

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR NO. 599/92
CR NO. 597/92
CR NO. 598/92

CUSTOMS

v

PACIFIC MOTORS LTD

CUSTOMS

v

RAROTONGA FROZEN FOODS
LTD

Hearing: 19 and 20 August 1993
Mr Mitchell and Ms Maki for the Prosecution
Mr Arnold for Defendants
Judgment 20 August 1993

REASONS FOR JUDGMENT

Rarotonga Frozen Foods was charged with making an erroneous customs declaration (S211 of the Customs Act 1913) and with unlawfully removing imported goods from the wharf without the permission of an officer of Customs (S61(2)(c)); and Pacific Motors was charged with being in possession of uncustomed goods (S223).

The charges were related and by consent were heard together. At the conclusion of the hearing I dismissed all charges with the intimation that I would give brief reasons for my decision in writing. This I now do.

When the vessel Ocean Link V12 arrived in Rarotonga on the 2nd May 1992 it was carrying "assorted foodstuffs" for Rarotonga Frozen Foods and "batteries, motorbikes and tyres" for Pacific Motors. The relevant bill of lading simply referred to "assorted foodstuffs and batteries" and

indicated that the goods were in two containers - TPHU 620152 and TPHU 286449.

Mrs Kura Cowan a senior administration officer with Rarotonga Frozen Foods prepared and submitted to Customs an "Entry for Home Consumption" form in relation to the assorted foodstuffs and signed the declaration that the particulars in the form were true and correct. The entry was processed by Chief Customs Officer Tamangaro who authorised the release of container 620152 in the belief that the assorted foodstuffs were in that container and that the batteries and motorbikes were in container 286449. He ordered the latter container to be held.

When container 620152 was opened at Rarotonga Frozen Foods premises it was found to contain the assorted foodstuffs and the batteries and motorbikes. Someone at Rarotonga Frozen Foods arranged for Pacific Motors to pick up its part of the consignment.

The Customs Department took the view that Mrs Cowan had made a false declaration in that she had not referred to the batteries and motorbikes in her entry form; and Rarotonga Frozen Foods had removed the batteries and motorbikes from the wharf without authority; and Pacific Motors was in possession of goods on which duty had not been paid. Prima facie there were circumstances which looked suspicious but in truth the whole case was simply a chapter of accidents and misunderstandings.

Although referred to in the bill of lading, container 286449 was not in fact on the vessel. I accept that Rarotonga Frozen Foods had no knowledge that Pacific Motors goods were in the container when it was removed from the wharf; and I

accept that Pacific Motors believed that it was in lawful possession of the batteries and motorbikes because a customs agent, Josephine Kapi, had actually filed an entry for home consumption in respect of the goods although Mr Tamangaro was unaware of this when he gave authority for container 620152 to be released. Neither of course was he aware at that time that the second container had not arrived.

Mr Mitchell fairly conceded that the erroneous declaration charge could not stand; and on that issue Mr Arnold's submission is worthy of note, namely that what is sought when seeking entry of goods is not entry of containers but of specific goods.

As for the unlawful removal and being in possession of uncustom goods charges it is clear there was an unwitting and innocent removal and an innocent possession. Pacific Motors made out the defence available on the possession charge by proving on balance that it obtained possession without knowledge that the goods were uncustomed.

Mr Mitchell argued that there was a technical breach of the offence under S61(2)(c) of unauthorised removal of goods from the wharf, but in my view, having regard for the penalty of forfeiture of goods that on conviction must be imposed, I am satisfied that deliberate wrong doing must be proven and that was not the case here.


 CHIEF JUSTICE

1 Sept '92