

THE SUPERINTENDENT OF SIRI KANDURA ESTATE
AND ANOTHER

v.

LANKA ESTATE WORKERS UNION

COURT OF APPEAL.

H. W. SENANAYAKE, J.

C.A. NO. 139/85.

L.T. NO. KT/18/5398.

OCTOBER 3, 1992.

Industrial Dispute – Wages Board – Claim to be paid as carpenter on rubber plantation.

All workmen on a rubber plantation of over 25 acres fall within the pay rates prescribed by the Wages Board for the Rubber Growing and Manufacturing Trade Regulations except specified excepted categories. A carpenter or mason does not fall within the excepted categories and cannot claim wages prescribed for Building Trades.

Where a workman claiming to be a carpenter refuses to accept alternative work, he must be deemed to have vacated post.

APPEAL from decision of the President of the Labour Tribunal.

S. M. Fernando for appellant.

S. Sinnathamby for respondent.

April 24, 1993.

SENANAYAKE, J.

This is an appeal from the order of the learned President dated 7.3.85 where he held the termination was unjustified and ordered the Employers-respondents to pay back wages in a sum of Rs. 16,153/80 and to reinstate the worker from 21.3.85. The learned President has computed the amount on the basis of not the actual wages paid to the workman but on the basis of what is payable under the decisions of the Wages Board for the Building Trade to a carpenter.

The facts relevant to the application are as follows: The Union made the application stating that the workman worked on the plantation as a carpenter from May 1980 till 9.5.83, when his services were terminated and that he was not paid the correct wages according to the Wages Board Ordinance and the Labour Officer had directed the Superintendent to pay the wages according to the Building Trades from August 1982. The Employer-Appellant denied the termination of services and stated that the workman was employed as an ordinary factory worker on daily pay under the Tea and Rubber Growing and Manufacturing Trade. They were not in a position to employ the workman as a carpenter under Building Trade as there was insufficient work in the plantation to be employed as a carpenter. They were unable to continue the workman as a carpenter and informed that could give him work on a contract basis if and when work was available. They were not prepared to pay the wages according to the Wages stipulated under the Wages Board decisions for Building Trades. The workman kept away from work on his own accord with effect from 5.5.83. They moved in the circumstances to have the application dismissed.

The learned Counsel for the appellants submitted that the learned President erred in law when he held that the workman was entitled to the wages as in terms of the Wages Board decision in terms of the Building Trades. His only submission was that the workman was an employee who came within the decision of the Rubber Growing and Manufacturing Trade.

He submitted that the workman was employed on the Plantation who came within the decision of the wages for the Rubber Growing and Manufacturing Trade, namely, "constructing, repairing and

maintaining roads and buildings" the wages for all workers employed is the same irrespective of the nature of the work done by every such worker. The following workers are excluded "Rubber-maker, Engine Driver, lorry and van driver, mechanic, clerk, conductor, kanakapulle, storekeeper, dispenser, midwife, bungalow servant, dhoby, barber, teacher and ward-attendant" and the work done by a mason or carpenter is not excluded and according to the description of Building Trades it would cover only, (a) work in connection with the maintenance repair or alteration carried on at or near the site of the building.

The Wages Board for the Rubber Growing and Manufacturing Trade regulations apply for Rubber lands over 25 acres in extent and according to (F) those engaged in "Construction, repairing and maintaining roads and building" The learned Counsel submitted that the learned President erred when he considered the workman was doing the work of a carpenter and mason that he should be paid the rates in the Building Trade. There is force in his submission. All estate Bungalows, Factories, and linerooms have to be maintained. The evidence clearly indicates that the workman was engaged in various repair works, replacing and maintaining doors and windows and the ceiling and repairing the roof work and incidental work connected to the Rubber and Tea factory. They do not fall within the excepted category. The workman did not fall within the description of the Building Trade.

The Learned Counsel for the respondent submitted that there was no evidence that the land was over 25 acres and this was a rubber land. The Court must presume that State Plantation Corporation do not manage Estates that are less than 25 acres and furthermore there was evidence that this estate consisted more than three divisions and there were over 5 Bungalows and 15 line rooms and there was a Rubber Factory and a Tea Factory. In the circumstances the Court on the evidence could come to the conclusion that this was a land which was over 25 acres in extent, though there was no evidence of specific extent by any witness regarding the extent of the land. The workman had refused to accept alternative work. In my view thereby he has vacated post. I am of the view that the learned President has erred in law. In the circumstances I set aside his order and allow the appeal with costs fixed at Rs. 250/-.

Order of Labour Tribunal set aside.