Appeal 12 (N.G.) 1954.

DONALD NEIL GOW
Appellant

and

WILLIAM ABLE FINNELLEY
Respondent

MINUTE OF JUDGMENT

Ground 1 : £13. 6. 8 salary awarded by the magistrate to respondent.

The contract of service between the parties provided that Respondent would commence work on 1st December 1950, for a term of two years at £40 per month, plus bonuses.

The appellant admitted in evidence that to his knowledge respondent did work before 1st December 1950. Respondent produced a copra statement, Exhibit "B", showing production of copra commencing from 20th November 1950.

It is apparent from the magistrate's findings that he allowed the £13. 6. 8 to respondent for the period 20th November 1950 - 30th November 1950. There was evidence before the magistrate on which he could have found that respondent did work during that period. Appellant did not seriously challenge respondent's right to work during that period and appellant has received the benefit of respondent's services during that period.

This amount will stand.

Ground 2 : £56. hire of Jeep awarded by the magistrate to respondent.

Appellant himself did not challenge this item in his evidence. Apparently appellant depended upon cross-examination of respondent whereby respondent stated that he did not "make an agreement" for the use of his jeep on the plantation. But in evidence in chief respondent stated that he hired his own jeep for the plantation because the plantation tractor was out of commission and that he advised appellant accordingly. There is no evidence that appellant objected to that procedure.

There was evidence before the magistrate that appellant impliedly accepted the hire and use of respondent's jeep.

This amount will stand.

Ground 3: £200 bonus on copra produced awarded by the magistrate to respondent.

As to quantity - Mr. Kirke, counsel for appellant, and Mr. Sturgess, counsel for respondent, both admit that on their compilations the amount of copra on which bonus was payable was approximately 56-tons.

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The magistrate assessed 50 tons. It appears that he worked on Production Control Board figures, plus 199 bags left on the plantation by respondent when respondent ceased work. If the magistrate was in error in his assessment of quantity, then it is in favour of the appellant and against the respondent. But as the figures are approximate I don't intend varying the magistrate's assessment.

As to bonus. The contract of service is silent on the matter as to whether the bonus should be payable on copra as at the plantation or as in Production Control Board's Store.

Respondent stated on cross-examination that Production Control Board weights are always taken and shrinkage is 4%.

Appellant in evidence in chief stated that he assumed Production Control Board weights would be used and on cross-examination he stated he thinks there is a shrinkage of 4%.

The evidence given by the parties before the magistrate was, in my opinion of little assistance to the magistrate in formulating his finding on this particular issue. It appears that the magistrate found that bonus was payable on copra as at the plantation. I do not feel disposed to over-rule him on the issue.

This amount will stand.

Ground 4: £10.10.-. for fares awarded by the magistrate for the respondent and his family at the termination of employment.

On the magistrate's note made at the conclusion of appellant's evidence in chief as follows: "The fares from Namatanai to Rabaul of £10.10.-. was agreed to by both parties" and on the note on his finding on the item "Freight charges to Rabaul" which note reads "Liability for fares admitted by counsel for defence", it appears that the magistrate was of the belief that this amount was admitted as owing by appellant.

It is now claimed by appellant that because the contract of service did not contain provision for payment of these fares the magistrate was in error in awarding the amount to the respondent.

The two notes by the magistrate referred to above have not been challenged by counsel for the appellant on this appeal therefore I must accept the magistrate's intimation that the appellant admitted liability.

This amount will stand.

Ground 5: £78. claimed by appellant for petrol sold and delivered to respondent disallowed by the magistrate.

This claim appears in appellant's Particulars of Set-off and Counter-claim as 6 x 44-gallon drums of benzine.

Appellant alleges that respondent did not deny in evidence that he was indebted. Respondent in evidence in chief stated that six drums of benzine were sent to the plantation by appellant and this was used on plantation work, and that he purchased benzine for his private use from a store at Namatanai. That was an implied denial of indebtedness.

In evidence in chief appellant stated that respondent was to take six drums of benzine to the plantation but he did not proceed to prove any sale of that benzine to respondent. On cross-examination he stated that the six drums of benzine were discussed in May 1953, but here again he did not proceed to prove sale to the respondent.

There was evidence before the magistrate on which he could have found in favour of respondent on that item.

This finding will stand.

Appeal dismissed with costs against appellant £21. -. -.

(Sgd) A. KELLY, J.
27th October, 1954.