

IN THE SUPREME COURT OF }
THE TERRITORY OF PAPUA }
AND NEW GUINEA. }

CORAM:

THE UNIVERSITY
OF
PAPUA & NEW GUINEA
THE LIBRARY

B E T W E E N

PAPUAN PRINTS LIMITED

v.

ANTON RUCKER

J U D G M E N T

1. In this case the Plaintiff Company has been represented by Mr. Sturgess of Counsel and the Defendant by Mr. Kirke of Counsel.
2. The case arises out of the employment of the Defendant by the Plaintiff Company, and the facts are as follows:-
3. The Defendant Anton Rucker was engaged by a written agreement executed at Munich on the 1st February, 1955 to serve the Plaintiff Company as a jeweller, etc., for a period of 3 years from the date of his embarkation for Port Moresby.
4. By Clause 1 of that agreement, the Defendant was to receive £80 a month, as I construe the clause, from the date of his embarkation by ship for Port Moresby.
5. At the time of the execution of the written agreement, the Managing Director of the Plaintiff Company, Mr. Carter, had not met the Defendant, but did so for the first time on the 14th May, 1955 at Munich.
6. The meeting took place at the house of the Plaintiff Company's business agent in Munich, Mr. Sellier, and on that occasion Mr. Carter, Mrs. Carter (herself a Director of the Plaintiff Company), Mr. and Mrs. Sellier and the Defendant and his wife were present.
7. At this meeting, discussion took place about the employment covering some hours, and both Mr. and Mrs. Carter have sworn quite positively that the Defendant there and then agreed, notwithstanding the written agreement that the salary of £80 a month provided by Clause 1 in the agreement should not accrue and become payable till he took up his actual duty at Port Moresby, though the Defendant had refused to sign any modification of the written agreement to this effect.

14. It will be seen therefore, that the first question to resolve is whether in fact there was any verbal modification to the written contract dated 1st February, 1955 agreed to by the Defendant on the 14th May, 1955 as alleged by the Plaintiff Company and acted upon by it. Central London Property Trust Limited -v- Hightrees House Limited 1947 K.B.D. at Page 134.

15. After hearing the evidence placed before the Court, I am satisfied that on the 14th May, 1955 the Defendant did agree verbally to the salary not accruing and becoming payable till the Defendant reached Port Moresby, notwithstanding that he would not sign any second written variation. I think the alteration in the written agreement from air to sea travel made the securing of such a modification an urgent matter for the Plaintiff Company, and one uppermost in Mr. Carter's mind, and evidence satisfies me, too, that at that stage the Defendant was ready to agree to much to establish good relations with his employer.

16. I am satisfied, too, that Carter took good care to have that variation, when proposed, interpreted to the Defendant, who agreed to such variation.

17. The Defendant has complained about his working conditions and his living conditions as failing to comply with the Company's obligations under the contract. In the circumstances of Port Moresby, and after inspecting both, I do not regard these as being so bad as to justify the Defendant from repudiating his agreement to serve the Company.

18. I am left with the impression, from Mr. Norman White's evidence, that he left for reasons unconnected with the contract. The Defendant therefore wrongfully repudiated the contract and should refund a proportion of fares and freight to the Plaintiff Company for the period he did serve, and I award damages for the breach of his agreement, which I assess at £150.

19. There will be a verdict of £80 in favour of the Defendant on the counter-claim, being £40 deducted and £40 due in salary.

20. The Plaintiff will be awarded against the Defendant the costs of this action on the lowest scale, from which will be deducted the costs of the successful counter-claim by the Defendant.