

1953

Present: Swan J.

G. B. MIDDLETON, Appellant, and A. G. MANUEL (Labour Inspector), Respondent

S. C. 1,012—M. C. Ratnapura, 28,121

Wages Boards Ordinance, No. 27 of 1941—Section 44—Prosecution for dismissal of worker—Implied condition that dismissal should be wrongful.

An employer cannot be prosecuted under section 44 (1) of the Wages Boards Ordinance for dismissing a worker for any of the reasons set out in that section if the dismissal was at the same time otherwise lawful and can be justified on the grounds, for instance, of due payment of wages in lieu of notice or insubordination or irregularity of attendance and absence from work without lawful excuse.

APPPEAL from a judgment of the Magistrate's Court, Ratnapura.

G. E. Chitty, with *P. Somatilakam* and *Robert Silva*, for the accused appellant.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 21, 1953. SWAN J.—

The appellant in this case was charged under section 44 (1) of the Wages Boards Ordinance, No. 27 of 1941, with having dismissed one

P. Marimuttu by reason merely of the fact that Marimuttu had given information to the Labour Authorities with regard to a certain matter under the Ordinance, an offence punishable with a fine not exceeding Rs. 1,000 or imprisonment of either description for a term not exceeding 6 months or both such fine and imprisonment.

Sub-section 2 of section 44 reads as follows :—

“ In every prosecution of an employer for an offence under sub-section 1 the burden of proof that the worker was dismissed by reason of some fact other than the fact mentioned in that sub-section shall be upon that employer.”

The facts briefly stated are as follows : the appellant was the Superintendent of Houpe Estate, Kahawatta. Marimuttu was employed on the estate. The provisions of the Wages Boards Ordinance have been proclaimed to be applicable to the tea-growing and manufacturing trade as well as the rubber-growing and manufacturing trade. Houpe Estate is planted with both tea and rubber. The workers on the estate had formed themselves into a trade union. P. Marimuttu was the leader of that union. It was one of his duties to entertain complaints of other members of the union. A complaint was made to Marimuttu that certain labourers were not paid according to the Wages Board rates of payment for days on which they brought less than 5 pounds of rubber latex and 1 pound of scrap. This practice was undoubtedly contrary to the provisions of the Wages Boards Ordinance. Marimuttu's evidence is that he made a note of the complaint he received in the minute-book and handed it over to the appellant, but that the appellant had done nothing to remedy it. Marimuttu thereupon informed one Mr. Punniam who was the representative of the Ceylon Workers' Congress Union to which the Houpe Estate Union was affiliated. Punniam wanted substantial evidence of this practice before he made representations to the Labour Authorities. Marimuttu therefore convened a meeting of the union at which it transpired that in addition to the usual Check Roll a Pocket Check Roll was maintained which would supply the necessary evidence. Another Marimuttu stealthily removed that Pocket Check Roll and handed it over to P. Marimuttu. With this Pocket Check Roll P. Marimuttu went to Mr. Thirunavakarasu, the Assistant Commissioner of Labour, accompanied by Punniam. Labour Inspector Manuel who was in the office at that time was sent for by Mr. Thirunavakarasu and Marimuttu explained the system of under-payment to Inspector Manuel. The Assistant Commissioner ordered Inspector Manuel to make a routine inspection and inquire into this complaint. Mr. Thirunavakarasu advised Marimuttu to replace the book and this apparently was done. Inspector Manuel went on 25.6.51 for the routine inspection, having previously informed the appellant by letter D 12. During the course of that inspection Manuel appears to have told the appellant that something must be wrong in the estate office as a Check Roll Register of the estate had been produced by Marimuttu at the Labour Office.

As regards the under-payment it would appear that the explanation of the appellant was that he was merely carrying out what was done by the previous Superintendent and that the rates of payment were agreed upon by the workers themselves. However, the appellant was prepared to make good the under-payments, and so far as the Labour Authorities were concerned the matter ended there.

There happened to be three Marimuttus working on the estate and the appellant wanted Manuel to identify the particular Marimuttu who had gone to the Labour Office. Only one Marimuttu was on the spot and Manuel said he was not the person who made the complaint. Thereafter the appellant tried to find out from the Labour Office whether it was P. Marimuttu who had gone there with the Pocket Check Roll. He had apparently fixed the identity of P. Marimuttu as the complainant because of the three Marimuttus one had been already identified by Manuel as not the person who went to the Labour Office and of the remaining two Marimuttus only P. Marimuttu had not worked on the estate on the day the Pocket Check Roll was alleged to have been taken to the Labour Office.

On 29.8.51 P. Marimuttu was dismissed from the estate. In P3 the reasons for his dismissal are stated to be (1) failure to report at the office on 11.8.51 although instructed to do so, and (2) irregularity of out-turn, that is, working 17½ days in June, 1 day in July and 4½ days in August up to the date of dismissal.

Mr. Chitty appearing for the appellant contends that it is implicit in section 44 (1) that the dismissal should be wrongful. With that contention I agree because if Marimuttu was lawfully dismissed I do not think the section would apply. In this particular case according to the evidence, quite apart from any legal presumption, P. Marimuttu's contract of service was from month to month. In the course of his evidence he stated: "I was under the impression that I should give one month's notice. Similarly if the estate had to dismiss me they had to give me one month's notice. This is what I understood right through. There was nothing to prevent me at any time leaving this estate and joining another estate by giving a month's notice." Marimuttu also admitted that on the day he was dismissed he was paid a month's wages in lieu of notice. This admission in my opinion concludes the matter. Under the contract of service Marimuttu was entitled to either one month's notice or one month's salary in lieu of notice. His dismissal therefore was not wrongful, and in my opinion section 44 has no application.

Even assuming that Marimuttu had not been paid one month's salary in lieu of notice but was summarily dismissed, one of the reasons for his dismissal being his action in reporting certain irregularities to the Labour Authorities the evidence satisfies me that the appellant had other good grounds for dismissing Marimuttu, namely (1) insubordination, and (2) irregularity of attendance and absence from work without lawful excuse.

I set aside the conviction and acquit the appellant.

Appeal allowed.