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COPY

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

On Appeal from the
District Court at Rabaul.

GUY BRYDEN BLACK Informant
(Respondent)

KARIMAN KWONDAIMERI

Defendant
(Appellant)

JUDGMENT delivered on twenty-fourth day of December, One thousand nine hundred and fifty-two.

This is an ex parte appeal against the decision of the District Court at Rabaul given on 11th November, 1952 wherein the appellant, a native employee under contract to the respondent, was convicted on the information of the respondent that he had failed to work 44 hours in a week, thereby contravening Regulation 12 of the Native Labour Regulations No.18 of 1950 made under the Native Labour Ordinance 1950.

The appeal is on the ground that information discloses no offence.

It is clear from Mr. Rigby's reasons for judgment that he believed Regulation 12 could be construed as a penal sanction against the employee, no doubt on his interpretation of Section 32(1.)(b) of the Ordinance.

Regulation 12 reads:-

"12. The hours of work for an employee or casual worker shall be forty-four (44) hours in a week counting from Monday to Saturday inclusive, and one hour's break shall be given the employee or casual worker after each period of four hours worked."

Section 32 (1.)(b) reads:-

"32.-(1.) An agreement shall -

(b) contain an undertaking by the employee that he will at all times and to the best of his ability perform the duties allotted to him under the agreement."

Mr. Lynch of the Crown Law Office, Counsel for the appellant, contended that Regulation 12 could not in any manner be construed as a penal sanction against the employee, and he submitted that Section 32 (1.)(b) creates only a civil liability.

The Native Labour Ordinance 1950 repealed the Native Labour Ordinance 1946. That 1946 Ordinance included the following sections:

"107.-(1.) A native who has entered into a contract under this Ordinance and who -

(a) fails or refuses without reasonable cause to commence work under his contract at the stipulated time; or

(b) without leave or other reasonable excuse absents himself from his place of employment,

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding an amount equal to his wages for a period of two months.

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(2.) If a complaint is made under this section before a Justice of the Peace he may issue a warrant for the apprehension of the defendant and the Court may, upon the hearing of the complaint, order that the labourer be returned to his employer or order that the contract be cancelled. "

"110.-(1.) A labourer shall not be entitled to wages for any period of absence from his place of employment in respect of which absence he has been convicted of an offence under section one hundred and seven of this Ordinance.

(2.) The Court by which the labourer is so convicted may add to the term of his contract a period not exceeding the period of his absence during the normal currency of the contract but so that in no case shall the period between the commencement of the contract and the expiration date of the added term exceed two years."

"113. Any labourer who, without reasonable excuse, fails to perform, or carelessly or improperly performs, any work which under the contract it was his duty to perform, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding an amount equivalent to his wages for one half-month."

Those three sections are omitted from the 1950 Ordinance. Mr. Lynch contended that such omission is a clear indication that the Legislature intended that the remedies under those sections should not apply under the 1950 Ordinance, but if an employer desires any remedy under the 1950 Ordinance then he has his remedy under Sections 47 and 51 of the 1950 Ordinance; but should he desire to proceed further then his only remedy is at common law.

Section 47 of the 1950 Ordinance reads:-

"47.-(1.) A Court may, at any time, on the application of an employer, cancel an agreement.

(2.) Where an agreement is so cancelled the Court shall determine what proportion of the wages, including deferred wages, held on behalf of the employee shall be paid to the employee, and what proportion, if any, of wages shall be paid to the employer by way of liquidated damages, and whether the employer shall be under any obligation to return the employee to his home.

(3.) Without in any way limiting the grounds on which a Court may cancel an agreement under this section, the following shall be deemed to be sufficient grounds for such cancellation:-

(a) ill-health of the employee;

(b) that the employee is exerting a bad influence upon his fellow-workers;

(c) that the employee has absented himself from work for a period exceeding seven days; or

(d) that the employee is imprisoned for a period exceeding seven days.

(4.) Where an agreement is cancelled on the grounds specified in paragraph(c) or (d) of the last preceding sub-section, and the employee cannot be found or is still in prison, the employer shall deposit with an authorized officer at the place where the agreement is cancelled an amount equal to the wages (if any) ordered by the Court to be paid by the employer

to the employee, and the authorized officer shall deal with the amount so deposited in the prescribed manner."

Section 51 of the 1950 Ordinance reads:-

"51.-(1.) A Court may, at any time, on the application of an employer, order than an agreement be varied by relieving the employer of his obligations to pay such part of an employee's deferred wages as the Court directs by way of liquidated damages.

(2.) Without in any way limiting the grounds on which a Court may order an agreement to be varied under this section, the following shall be deemed to be sufficient grounds for any such order:-

(a) absence of the employee without permission;

(b) refusal by the employee to perform work lawfully allotted;

(c) failure by the employee to show ordinary diligence;

(d) any other breach of the agreement on the part of the employee; or

(e) negligence on the part of an employee resulting in the loss of the employer's property."

Quoting from Maxwell on Interpretation of Statutes, 9th Edition, at page 324...."As the same expression is as a general rule to be presumed to be used in the same sense throughout an Act, or a series of cognate Acts, a change of language, probably, suggests the presumption of change of intention, and, as has been seen, the change of language in the later of two statutes on the same subject has often the effect of repealing the earlier provision by implication."

I accept Mr. Lynch's submissions. I do not think any authority is necessary for the proposition that such an emphatic variation as the omission from the 1950 Ordinance of the two penal clauses, Sections 103 and 113 of the 1946 Ordinance, is a clear intimation of the Legislature's intention to deprive the employer, under the 1950 Ordinance, of his previous penal remedies under the 1946 Ordinance.

In my opinion, if the employer wishes to proceed against an employee for refusing to work under the contract he has lost his remedies under the 1946 Ordinance, and his statutory remedy is under Sections 47 and 51 of the 1950 Ordinance. Otherwise he is left to pursue his common law rights.

The magistrate was wrong in his findings. The appeal is upheld, and the conviction of the District Court at Rabaul on the 11th November, 1952 is quashed.

(Signed) A.KELLY,J.