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## SUSPENSION AND INTERDICTION OF WORKERS UNDER GHANAIAN LAW: A NOTE TO EMPLOYERS

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## **Introduction**

The wrongful exercise of legitimate rights may result in liabilities for the person who exercises that right. An employer who wrongfully terminates a contract of employment may be liable to pay damages for the wrong, although, ordinarily, an employer can bring a contract of employment to an end. Under Ghanaian labour law, employers and employees have a bundle of rights. Employees have rights including the rights to receive remuneration and to work in satisfactory and safe environment. On the other hand, employers may suspend, or interdict employees for investigation, where the circumstances permit. Suspension and interdiction are also employed as tools to maintain discipline at the workplace. The purpose of this paper is to examine the legal implications of suspension and interdiction for employers and employees.

## **Meaning of Suspension and Interdiction**

In employment circles, suspension is sometimes used interchangeably with interdiction. The two words are, however, not one and the same. A worker is said to have been interdicted when that worker excuses himself from work, *at the instruction of the employer*, for an inquiry to be conducted into an alleged misconduct. On the other hand, the term “suspension” refers to a situation where the worker is asked to excuse himself from employment by reason of some misconduct. Whereas for interdiction, the worker steps aside for a while for investigations to be conducted into an alleged wrongdoing, in respect of suspension, the worker steps aside or ceases to work for a period of time *as punishment* for the misconduct.<sup>1</sup>

The exercise of the right to interdict or suspend has legal implications. These are briefly pointed out in the following paragraphs.

## **Legal Effect of Interdiction**

*Interdiction is not punishment*

Interdiction is not a punishment. In labour law, interdiction is one of the foremost processes used to initiate investigations into alleged misconducts at the workplace. It is to “open the way for hearing or investigations.”<sup>2</sup> Whenever there is a development at the work place, say a collusion is suspected among the workforce leading to a theft case, the persons suspected may be interdicted. Essentially, they are required to step aside for investigations to be conducted. Afterwards, the employer may recall the interdicted employees into the employment or dismiss them based on the findings of the investigation.

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<sup>1</sup> William G.K. Thompson v. Total Ghana Limited H1/124/2008, 31st July 2008

<sup>2</sup> William G.K. Thompson v. Total Ghana Limited H1/124/2008, 31st July 2008

*Letter of Interdiction is not a Disciplinary Charge Sheet*

An employee to be interdicted is notified in writing. A letter of interdiction contains no charges against the employee. That letter is not a disciplinary charge sheet. "A letter of interdiction only communicates to the worker that an offence is suspected to have been committed which requires a written response, further investigation or depending on the gravity, summary dismissal."<sup>3</sup> Similarly, a query is neither a disciplinary charge nor a notice of disciplinary proceeding.<sup>4</sup> Queries inform an employee of some default and require the employee to provide explanation for his actions or omissions. After the investigation, if a *prima facie* case is established against an interdicted employee, that employee must be charged for committing a wrong contrary to rules and regulations affecting the operations of the employer.

*Hearing Prior to Dismissal*

Interdiction is not proof of wrongdoing. Also, the findings of an investigation ought not be treated as conclusive evidence of wrongdoing on the part of the interdicted employees. Thus, employees against whom some *prima facie* findings have been made must be given the opportunity to speak to those findings. Put differently, such employees must be heard. An employer may be sued for wrongful dismissal if the employee is not given a hearing before dismissal. Such a suit will focus on the procedural lapses in dismissing the interdicted employee.

As indicated earlier, following the findings of the investigation, the employee may either be reinstated or dismissed. There must however be a hearing prior to the dismissal. In accordance with the principles of natural justice and/or administrative justice, the interdicted employee must be informed of the date, time and place of the hearing. The employee must also be given adequate time to prepare his defence.

The requirement to hear the other side does not mean that the decision-maker, must at all cost, meet the accused or the other side face to face. This is because "natural justice does not generally demand orality."<sup>5</sup> What is essential is whether the employee had had an opportunity to react to the various charges levelled against him. If an affirmative determination is made, in the absence of any requirement in the employment contract, the courts would hold that the requirement of natural justice had been met. It is immaterial that the employee did not directly

<sup>3</sup> [George Akpass v. Ghana Commercial Bank, \(Unreported\) Civil Appeal No. J4/08/2021, Dated 16th June, 2021.](#)

<sup>4</sup> [Aboagye v Ghana Commercial Bank \[2001- 2002\] SCGLR 797](#)

<sup>5</sup> [R \(Morgan Grenfell & Co. Ltd.\) v Special Commissioner of Income Tax \[2000\] 2 WLR 255 at 286.](#)

react to the allegations before a governing board or a body set up by the board.<sup>6</sup>

*Dealing with Discrepancies between Interdiction Letter and Disciplinary Charge Sheet*

Where there are discrepancies between the interdiction letter and disciplinary charge sheet, the latter would prevail. The reason is that the employee is required to answer the charges levelled against him.<sup>7</sup> The interdiction letter contains no charges. It merely conveys information of an uncovered wrong doing worth investigating.

More so, charges may be served on the interdicted employee but in the course of the disciplinary hearing, other matters may come up. These new matters may constitute a wrong. The employee may be charged for those wrongs as well. In such situations, the proceedings will continue unlike criminal trials. However, before a decision is made, the affected employee must be given an opportunity to respond to the new charges levelled against him. Otherwise, “no disciplinary sanctions could be applied on those charges.”<sup>8</sup>

*Part Payment of Salary*

An interdicted employee is still in the employment of the employer despite the fact of interdiction. Thus, the employee is entitled to payment of salary except that, that employee, unlike those not interdicted, ought not to be paid full salary. An interdicted employee is entitled to one-third or half of the salary. It is wrongful for the employer to withhold the entire salary and pay in arrears when the employee is recalled. Doing so may expose the employer to a suit for a breach of contract.<sup>9</sup>

*Payment of Withheld Salary*

When the employee on interdiction is recalled after the conclusion of investigations and no adverse findings are made against him, the employee must be paid the portion of his salary that was withheld during interdiction <sup>10</sup>. In other words, the remaining salaries become fully payable upon the discharge of the employee of all allegations levelled against him. That the employee was interdicted is no reason to keep the withheld salaries. The withheld salaries are the lawfully earned remuneration of the interdicted employee and they must be paid. Otherwise, they become liquidated claims which may be recovered from the employer with

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6 [Awuku-Sao v. Ghana Supply Co. Ltd. \[2009\] SCGLR 710](#). See also [Lagudah v. Ghana Commercial Bank Ltd \[2005-2006\] SCGLR 388](#)

7 [George Akpass v. Ghana Commercial Bank, \(Unreported\) Civil Appeal No. J4/08/2021, Dated 16th June, 2021](#)

8 [George Akpass v. Ghana Commercial Bank, \(Unreported\) Civil Appeal No. J4/08/2021, Dated 16th June, 2021](#)

9 [Donkor & Ors. V. Gliksten \(WA\) Ltd \[1997-98\] 1 GLR 799 - 809](#)

10 [Achina v. Kassona-Nankani Local Council \[1962\] 1 GLR 499](#)



possible interests and costs incurred in a debt recovery litigation which may be instituted against the employer.

### **Suspension under Ghana Law**

In *Lando v. Angelo and Another*<sup>11</sup>, Ollennu J. (as he then was) stated the law on suspending employees as follows:

*the law is that in the absence of any express or implied term in a contract giving power to a master to suspend his servant from his employment for misconduct, the master is not entitled to punish the servant for alleged misconduct by suspending him from employment.*

Impliedly, the authority of the employer to suspend an employee must stem directly or indirectly from the terms of the contract of service. Otherwise, the employer is bereft of that power or authority.

### **Legal Effect of Suspension**

#### *Burden of Proof*

The burden of proof in litigation regarding suspension is on the employer to show that it complied with the conditions of employment which it had with the employee by suspending the latter.<sup>12</sup> In other words, the employer must, first, prove that it had the power to suspend by reference to the contract of employment. Secondly, the employer must show that it exercised its power to suspend in compliance with the terms of the contract as regards procedure as well. Thus, in *William G.K. Thompson v. Total Ghana Limited*<sup>13</sup>, it was held that:

*... the appellant (the employer) did not show the power which entitled them to impose the suspension term on the respondent ... [When questioned] ... the witness maintained that the appellant followed procedure in suspending the respondent. What the appellant failed to do was to show which procedure it was that they claimed to have followed.*

This is the legal and evidential burden for the employer to discharge. Failing to prove that

11 [1961] GLR 210 at 211

12 *William G.K. Thompson v. Total Ghana Limited* H1/124/2008, 31st July 2008; See also *Total Ghana Ltd vs. Thompson* [2011] 1 SCGLR 459

13 *William G.K. Thompson v. Total Ghana Limited* H1/124/2008, 31st July 2008

it had the power to suspend the employee which emanated directly or indirectly from the contract of employment and /or failing to prove that it complied with procedural terms of the contract in suspending the employee, the employer may be liable for an action for breach of contract.

#### *Power to Suspend is Contractual*

It is evident from the Lando Case *supra* that the power of the employer to suspend employees must be contractual. This means that the power must either be expressly contained in the contract of employment or other documents binding the parties in their employment relationship. Otherwise, the existence of the power to suspend must be such that it can be implied from the contract of service executed by the parties. The reason is that:

there is no generally implied contractual right on the part of employers to suspend employees without pay on disciplinary grounds. It must be shown that there is an express or implied term in the particular contract justifying this inroad upon the employer's normal obligations to the employee; and written particulars of such terms must now be given to the employees.<sup>14</sup>

That is the law. Accordingly, the source of validity of suspension in employment circles stems from the contract of employment. The Supreme Court affirmed the decision of the Court of Appeal in *William G.K. Thompson v. Total Ghana Limited* when the second appellate court stated as follows:

*since the action arises from a contract of employment, the fundamental issue to be decided in the matter herein is whether the letter of suspension ... was justified under the contract between the parties herein?*

If there is no justification, the employer would be in breach.

#### *Suspension as a Disciplinary Measure*

Instead of summarily dismissing an employee for some wanton act, the employer may suspend the employee. Suspension is a disciplinary measure<sup>15</sup> intended to correct the defaulting employee. For it is within the right of the employer to "provide and ensure the operation of an adequate procedure for discipline of the workers."<sup>16</sup>

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14 [Hanley v. Pease & Partners Ltd. \[1915\] 1 KN 698 at 751](#)

15 [William G.K. Thompson v. Total Ghana Limited H1/124/2008, 31st July 2008](#)

16 [Section 8 of the Labour Act, 2003 \(Act 651\)](#)

### *Suspension is not Termination*

Suspension is a temporary punishment. It is a lesser punishment compared to summary dismissal. After sometime, the suspended employee is reinstated.<sup>17</sup> For summary dismissal, the employee totally loses the employment from the date of the dismissal. A suspended employee has a second chance.

### *Suspension Follows Administrative Inquiry*

Suspension follows investigation. The investigation may reveal some misdeed on the part of the employee which by the terms of the employment contract may warrant suspension. The employee may be charged and heard on the charges. If adverse findings are made against the employee, the employer may suspend the employee.

### *Forfeiting Salary*

A notable difference between interdiction and suspension is that the latter is a form of punishment whereas the former is not. Again, whereas an interdicted employee is paid, first, part salary and the withheld salaries paid on reinstatement, the suspended employee forfeits the salaries. The employer is not bound to pay the forfeited salaries upon resumption of the worker. For that is part of the punishment the suspended employee must suffer. If the employer decides to pay any salary or part of it to the employee either during the suspended period or upon reinstatement, the employee is no more than a beneficiary of the magnanimity of the employer.

### *Restoration of Leave Entitlement*

There is statutory right granted suspended employees in respect of leave entitlement. Where a suspended employee is reinstated after the suspension period, the employee is entitled to take leave just as he would have taken if he had not been suspended. The employer cannot derogate from this right.<sup>18</sup>

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17 Section 29 of the Labour Act, 2003 (Act 651)

18 Section 29 of the Labour Act, 2003 (Act 651)

## **Liability for Wrongful Suspension**

### *Breach of Contract*

Wrongful suspension can lead to an action for breach of contract. It connotes either the employer had no authority to suspend under the contract of employment or that it did not follow the procedural terms of the contract before the suspension.

### *Payment of Remuneration*

When a wrongfully suspended worker sues, the employer is liable to pay to the employee all wages due to him. Needless to say, the payment will be for the duration of the suspension. In *Lando v. Angelo and Another*<sup>19</sup>, Ollennu J. (as he then was) stated the legal effect of suspension as follows:

the law is that in the absence of any express or implied term in a contract giving power to a master to suspend his servant from his employment for misconduct, the master is not entitled to punish the servant for alleged misconduct by suspending him from employment; **if he suspends him he will be liable to pay to the servant all wages due to him for the duration of the suspension** (Emphasis mine).

### *Ancillary Reliefs*

The court may, having given judgment in favour of the employee, give other ancillary or consequential reliefs such as general damages and cost, again, in favour of the employee.

In addition, the former employee, depending on the cause of action taken against the employer, may obtain other reliefs. For instance, the facts of a case of wrongful suspension may found an action in unfair termination contrary to section 63 of the Labour Act, 2003 (Act 651). In that case, the employee aside monetary compensation may pray for reinstatement or re-employment under section 64 of Act 651.

## **Conclusion**

Interdiction and suspension, though casually used interchangeably, are not one and the same. They apply, in law, to different situations. Also, they have different legal implications. When interdicted, the worker stays off work for investigations but when suspended, the worker stays

<sup>19</sup> [1961] GLR 210 at 211



away as punishment. The salaries of an interdicted person is partly paid and the withheld portion paid on recall but the suspended, gets nothing. All in all, suspension is not the same as interdiction and vice versa. The wrongful exercise of these rights may result in liabilities for the employer.

As regards suspension, it is advisable that employers take the pain to include the disciplinary sanctions they may want to impose on deviant employees in their contracts of employment. Though they have the power to discipline workers generally, employers and their workers are bound by the contracts of employment. Accordingly, an employer does not have the automatic right to suspend an employee unless it has been expressly stated or can be implied from the contract of employment. In the absence of any provision in the contract of service empowering the employer to suspend the worker, should the worker be suspended, the employer would be in breach of the contract. The employer's liability would be to pay the worker his full salary for the entire period of the suspension in addition to other reliefs the court may grant.

THE END