5-26

IN THE SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA } W.S. 86/62 (N.G.)

WILLIAM THOMAS HAY

Plaintiff

-v-

HIGHLAND PRODUCTS LIMITED and MICHAEL JAMES LEAHY

Defendants.

REASONS FOR JUDGMENT.

MORESBY.
MANN C.J.
/3/64.

This is a claim for damages for breaches of contract of employment. The Plaintiff was engaged as a Dairy Manager on the property owned by Mr. Leahy at Zenag. When the business was taken over by the Defendant Company, the Plaintiff continued to work under the control and direction of the Defendant Leahy. The engagement was arranged in Sydney by Mr. Boyce of Ventura Trading Company, who acted as Agent for Mr. Leahy. A written Memorandum was drawn up and signed in Sydney after reference to Mr. Leahy for instructions on points of detail. The Plaintiff arrived on the property early in March, 1961 and commenced work. He had substantial qualifications and experience for the job.

There is some dispute as to the precise terms of the contract for employment, but I think that on this question the evidence is substantially all in favour of the Plaintiff. It is revealed that the first step in the negotiation was an advertisement which was answered by the Plaintiff, and the supply by Mr. Boyce to the Plaintiff of a document (EXHIBIT "C") which consists of brief notes describing the property and setting out in general terms the outlines of a scheme for employment under which the Manager would be paid a royalty on the milk actually produced and calves actually reared to the age of six months. Everything other than the Manager's own labour was to be provided by the employer. This document states

specifically that bonds will be paid but no fares. This is followed by a statement to the effect that the employer would be prepared to pay the fare on the understanding that it would be deducted from wages over a period.

The next step was a reference by Mr. Boyce to the Defendant for instructions as to the fare and leave conditions. This produced a form of contract which in most respects set out the substance of the document, EXHIBIT "G", but departed from it to the extent of providing that one fare was to be paid on the understanding that it would be deducted from wages over a period of one year, and would be refunded on completion of one year's satisfactory service. This was the term asked for by the Plaintiff. This contract is EXHIBIT "E" in the present proceedings.

The next step again is a variation of this last contract which was arrived at after discussion between the parties at Zonag. It is EXHIBIT "G" in the present proceedings. It provides for the minimum wages to be not less than £150 every four weeks, and that the £150 minimum was to be exclusive of money to be earned for rearing calves. A further departure from the previous agreement is that the provision for two months leave after two years service was eliminated.

Then there was a conversation at or about the same time as the last at which the parties agreed that the Plaintiff was not to be employed at a variable remuneration depending on the amount of milk produced, but was to receive a flat rate of £162.10.0. per calendar month, and that he was to receive payment for calves reared in addition to this amount. The figure of £162.10.0. was arrived at by adding to the previous minimum figure of £150 an adjusted figure representing wages in lieu of leave for two months spread over a two-year period and adjusted to represent a payment per calendar month.

It seems clear to me that the documents put in do not represent a precisely drawn agreement covering all the terms and obligations of the contract of service. It is a note of the more important items discussed and

agreed upon. It does not import any intention to exclude the operation of an implied clause or a collateral agreement.

On the points in dispute in this case, I think that the effect of the agreement is as follows:-

(1) The express agreement to pay one fare only against a background of negotiation originally providing for the payment of no fares at all excludes any inference that the employer would be liable to pay any additional fares or expenses. Thus there is, in my view, no liability to pay either the Plaintiff's return fare to Australia or to pay any of the fares for Mrs. Hay or for freight in relation to the car or furniture and effects.

(2) The Plaintiff was not entitled to leave. This was expressly agreed upon, and he was given money in lieu of leave. Thus, if he took his leave by arrangement at any time or at the conclusion of his service, he would not receive remuneration during the period of his leave.

(3) On the more difficult question of whether there was a minimum term of two years in force, I think that the weight of evidence supports the inference that two years was understood and intended to be the minimum term.

The evidence of the conversations with Mr. Boyce, the representation set out in Mr. Leahy's letter to Customs authorities, and the provisions as to leave provided for in EXHIBITS "E" and "G" (the latter provision being cancelled) all support the assertion that a two years period was a significant topic of discussion between the parties in various aspects. I accept Mr. Hay's evidence that this point was clarified before he sent for his wife, car and furniture. At this time I think all the parties were in a co-operative and friendly frame of mind, and I think that on this question Mr. Hay's evidence is to be preferred.

It almost follows, as of course, from my last finding, that the dismissal of the Plaintiff was in breach of the agreement. The Defendants have endeavoured to establish a case of wilful neglect of duty as an alternative ground for justifying the dismissal of the Plaintiff. I have no doubt that Mr. Leahy and the other witnesses, in giving evidence, spoke frankly and truthfully described past events in the light in which these witnesses now see them, but I am convinced that their attitude against the Plaintiff has hardened very considerably and has become markedly antagonistic since he was dismissed. I am disposed to think that there was some dissatisfaction in relation to his management of the Dairy, and that it was Mr. Timothy Leahy who at this stage was particularly hostile and willing to see the Plaintiff go. Something of hostility may well have been conveyed to the Plaintiff, who made a rather poor showing at the time, and did not appear to have any idea that he had substantial rights against Mr. Leahy. He may have been somewhat over-borne by Mr. Leahy's positive manner. At a later stage when the Plaintiff had the opportunity to seek legal advice, a letter of demand was written claiming a sum representing his Solicitors' interpretation of the instructions which they had received.

I think that the sum involved must have come as a surprise to both parties. It has lead to a good deal of intensity in the conduct of the litigation, but an accurate analysis of the case is now made more difficult by the fact that further particulars of some of the assertions made in the Defence apparently for the first time were not sought. Moreover, there are gaps in the information available to me, and it might have been of importance if information had been available to show the date upon which Mr. Leahy decided to engage another Manager after the Plaintiff left.

I do not think that the charges against Mr. May for misconduct and neglect of duties have been sustained. The criticism of him for not supervising the early morning milking from the start is inconsistent with the agreed practice that two consecutive milkings each week-end were to be entirely unsupervised.

I think it incredible that Mr. Leahy should neglect what he described as such a serious breach for a period of at least some months after his son had complained about it. I think that the accusations with reference to calves are not reliably supported. It is true that on the surface there appear to be duplications involving five ear-tag numbers. The system of ear-tag numbering was incomplete, and the information conveyed to me lacked precision. It is easy to make errors in transcribing numbers, or to mis-read numbers, especially if they are not clear. There is the risk of duplication in numbered ear-tags, and although this risk, in the circumstances, does not appear to me to be very great, at least in relation to the range of numbers over five thousand, the extent of the risk is not known, and cannot be assessed.

If these figures had been carried into proper stock records, every animal on the place would have its proper number, and its breeding could be determined at a glance. Records such as these would provide a reliable check, but the duplications were in fact unnoticed, in spite of occasional checks at fairly close intervals of time during which the number of calves being reared were reported to Mr. Leahy.

It is clear that these complaints were not put forward promptly as justification for the dismissal when the claim was made, and the complaint which ultimately emerged most strongly happened to be one the foundation for which was provided by the Plaintiff himself in his own evidence.

I find that the Plaintiff was in fact dismissed in reliance upon the absence of an express provision of thewritten Memorandum providing for a minimum term of employment, and that the Defendants, at the time of dismissal, were relying on one month's notice as being all that the Plaintiff was entitled to.

On my view of the terms of the agreement reached by the parties, this was not the true position, therefore the Defendants are liable to pay damages for loss of income.

The Plaintiff was, of course, bound to minimise his own losses, and although a man of his

qualifications might confidently expect to obtain employment in the Territory readily enough, he was unfortunate. He did have a try. I am not at all sure that he exhausted every possibility, but at least he did work when he was able to, and gives the benefit of his earnings to the Defendants in the reduction of his claim for this.

It is agreed between the parties that in the event of the Plaintiff recovering under this heading, the verdict should be for £1,046.7.6. The parties have also agreed that the calf bonus has been paid in respect of the period up to the end of the Plaintiff's employment, but that the amount of his claim for damages for the 7¾ months during which he has been deprived of this income should be assessed at £460. The other items claimed are, as I have already indicated, contrary to my view of the agreement between the parties, and are not allowed. Accordingly there will be judgment for the Plaintiff for £1,506.7.6., with costs to be taxed.