

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
INDUSTRIAL AND LABOUR DIVISION 2 HELD IN ACCRA ON WEDNESDAY THE 30TH
DAY OF JULY 2025 BEFORE HER LADYSHIP JUSTICE ANANDA J. AIKINS (MRS.)
JUSTICE OF THE HIGH COURT.

SUIT NO. IL/0015/2022

ISAAC ABEDU AYIM

PLAINTIFF

VRS

GHANA REVENUE AUTHORITY

DEFENDANT

COUNSEL FOR THE PLAINTIFF: GEORGE AMOAH ESQ.,

COUNSEL FOR THE DEFENDANT: PATRICK KWEKU INTARMAH

JUDGMENT

1. INTRODUCTION

This was a writ issued by the plaintiff against the Defendant endorsed with his reliefs on the 10th of November, 2021 with an accompanying statement of claim. The Defendant entered appearance on 18th November, 2021 and subsequently filed its statement of defence on 2nd December 2021. The plaintiff further filed a reply to the defendant's statement of defence. The reliefs claimed by the plaintiff were:

- (1) A declaration that per the Collective Bargaining Agreement dated 2014 between the defendant and the ICU, he was entitled to be paid outstation and night allowance.
- (2) An order directed at the defendant to pay to the plaintiff the accrued out-of-station and night allowances from 26th May 2017 to 22nd May 2019 when he was re-assigned to work out of his station in the RPU, Tema.
- (3) Interest on item 2 above from 23rd May 2019 to date of final payment at the prevailing Bank of Ghana interest rate.
- (5) Damages
- (6) Costs, including legal fees

2. CASE OF THE PLAINTIFF

The plaintiff's case is that, he was an employee of the Customs Division of the Ghana Revenue Authority, previously stationed at Wa, until his statutory retirement in 2019. And that pursuant to the formation of the Revenue Protection Unit (RPU) of the

GRA, he was nominated as one of the officers of the newly formed unit per a circular dated 16th May 2017. He was therefore reassigned from the Wa Collection point to the RPU at Tema, KIA and TOR Collection where he worked from 26th May 2017 until 2nd May 2019 when he was asked to return to the Wa Collection by the management of the defendant. The plaintiff says that pursuant to the conditions of service provided in Article 33(g) of the Collective Bargaining Agreement (CBA) between the Defendant and the Public Service Workers Union (PSWU) of GTUC dated 2014, the defendant was to provide the plaintiff with accommodation in the Authority's Guest House, or if unavailable plaintiff was to seek accommodation in a private hotel whose rate should not exceed the rate of the Defendant's Guest House, and the defendant will reimburse the plaintiff with such rate. The plaintiff says that, the defendant's has not complied with the agreement. The plaintiff says that for the period of 26th May 2017 to 22nd May 2019, he worked in the newly formed unit (RPU) hence he was entitled to the payment of a lump sum and night allowances as specified in the CBA but he was not provided with any accommodation, and no meals provided for the two- year aggregate period at the Tema, TOR & KIA as provided in the CBA. The plaintiff says that, he requested the defendant to pay the amount due him, but the defendant refused to pay the amount due and did not also reimburse him for all expenses duly incurred.

3. THE DEFENDANT'S CASE

The defendant says that, the plaintiff being an employee was re-assigned from the Wa Collection to the Revenue Protection Unit (RPU) in Tema. And the defendant again posted back the plaintiff to Wa after the dissolution of the RPU. That the plaintiff worked from 26th May 2017 to 22nd May 2019 but the plaintiff was not entitled to the allowances and night work claims made by the plaintiff. And that, the defendant has the authority to reassign the plaintiff to any of the stations deem fit at any time. The

defendant says that the Article relied on by the plaintiff is not applicable to the plaintiff because the reassignment was a transfer.

4. THE ISSUES SET OUT FOR TRIAL

(a) Whether or not the letter assigning plaintiff to the Revenue Protection Unit constitute a transfer letter?

(b) Whether or not the provision in Article 33(g) of the CBA of the GTUC dated 2014 is applicable to the plaintiff?

(c) Whether or not the plaintiff was requested to report back to his mother unit, Wa Collection, upon the dissolution of the Revenue Protection Unit (RPU)?

(d) Whether or not the Plaintiff is entitled to the reliefs claimed?

5. BURDEN AND STANDARD OF PROOF

It is a basic requirement of law that parties in litigation are to substantiate their claims with corroborative evidence. In *MAJOLAGBE v LARBI* [1959] GLR 190, Ollenu J. (as he then was) defined proof in the following words

“Proof in law is the establishment of facts by proper legal means; in other words, the establishment of an averment by admissible evidence. Where a party makes an averment, and his averment is denied, he is unlikely to be held by the court to have sufficiently proved that averment by his merely going into the witness box, and repeating the averment on oath, if he does

not adduce that corroborative evidence which (if his averment be true) is certain to exist."

In *Section 12(1) of the Evidence Act 1975 NRCD 323*, it is provided that the burden of persuasion which a plaintiff has to satisfy in every case is proof on a balance of probabilities. And in *OWUSU v TABIRI & ANOR [1987-88] 1 GLR 287-293*, the Court per Mensah J, stated,

"It is trite principle of law that he who asserts must prove".

Section 14 of NRCD 323 also provides that,

"Except as otherwise provided by law, unless and until it is shifted a party has a burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting"

The onus of adducing evidence thus first rests with the plaintiff herein to prove on a balance of probabilities that he is indeed entitled to the reliefs sought. The plaintiff is expected to adduce evidence in support of his claim in this case, and anything short of that, his claim will fail as per Adinyira JSC (as she then was) in the case of *ACKAH v PERGAH TRANSPORT & ORS {2010} SCGLR 728*.

6. ANALYSIS OF ISSUES

**ISSUE 1 - WHETHER OR NOT THE LETTER ASSIGNING PLAINTIFF TO THE
REVENUE PROTECTION UNIT CONSTITUTE A TRANSFER LETTER?**

The plaintiff contends that per the defendant's circular dated 16th May 2017, he and other staff of GRA were nominated to form the RPU at TOR and KIA. And after the dissolution of the RPU, he together with other staff members of the GRA were reassigned to work in a special assignment called the Revenue Surveillance Unit (RSU).

The plaintiff contended that the said re-assignment does not constitute a transfer as alleged by the defendant.

The plaintiff in support of his claim attached exhibit A which is entitled "**OFFICERS NOMINATED TO FORM REVENUE PROTECTION UNIT AT TOR, TEMA and KIA**" which reassigned the plaintiff and other officers to the RPU. The plaintiff is identified as NO. 22 on the list attached to the said circular.

The plaintiff also provided exhibit A1 which is titled read "**REVENUE SURVEILLANCE UNIT**" and which reads as "*I forward herewith the names of officers nominated for the above unit at Tema.*" They are to start work effective 1st March 2018." In this said exhibit A1, the plaintiff's name is the No. 15 on the list of nominated persons. In this exhibit A1, the plaintiff and other staff affected were moved from their work stations and placed at other stations to perform specific functions for a period.

The plaintiff also tendered his exhibit C, a wireless message circulated on 22nd May 2019 to substantiate his claim that, he remained with the RSU till he was later instructed through the said wireless message to move back to his station in WA. The circular requested all staff members to return to their stations and also that their heads should report of their assumption of duty.

In a further attempt by the plaintiff to substantiate his claim that the reassignment was not a transfer, the plaintiff tendered in exhibit E, a letter of transfer from the defendant with the subject heading **"STAFF TRANSFER."** In this letter, some staff members were transferred from their original stations to different ones, and they were categorically requested to submit and handover their schedules before they leave and also a report on their assumption of duty was to be made by their station heads. The plaintiff contended that, the circular which initiated his reassignment does not amount to a transfer when compared to exhibit E.

The defendant on its part tendered in exhibit 3. Article 34(i) of the Exhibit reads as follows *"(i) an employee shall serve at any place in Ghana to which he is directed in the interest of the Authority and may be required to proceed on transfer either temporarily or permanently to any region in Ghana, at any time so far as the maintenance of the Authority allows."* The defendant argued that the reassignment of the plaintiff from his original station to other places constituted a transfer. And submitted further that, the defendant can transfer any staff at any point, hence the reassignment was a transfer.

It is indeed evident that the plaintiff, was moved from his station in Wa to Tema, TOR and KIA within the period stated above. It is pertinent to note that the plaintiff's movement from Wa to Tema, TOR and KIA cannot be deemed as a transfer because a careful examination of Plaintiff's exhibits A, A1 and E compared to defendant's exhibit 1 shows the clear difference between a transfer and an assignment/re-assignment for special purposes. Whereas exhibits E and 1, which connote a transfer (permanent/temporary), meant that the staff was a member of the new station to which

that staff had been transferred and was required to carry on with his or her duties at the said new station, exhibits A and A1 on the other hand meant an assignment/re-assignment for special purposes. The staff was meant to carry on with his or her duties in line with the purpose for which they had been so assigned. The latter is reflective of the plaintiff's movement in exhibits A and A1 and clearly shows that the plaintiff was not transferred but was only required to carry on with his duties as part of the officers nominated to form the RPU at TOR, Tema and KIA. A closer look at the Article 33 of the CBA, grants the defendant the authority to transfer a staff member from one service station to another either temporarily or permanently. But circumstance of the plaintiff's reassignment does not fit into the article 33(g) of CBA relied on by the defendant.

The evidence on record rather shows that, despite the reassignment of the plaintiff from Wa to Tema, TOR & KIA, the defendant still maintained in their records, Wa as the service station of the plaintiff, which the defendant requested the plaintiff to return to after the dissolution of the RSU. This clearly shows that, the defendant did not transfer the plaintiff, but rather assigned him a special duty for an unspecified period.

On this issue, it is my finding that, the reassignment of the plaintiff within the units mentioned above is not a transfer.

ISSUE 2 - WHETHER OR NOT THE PROVISION IN ARTICLE 33(G) OF THE PSWU OF THE PSWU DATED 2014 IS APPLICABLE TO THE PLAINTIFF?

The Article 33(g) which is entitled '*OUT OF STATION NIGHT SUBSISTENCE/ALLOWANCE*' reads as follows:

“When an employee is expected by his work to spend the night away from his recognized station of employment, he shall be provided with accommodation in an Authority’s Guest House, where available, but in the absence of any facilities, he can seek accommodation from a private hotel which rates should not exceed the Service’s Guest House rates. His expenses (i.e breakfast, lunch and dinner excluding drinks) supported by receipts shall be borne by the Authority, in which case no subsistence allowance shall be paid. Subject to conditions specified above, other rates payable are as follow.....

In the instant case, the plaintiff was moved from the Wa Collection point to operate at three (3) different units amounting to a period of two years, which means the plaintiff was not able to spend nights at his Wa Collection, hence the need for the plaintiff to be accommodated and provided the basic needs as required by the said Article 33(g) of the CBA. It is the plaintiff’s case that, the defendant has failed to provide for his accommodation and meals for two years when he was assigned to operate at the newly created units, that is RPU, and later to RSU.

Indeed, since the reassignment of the plaintiff from his service station at Wa to Tema, TOR and KIA, required that he spent nights outside his recognized station of employment, the plaintiff is entitled to the claim under Article 33(g) of the CBA, as such is applicable to him under the circumstances.

ISSUE 3 - WHETHER OR NOT THE PLAINTIFF WAS REQUESTED TO REPORT BACK TO HIS MOTHER UNIT, WA COLLECTION, UPON THE DISSOLUTION OF THE REVENUE PROTECTION UNIT (RPU)?

In proof of this issue, the plaintiff tendered exhibit C, which reads as follow;

"All members of the unit are required to report to their stations and collection."

This directive was made pursuant to the 22nd May 2019 Memorandum issued by the Deputy Commissioner Operations that, the RSU Tema was dissolved. This memo was followed also by a wireless message sent to the plaintiff and others requesting that 'all sector commanders and station heads are to report on the assumption of duty of the members of the RSU Task Force. The plaintiff attached exhibit C1 to prove that he was among others who were asked to return to their service stations. The defendant on the other hand has not denied this assertion by the plaintiff.

The plaintiff claimed that he on the request of the defendant per the exhibits C and C1, returned to the Wa Collection. In the light of this evidence, it is my finding that, the plaintiff was asked to return to his mother unit, Wa Collection upon the dissolution of the RPU.

7. CONCLUSION

Upon a careful consideration of the evidence adduced by the parties, the Court is of the opinion that the Plaintiff has been able to establish his case against the defendant and is entitled to the award of judgment on the reliefs he seeks.

The Court gives judgment in favor of the Plaintiff as follows; -

- (1) The Court declares that per the CBA dated 2014 between the defendant and the PSWU, he was entitled to be paid outstation and night allowance.
- (2) The Court orders the defendant to pay to the Plaintiff the accrued out-of-station and night allowances from 26th May 2017 to 22nd May 2019, when he was re-assigned to work out of his station in the RPU, Tema.
- (3) Interest is to be calculated on the said sum from 23rd May 2019 to date of final payment at the prevailing BOG rate.
- (4) Cost of Ten Thousand Ghana Cedis (GHC 10,000.00) is awarded the Plaintiff against the defendant.

(SGD.)

**H/L ANANDA JULIANA AIKINS (MRS.)
JUSTICE OF THE HIGH COURT**

