

POLICE v P.C. FABRICIUS LIMITED

High Court Apia
18, 26 February 1943
Herd CJ

STATUTORY OFFENCES (Emergency price controls) - Breach by sale of goods at higher than permitted price.

PROSECUTION under Regulation 5 of the Price Stabilisation Emergency Regulations, 1939.

Cur adv vult

HERD CJ. This is a prosecution under Regulation 5 of the Price Stabilisation Emergency Regulations, 1939 as amended, which provides:-

No person who on the said fixed day [1st September, 1939] was engaged in the business of selling any goods shall sell goods of the same or substantially the same nature and quality in the same or substantially the same quantity and on the same or substantially the same terms as to payment, delivery or otherwise at any price which is higher than the lowest price at which he sold or was willing to sell such goods on the said fixed day.

For the prosecution it was alleged that in January, 1943 sewing machine needles were sold by the defendant Company to a Samoan, first on the 9th January at 1/- each and then on 11th at 1/6 each. It was further alleged that the landed cost, including such items as freight and duty, could not be more than 2¢ per needle. This calculation was based upon the item in the Customs final entry put in by the defendant Company's clerk for a shipment of goods which included the needles. This entry showed twelve packets and the invoice price of \$4.32. The calculation of 2¢ necessarily depends on there being twelve packets with eighteen needles in each packet.

The defendant Company, while admitting the sales and also that the Customs entry contained the item of twelve packets, nevertheless avers that the item is a mistake, that only two packets each containing eighteen needles were in the shipment and that only two packets are included in the invoice. It produces the carbon copy of the invoice to show this, at the same time explaining that the item on the invoice "12 x 1" refers to the "mark" of the needle and does not indicate that there were twelve packets. In support of this latter contention the Company produces one of the packets labelled on the back "12 x 1" and "18", in which 18 needles were sent. It also produces part of a packet of a different kind of needle showing a mark "15 x 1".

It is contended for the Company by Mr. Fabricius that the landed cost (based on there being only thirty-six needles) is more than 1/- and that the Company was entitled to sell at 1/6 each, working on the same monetary margin of profit as the Company made on needles in 1939 in accordance with the practice allowed by the Price Committee, which until very recently controlled prices here.

This practice of allowing sales at the same monetary margin of profit has obtained until the issue of a recent Price-order. This is admitted by the prosecution.

The defendant Company admits selling the needles at a greater price than they sold in 1939 and does not invoke any Ministerial authority or price-order to allow this under Regulation 11. On this

latter admission only, there appears to be a breach of Regulation 5 of the Price Stabilisation Emergency Regulations, 1939, which has not been revoked by the later Control of Prices Emergency Regulations 1939. Therefore a conviction must be entered.

As to the penalty to be inflicted, I do not find as a fact that there were twelve packets of needles sent and charged for on the invoice but I am satisfied with Mr. Fabricius's evidence that there were only two packets. The apparent contradiction of this in the Company's Customs entry has been explained to my satisfaction. The sale was made before the practice of allowing the same monetary margin of profit was expressly discontinued by the Price-order of 1st February, 1943, which came into force on 15th February, 1943. I do not think it would be just to inflict any fine in respect of any sale made in accordance with that practice.

It will, of course, be different in respect of sales made after 15th February, 1943.

The defendant Company is convicted and discharged.