

1971

*Present : Sirimane, J.***HEMAS (ESTATES) LTD. and another, Appellants, and  
CEYLON WORKERS' CONGRESS, Respondent***S. C. 88/69—Labour Tribunal, 9/484 & 485**Industrial dispute—Evidence—Burden of proof.*

In proceedings before a Labour Tribunal relating to a dispute between a workman and his employer, it is open to the President to accept the more probable version and to decide the case on a balance of probability.

**A**PPEAL from an order of a Labour Tribunal.

*H. W. Jayewardene, Q.C., with A. M. Coomaraswamy, for the employers-appellants.*

*N. Satyendra, with V. Jegasothy, for the applicant-respondent.*

*Cur. adv. vult.*

August 10, 1971. SIRIMANE, J.—

The main question which arose for decision in this case was whether the workman (a labourer on an estate) had handed over the line-room allotted to him to another labourer, and gone to reside elsewhere.

There was conflicting evidence on this point.

It was the workman's case that he never gave up residence in the line-room, and that his absence was temporary.

The President, having considered all the evidence, appears to have accepted the evidence of the workman and his witnesses in preference to that of the employer. He has expressed himself thus, ". . . according to all the evidence produced before me, there is no reason to think that Dharmadasa actually lived in house No. 349".

In one part of his order, having said that the employer has failed to prove that the workman definitely resided outside the estate, he has said, "I therefore give the benefit of the doubt to the applicant".

I agree with the submission of the learned Counsel for the employers-appellants that in a case like this, there is no burden placed on the employer to prove his allegations "beyond all reasonable doubt", as in a criminal case. A case like this has to be decided on a balance of probability. But, despite the unfortunate use of the phrase "benefit of the doubt", on a reading of the whole order, and on a consideration of the evidence, I am of the view that all that the President has done was to accept the more probable version.

I am unable to say that he has approached the evidence as a Judge seeking proof of a criminal charge.

The balance of evidence and the surrounding circumstances certainly favour the workman, and I see no error in law which warrants interference with the President's order.

The appeal is dismissed with costs.

*Appeal dismissed.*

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