered to pay costs to the Appellant, as a basis to say that the costs awarded was harsh. As pointed out, the award of costs is at the discretion of the court and from the statement of case filed by the Appellant, it has not been shown that the Court of Appeal exercised its discretion in a manner not recognised by law. In *Nartey-Tokoli vs Volta Aluminium Co. (No.2)* [1989-1990] 2 GLR 341@ 372, the point was made that:

“The well-known practice in the conduct of appeals is that where a judge has used his discretion in arriving at a decision, then unless it can be demonstrated that he ignored the law or took into consideration facts that he ought to have excluded or omitted material facts which should have been considered, his conclusion should not be interfered with.”

In the instant matter, the Appellant has not shown to the satisfaction of this court that in awarding the costs of GH¢30,000.00 against it, the Court of Appeal took into

consideration any extraneous matters not recognised by law. There is therefore no reason to disturb the costs awarded by the Court of Appeal.

[13]. In conclusion, I find no merit in the instant appeal. I proceed to dismiss the appeal. The judgment of the Court of Appeal delivered on the 14th April 2022, is hereby affirmed.

S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

BAFFOE-BONNIE JSC:

I have read the lucid opinion of my brother Asiedu JSC, and I am wholly supportive of his revolutionary but accurate judgment. I associate myself with his analysis and conclusions. I however wish to add a few thoughts of my own.

This appeal is against the judgment of the Court of Appeal dated 14th April, 2022 which affirmed the decision of the National Labour Commission dated 26th February, 2020 in which it was decided that the termination of a member, (Margaret Jackeline Adjimah) of the Petitioner/Respondent/Respondent (simply referred to as Respondent) by the Respondent/Appellant/Appellant (hereafter, Appellant) was unfair because same was done without recourse to due process. The Respondent is the workers' union which represents the interests of workers within the transport, petroleum and chemical industry of Ghana, including unionized workers of the Appellant. The Appellant on the other hand is a company involved in the oil and gas industry and also the employer of Margaret Jackeline Adjimah.

The facts as contained in the Record of Appeal is that, on 4th May, 2018, the Appellant terminated the contract of Margaret Jackeline Adjimah, a member of the Respondent who had been in the employment of the Appellant since 2012 as a Field Service Representative. The Respondent then wrote to the Appellant requesting for details of the termination of their member, this the Respondent responded by confirming the termination stating that it was done in accordance with law. After several back and forth with the Appellant, the Respondent filed a complaint on behalf of their member at the National Labour Commission (simply referred to as the Commission) on the basis that the termination of their member was unfair. The Appellant also filed their response to the complaint stating that the termination was done in accordance with the law, the Collective Bargaining Agreement (CBA) and the Contract of Employment. After a hearing, the Commission came to the conclusion that the termination was unfair and made certain orders against the Appellant. Aggrieved by the said decision of the Commission, the Appellant proceeded to file a Notice of Appeal in the Court of Appeal on the sole ground that the judgment is against the weight of the evidence. The Court of Appeal after determining the matter, entered judgment in favour of the Respondent on the basis that the termination was indeed unfair. The reasons given by the learned justices of Appeal were that since there was a CBA which provided extensive procedures for the termination of an employee, same should have been applied. This is because Section 19 of the Labour Act, 2003 (Act 651) provides that where there are express provisions in a CBA which is more beneficial to the employee, then the provisions in the Labour Act with respect to termination are inapplicable. On the basis, the Appellant should have complied with the procedures provided for under termination in the CBA before terminating the employee. Failing to do so meant the Appellant acted contrary to the CBA which resulted in terminating the employee unfairly. The Court of Appeal then dismissed the case of the Appellant and affirmed the decision of the Commission.

On 1st June, 2022 the Appellant was granted leave by the Court of Appeal to file a Notice of Appeal and same was filed in this court on 15th June, 2022. Counsel for the Appellant filed a rather lengthy Notice of Appeal, the essential grounds however are that the Court of Appeal erred when it held that the common law position on termination was inapplicable once there was a more beneficial provision in the CBA, the

Court of Appeal misdirected itself on the application of the legal principles governing termination of employment and that the Court of Appeal misdirected itself when it held that the Appellants wrongly relied on Article 10 of the CBA Agreement to justify the termination of Margaret Adjimah, the cost awarded is excessive and that the judgment is against the weight of evidence on record.

SUMMARY OF ARGUMENTS BY APPELLANT

Counsel for the Appellant began his arguments on the ground that the Court below misdirected itself on the application of the legal principles governing termination of employment. On this point, counsel submitted that it was not mandatory in law for the employer to state reasons for terminating the employment of its employees so long as the requisite notice is given. It is their further case that although the Labour Act governs the rights and obligations of parties in an employment contract, since the relationship between the employer and employee is contractual, the underlying law for evaluating their actions is the law of contract. Counsel further argued that the decisions of this court is numerous on the principle that a contract of service is not a contract of servitude and the parties are free to terminate the employment contract at any time within the manner specified. Counsel for the Appellant cited the case of **Kobea & ors Vrs Tema Oil Refinery [2003-2004] SCGLR 1033** to say that the common law position on termination has been given statutory backing by the Labour Act in Section 17 and so once the Contract of Employment and the CBA provides for similar conditions and notice of termination, it was wrong for the Court of Appeal to hold that the common law position is inapplicable. Counsel also relied on the case of **Affram Vrs SG-SSB Ltd [2019-2020] 1 SCLRG 760** where the court held that an employer is not really required to give any reasons for the termination.

In relation to the ground that there was a misrepresentation placed on the CBA, counsel pointed out that Section 105 of the Labour Act provides room for the CBA to prevail over the Contract of Employment, unless the terms of the Contract of Employment are more beneficial. However in this case there was no conflict and so the court of Appeal's reasoning that the Article 10 of the CBA is inapplicable is wrong. Counsel argued that

there are two modes of termination under the CBA and the employer is to put an election to use the most convenient method in terminating its employees and so the attempt by the court of Appeal to restrict the Appellant to only one mode of termination is wrongful. It is the case of counsel for the Appellant that Article 10 of the CBA is also a beneficial provision and does not warrant an employer to give reasons for termination. On the omnibus ground of appeal, it was argued that since the CBA and the Contract of Employment provides for termination by giving one month's notice or payment in lieu of one month salary, it is clear the employee was terminated in accordance with the terms of her contract and the CBA. Counsel concluded his arguments with his ground of appeal relating to costs and stated that since the termination of the employee was done with due recourse, it was wrong for costs to have been awarded against the Appellant.

SUMMARY OF ARGUMENTS BY RESPONDENT

Counsel for the Respondent whilst agreeing with counsel for Appellant on the common law position on termination stated that our Labour Act has made significant changes to the common law position in Ghana and this is to the effect that where there is a conflict between the terms of the contract of employment and the CBA, the CBA shall prevail, if the terms of the CBA are more favourable or beneficial to the worker. As a result of this, the common law position is not applicable in such a situation and Section 19 of the Labour Act shall prevail. It was submitted that even though the terms of the contract as well as Article 10 of the CBA provides that the employer may give one month's notice in view of termination, Article 8 of the CBA is more favourable to the employee and has an overriding effect. Counsel stated that the essence of Article 8 of the CBA is to provide some form of security for the employees of the Appellant so as to ensure that their employment are not terminated in a whimsical and capricious manner. Counsel argued that the CBA does not provide two modes of termination as contended by counsel for Appellant, in all instances the Appellant is required to follow the procedure in Article 8 of the CBA before triggering Article 10 of the CBA.

It was further argued by counsel for the Respondent that the Appellant failed to comply with due process stipulated in the CBA before terminating the employment of the employee. The Appellant did not give any reason neither did they comply with the disciplinary procedures set out in the CBA. Counsel opines that the restriction of the Court of Appeal to Article of the CBA is legally justifiable because Article 8 of the CBA contains express provisions on termination of employment which are more beneficial to the affected worker. On the award of cost, counsel for the Appellant intimated that the court below was right in giving that cost because the costs was to compensate the Respondent for the expenses incurred in defending her rights in the matter. Counsel therefore prayed for the matter to be dismissed before this court.

ANALYSIS

The plaint of the Respondent was that the Appellant had **unfairly terminated** the employment of their member without resort to due process. Section 64 of Act 651 provides that where a worker claims that his/her employment has been unfairly terminated by their employer, the worker may present a complaint to the Commission. It was based on this provision that the worker represented by the Respondent filed a complaint at the Commission.

The main issue for the determination of this court is whether an employer was at liberty to terminate the employment of an employee without any reason by simply giving one month's notice or payment of one month's salary in lieu of the notice and the employee would have no cause of action.

Counsel for the Appellant has cited numerous authorities from this court to buttress his submissions that an employer has an unfettered right to terminate the employment of a worker without giving any reasons provided the employer gave one month's or requisite notice or paid one month's or agreed number of months salary in lieu of notice. And no court could order any employee to continue to work with any employer and vice versa. Hence the often cited axiom "contract of employment is not a contract of servitude"

Much as this position was true under the common law, the Labour Act, Act 651 has made certain modifications to the common law principles. It is not in doubt that where

the common law conflicts with the terms of a statute, the statute would prevail. See the case of **Ghana Commercial Bank Vrs CHRAJ [2003-2004] SCGLR 91**. And so if there is any discrepancies between the Labour Act as we have it now, and the common law position of law, then the Labour Act would prevail. The provisions in the Labour Act would certainly override the common law principles of law.

Section 17 of Act 651 is what provides for the notice of termination of a contract of employment. It reads as follows;

Section 17—Notice of Termination of Employment.

(1) A contract of employment may be terminated at anytime by either party giving to the other party,

(a) in the case of a contract of three years or more, one month's notice or one month's pay in lieu of notice;

For the purposes of the matter we are dealing here, I would end Section 17 here. Note must be taken of the fact that that the makers of the law did not end here, but subsequently expanded on the scope of termination in Sections 62, 63 and 64 of the Act so that the meaning of termination under our laws would be brought to light. It is not for no reason that the makers of the law enlightened us on the scope of termination.

For this purpose I reproduce herein Section 62 of Act 651;

PART VIII—FAIR AND UNFAIR TERMINATION OF EMPLOYMENT

Section 62—Fair Termination.

A termination of a worker's employment is fair if the contract of employment is terminated by the employer on any of the following grounds:

(a) that the worker is incompetent or lacks the qualification in relation to the work for which the worker is employed;

(b) the proven misconduct of the worker;

(c) redundancy under section 65;

(d) due to legal restriction imposed on the worker prohibiting the worker from performing the work for which he or she is employed.

This particular provision in the Labour Act is a creature of statute and does not form part of the common law principles. As noted by this court in the case of **Affram Vrs SG-SSB** supra, unfair termination is a creature of statute under Act 651 and is distinct from the common law concept of wrongful dismissal. This court also held in the case of **George Akpass Vrs Ghana Commercial Bank Civil Appeal No. J4/8/2021 unreported judgment of the Supreme Court dated 16th June, 2012** that this provision;

"Being a creation of statute, the concept places an obligation on the employer to justify the termination of the appointment of a worker. The overarching condition is that the reason for the employee's termination must be fair and in accordance with due process of law".

The provisions under Section 62 talks about the grounds for fair termination which means if an employer terminates an employee's employment based on these grounds, then the termination is said to be fair. Interestingly, Section 17 is not reproduced here. That is to say the one month's notice or payment in lieu of notice is not listed here which means the makers of the law do not consider that as a fair ground for termination. My understanding of this is that the makers of the law did not intend for the employer's one month without reasons to be a ground for termination much less it being fair.

I take the view that Section 17 is rather procedural. It is the procedure through which an employment contract may be terminated after giving reasons. This means that for an employer to terminate an employee's employment he/she must come under the grounds for fair termination through section 17, which is giving notice or payment in lieu of notice. For example, if an employee decides to terminate the employment of a worker, he/she must first look at the grounds for termination under which the said worker falls and write to the worker giving him/her a month's notice of the termination with the reason stated or payment in lieu of notice.

I am of the considered opinion that it is unfair for an employer to have an unfettered right to terminate the employment of an employee at any time without assigning any

reasons. In this day and age where unemployment rate is high, an employer will take undue advantage and just terminate worker's employment as and when they desire because there is no form of security of tenure and subsequently deprive them of benefits they are entitled to under the guise of the right to terminate by giving one month's notice or payment in lieu of notice without reasons. Just imagine an employee who has worked in a company for many years almost getting close to retirement to have his/her employment terminated without any reasons and to go home with no form of compensation. This is certainly not fair. The rationale for the modifications in the Labour Act is to provide security of tenure for all workers both private and public and to prevent employers from merely giving notice in order to avoid paying the necessary compensation to their workers.

In particular, section 63(4) provides that;

(4) A termination may be unfair if the employer fails to prove that,

*(a) the **reason** for the termination is fair; or*

(b) the termination was made in accordance with a fair procedure or this Act.

This section casts a burden on the employer to prove the fairness of a termination. This reinforces the position that now, an employer cannot merely terminate a worker's employment by only giving notice without any reasons. If an employer is unable to prove that the reason for termination is fair, then the said termination is unfair. Meaning, the common law position of giving no reasons for termination does not find expression in our Act. Per our laws, an employer must necessarily give reasons for termination and it is based on those reasons that it would be determined whether the termination is fair or not. More so, the (b) provides that a termination may be unfair if the employer fails to prove that the termination was made in accordance with fair procedure or this Act. This is what I referred to supra in Section 17. An employer may give valid reason for termination but if the termination is not done according to fair procedure (which may be provided in the CBA) or this Act, then even though the reason is valid, the termination may be deemed as unfair.

I therefore do not agree with counsel for the Appellant when he argues that there are two modes of termination of employment and the employer is put to an election to

choose which is convenient, that with all due respect to counsel would be unfair. Employers would always choose what is beneficial to them to the detriment of the employees. We are well aware of the subtle practices by some employers to evade the payment of compensation when due and this court would not condone such practices. The case of **Kobea Vrs TOR** supra relied on by counsel for the Appellant was decided before the enactment of Act 651 and the Act was not under consideration in that matter.

Section 63 of Act 651 provides as follows;

Section 63—Unfair Termination of Employment.

(1) The employment of a worker shall not be unfairly terminated by the worker's employer.

(2) A worker's employment is terminated unfairly if the only reason for the termination is

(a) that, the worker has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union;

(b) that, the worker seeks office as, or is acting or has acted in the capacity of, a workers' representative;

(c) that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment;

(d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;

(e) in the case of a woman worker, due to the pregnancy of the worker or the absence of the worker from work during maternity leave;

(f) in the case of a worker with a disability, due to the worker's disability;

(g) that the worker is temporarily ill or injured and this is certified by a recognised medical practitioner;

(h) that the worker does not possess the current level of qualification required in relation to the work for which the worker was employed which is different from the level of qualification required at the commencement of his or her employment; or

(i) that the worker refused or indicated an intention to refuse to do any work normally done by a worker who at the time was taking part in lawful strike unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment.

(3) Without limiting the provisions of subsection (2), a worker's employment is deemed to be unfairly terminated if with or without notice to the employer, the worker terminates the contract of employment

(a) because of ill-treatment of the worker by the employer, having regard to the circumstances of the case; or

(b) because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the work place.

These provisions provide a guarantee to all workers to have their employment protected against unfair termination by their employers. Now, looking at the extensive grounds provided in the Act, which employer would be honest enough to state that the reason for terminating a worker's employment is due to his/her political affiliations? No employer would do that, and so the safest way to go by, is merely to terminate the worker without any reason by just giving a month's notice or payment in lieu of notice. If employers are not required to give reasons for termination, they would bypass the very provisions provided in Section 63 to safeguard such practices. Indeed, no termination is without a reason, there certainly is a reason and that reason must be stated.

The cases relied on by counsel for the Appellant were all adjudged on the common law principles of termination which are not applicable herein because the Respondent's complaint is based on unfair termination which finds its root in our Act 651.

Section 64 provides for remedies of unfair termination. The Act establishes the Commission and gives its power to investigate complaints of unfair termination and where necessary to order the reinstatement of the said employee if his/her termination

is found to be unfair. Here again, this runs counter to the common law principles party autonomy. The only remedy available to such an employee then was damages.

This court speaking through Ansah JSC in the case of **Kobi Vrs Ghana Manganese Co. Ltd [2007-2008] SCGLR 771** stated as follows;

It was time the 'traditional rule' epitomised by Aryee v State Construction Corporation (supra) was considered for it has the potential of resulting in oppression by the employer and docility in the employee. With the fear of losing his job 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, like he the employee being found guilty of an offence in a schedule of offences in the collective agreement, the laws of the land, or statutes regulating employment in the land for the time being, or declared redundant under specified conditions.

I am of the considered view that this statement applies with full force on termination of employment. The labour Act as it is must be carefully considered taking into mind the reasons and circumstances for its enactment. This is because the common law principle of terminating without giving reasons has the potential of suppressing the employee. Because of the fear that he/she may lose his job at any time depending on the whims and caprice of the employer who may terminate the employment relationship at any time of the employer's pleasure.

The learned judge did not end there, he continued by stating that;

*Now, the passing of the new Labour Act, 2003, (Act 651), hereinafter called the Act, **has brought relief and hope to the employee, for now there are statutory duties and rights of the employer and the employee. The right to terminate employment does not depend on the whims of the employer. Part VIII of the Act provided for fair and unfair termination of employment explained in section 63 (1).** Termination of employment may be fair or unfair even if it is recognized that the employer has power to*

terminate the employment under section 8 of the Act. Under 63 (3), a termination may be unfair if the employer fails to prove that the reason for the termination is fair; or it was made in accordance with a fair procedure under the Act.

By virtue of the Labour Act, though the employer has the power by contract and law to terminate on those grounds. That power has been curtailed by statute and can no longer be exercised arbitrarily or capriciously. This is part of the reliefs the Act has brought to workers in Ghana.

Counsel argument that since the Terms of the Contract and the CBA have similar provisions which provides methods of terminating employment, the employer was at liberty to decide which was convenient cannot stand. My question here is, which was convenient to who? Certainly not the employer. Let's look at this provision of Act 651.

Section 19—Exception.

*The provisions of sections 15, 16, 17 and 18 are not applicable where in a collective agreement there are express provisions with respect to the terms and conditions for termination of the contract of employment which are **more beneficial to the worker.***

This provision envisage a situation which would be more beneficial to the worker and not the employer.

Article 10 of the CBA provides that;

*Every employee is entitled to notice by the Company in the event of termination **other than dismissal for gross misconduct.***

A critical reading of this implies that the termination here is that which is provided in Article 8 of the CBA because there is a distinction made between termination and dismissal here which are all provided for in Article 8. Article 8 of the CBA provides for circumstances that may justify warning, suspension, termination or dismissal of an employee. My understanding here is that a worker can only be terminated under the grounds provided for in Article 8 and if a worker's employment is terminated based on

those grounds, then Article 10 would be triggered i.e the one month's notice or payment in lieu of notice. Which is why the Respondent kept on asking the Appellant the reasons for termination.

My attention has been drawn to the Majority and Minority opinions delivered in the unreported case of **CA/J4/50/2023 dated 15/11/2023, National Labour Commission Vrs Barclays Bank of Ghana (Coram: Pwamang, Lovelace-Johnson, Amadu, Kulendi and Koomson JJSC)**, by my esteemed brothers and Sister. I have carefully digested the lead majority opinion by Kulendi JSC and the concurring opinion of my brother Tanko Amadu JSC. I have equally digested the minority opinion delivered by Pwamang JSC and concurred in by my brother Koomson JSC. I must say that I particularly associate myself with the dissenting opinion expressed by Pwamang JSC in that case which I believe reflect the changes and modifications brought about by the Labour Act, Act 651. The majority opinion in that case I respectfully say, is per incuriam in the wake of the Labour Act.

I therefore conclude that this appeal should be dismissed and the decision of the Court of Appeal confirming the decision of the Labour Commission should be affirmed.

**P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)**

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