

IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 25 of 1977

AKBAR BUSES LIMITED

Appellant

v.

THE DIRECTOR OF PUBLIC
PROSECUTIONS

Respondent

G.P. Shankar for appellant

M. Jennings for respondent

Date of Hearing: 1st March, 1978.

Date of Judgment: 22nd March, 1978

REASONS FOR JUDGMENT

Appellant was charged in the Magistrates Court at Tavua that, being an employer, paid to a worker to whom the Wages Regulations (Road Transport) Order 1975 (Legal Notice 10/75) applied, less than the statutory minimum remuneration specified in that Order contrary to section 9(2) of the Wages Councils Ordinance (Cap.81). The learned Magistrate held, on the evidence for the prosecution, that there was no case to answer and dismissed the information. From this dismissal respondent appealed to the Supreme Court. The learned Judge allowed the appeal and remitted the proceedings for the Magistrate to resume

and conclude. From that judgment appellant has brought this appeal which is confined to points of law. The points of appeal are:

- "(1) The Supreme Court erred in holding that under the Wages Regulation Order and Section 11 of the Wages Councils Ordinance Cap. 81, payments in kind could not be reckoned in computing minimum wage, and thereby the Supreme Court did not take into consideration the provisions of sections 51 and 52 of the Employment Ordinance, Cap.75.
- (2) There was no evidence before the Magistrate therefore no evidence before the Supreme Court as to the age of Eranna. The Supreme Court has therefore erred in presuming that Eranna was clearly over 18 years of age.
- (3) The Supreme Court of Fiji erred in law in not holding that Wages Regulations Order being a subsidiary legislation could not in any way affect the operation of sections 51 and 52 of the Employment Ordinance, Cap.75."

Appellant paid its employee, one Eranna, a public service vehicle driver, \$85.00 per month which represented 43 cents per hour. In addition Eranna was provided with housing worth \$15.00 per month and daily meals worth \$3.00 per day. If these two latter sums are taken into account the remuneration of Eranna amounted to 88 cents per hour.

The effect of section 9(2) of the Wages Councils Ordinance (Cap.81) has been sufficiently set out in the charge earlier referred to. Section 8 provides for the Minister of Labour to make orders called

"wages regulation orders" fixing remuneration to be paid to employees and also fixing holidays.

It is common ground that a wages regulation order (Legal Notice No. 10/75) fixed the minimum remuneration for public service vehicle drivers at 61 cents per hour. Eranna comes within that category subject only to a subsidiary question concerning his age.

Section 11 of the Wages Councils Ordinance provides for the computation of remuneration. It reads:

"Section 11.(1). Subject to the provisions of this section, any reference in this Part of this Ordinance to remuneration shall be construed as a reference to the amount obtained or to be obtained in cash by the worker from his employer after allowing for the worker's necessary expenditure, if any, in connexion with his employment, and clear of all deductions in respect of any matter whatsoever, except any deductions lawfully made -

- (a) in accordance with the provisions of the Employment Ordinance, or
- (b) at the request of the worker, either for the purposes of a superannuation scheme, or a thrift scheme or for any purpose in the carrying out of which the employer has no beneficial financial interest either directly or indirectly.

- (2) Notwithstanding anything contained in the last preceding subsection, wages regulation proposals and wages regulation orders may contain provisions authorising specified benefits or advantages, being benefits or advantages provided, in pursuance of the terms and conditions of the employment of workers, by the employer or by some other person under arrangements with the employer and not being benefits or advantages the provision of which is illegal by virtue of any other Ordinance, to be reckoned as payment of wages by the employer in lieu of payment in cash, and defining the value at which any such benefits or advantages are to be reckoned."

Section 11(1) requires that remuneration shall be construed as a reference to the amount obtained or to be obtained in cash after first allowing for certain necessary expenditure, which is not in issue here. Then section 11(1) goes on to enact that the only permissible deductions are those lawfully made in accordance with subsections (a) and (b) above. Subsection (2) does not apply because Legal Notice No.10/75 did not contain any such provisions. Section 11(1)(a) provides that deductions lawfully made in accordance with the provisions of the Employment Ordinance (Cap.75) may be taken into account in construing the amount of remuneration obtained or to be obtained in cash. Section 51(1)(c) of the Employment Ordinance as far as it concerns this case provides as follows:

"Section 51.(1) Notwithstanding any other provision of this Ordinance -

- (c) an employer may make deductions at the request in writing of an employee -
 - (ii) in respect of charges for the cost of accommodation, fuel or light supplied by the employer and used by an employee:

Provided that the total deductions in respect of such accommodation, fuel and light shall not exceed fifteen per centum of such employee's wages in respect of any one wage period;"

There was no request in writing given by Eranna for appellant to make the said deductions so there was a breach in respect of the payment of cash of only 43 cents per hour unless some other statutory provision authorised such a deduction.

Counsel for appellant has conceded the appellant was not entitled to make any deduction under this provision.

In the Supreme Court section 52 was advanced as a ground upon which the deduction might lawfully be made. This was not put forward on appeal but we wish to make some comment on that section. Section 52 reads:

"Section 52. Nothing in this Ordinance shall render illegal any agreement or contract with an employee for giving to him food, a dwelling place, or other allowances or privileges, in addition to money wages, as remuneration for his services:

Provided that no employer shall give to an employee any intoxicating liquor by way of such remuneration."

This section merely declares that such agreements or contracts are not rendered illegal by virtue of the Ordinance. Thus it would appear that the agreement made with Eranna was not illegal - But the question is whether or not the remuneration so agreed to be paid may be taken into account in assessing the amount required to be paid under an order fixing a statutory minimum remuneration. As we have already said the only amounts other than payments in cash to be taken into account are those set out in section 11 and the amounts claimed in this case do not come within that section. Accordingly, upon that calculation the minimum statutory remuneration fixed by Legal Notice No.10/75 was not paid to Eranna.

These findings dispose of grounds Nos. 1 and 3 so we turn now to ground No.2 which reads:

- "(2) There was no evidence before the Magistrate therefore no evidence before the Supreme Court as to the age of Eranna. The Supreme Court has therefore erred in presuming that Eranna was clearly over 18 years of age."

This point was not taken in the Magistrates Court but was advanced before the Supreme Court. Legal Notice No. 10/75 provided for minimum hourly remuneration for ten different classes of employees including drivers of public service vehicles. The

only remuneration fixed was 61 cents per person of or over the age of 18 years. It was argued that the prosecution must prove that Eranna was 18 years of age at least to qualify for such remuneration. The learned Judge found as follows:

"(Counsel) submitted that there being no evidence as to Eranna's age there was nothing to show that he was subject to the order. However, Eranna is a P.S.V. driver and could not hold a P.S.V. licence unless he had attained that age; he has, on his own evidence as accepted by the Magistrate, held his present job for 3 years. Clearly he is over 18 years."

Counsel for respondent drew attention to section 35(2) of the Traffic Ordinance (Cap.152) which prohibits any person under the age of 21 years from driving a public service vehicle. Eranna deposed that he was the holder of the required licence and this evidence was not challenged. The maxim omnia praesumuntur rite esse acta may be applied so that, in the absence of challenge or evidence to the contrary, it may be presumed he was lawfully licensed as a public service driver.

In our view the learned Judge came to a correct decision on this point both for the reasons he gave and for the additional matters to which we have drawn attention. If the matter had been raised before the learned Magistrate he had further evidence which he was entitled to consider. We refer in

particular to the cases of R. v. Cox (1898)
1 Q.B. 179 and Wallworth v. Balmer (1965)
3 All E.R. 721.

For these reasons the appeal was dismissed at the hearing on March 1st 1978 and the order of the Supreme Court was confirmed.

(Sgd.) T. J. Gould
VICE PRESIDENT

(Sgd.) C. C. Marsack
JUDGE OF APPEAL

(Sgd.) T. Henry
JUDGE OF APPEAL