

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

CORAM : MANN C.J.

428

IN THE MATTER OF THE PUBLIC SERVICE (PAPUA AND
NEW GUINEA) ORDINANCE, 1963-1965.

DECISION OF AN APPEAL BOARD CONSTITUTED TO HEAR
AND DETERMINE AN APPEAL BY W.J. WHATMAN, AN
OFFICER OF THE DEPARTMENT OF EDUCATION.

The Appeal Board comprised the Chief Justice, (appointed by the Administrator); A.C. Gilchrist Esq., (representative of the Division to which the appellant belongs); and R.J. Mason-Pettifer, (an officer appointed by the Administrator).

The Appeal Board sat at the Supreme Court building in Port Moresby on Monday, 19th June, and Tuesday, 20th June, 1967, to hear and determine the appeal. The Appeal Board took into account the matters required by the Public Service Ordinance and Regulations. Mr. Munroe appeared for the appellant and Mr. Davenport for the Department of Education.

The Board, having made a thorough investigation gives the following decision :

(i) That the appellant is guilty of an offence under Section 61(g) of the Ordinance, viz. guilty of improper conduct otherwise than in his official capacity.

(ii) That the punishments imposed by the Director of Education were not in accord with the provisions of the Ordinance. The appeal is allowed to the extent of annulling those punishments and varying the decision of the Director by imposing as punishment a fine of five dollars, (\$5.00).

The punishments imposed by the Director are :

- (a) That the appellant's salary be reduced by one increment;
- (b) That the appellant should be transferred to Dregerhafen;
- (c) That the appellant's provisional promotion be cancelled.

The Board was provided with the personal file of the appellant which contained little information concerning his efficiency as an officer prior to the events which led to the charge being laid. This was apparently due to the fact that the prospective advancement in the status of the appellant was treated as a matter of recruitment and dealt with in Canberra.

The provisional promotion of the appellant was published in the Government Gazette with a large batch of names. The Department wrote to the Chairman of the Promotion Appeal Committee on 12th May, 1967, stating that Mr. Whatman "is now not suitable for promotion to the position of Education Officer". It is clear that the conduct with which the appellant was charged had resulted in the withdrawal of the recommendation of the Director of the Department that he be promoted.

It is not for us to express any view as to how the Promotions Appeal Committee should resolve this question, but since the letter is clearly likely to prejudice the appellant in the course of the proceeding of the Promotions Appeal Committee, we think we should expressly state that the letter itself, and any implied withdrawal of the Director's recommendation, constitutes an unauthorised punishment imposed on the appellant, on the express ground that he had "been found guilty of striking a student."

Counsel representing the Director conceded at the outset that the Director had erred in imposing two punishments, although the Ordinance only authorises one to be imposed. Mr. Davenport contended that the Department's letter of the 12th May to the Promotions Appeal Committee in no way constituted an additional authorised punishment, but we conclude that the letter of the Director to the Public Service Commissioner dated 1st May makes the punitive character of this action quite plain. Having regard to the provisions of the Ordinance, we think it of especial importance that the Department should avoid taking any action which might prejudice the officer's career and the normal expectation of promotion in the Public Service.

Under the Ordinance the Director is in the invidious position of having to initiate the charge,

form tentative views on it and take other action, and then finally decide the case and impose punishment. At the same time the Director has to exercise discretionary powers in relation to an officer's duties, postings and privileges. He is responsible for the reputation of his Department and its public relations. With all these conflicting responsibilities it is difficult to avoid the possibility of severe prejudice to an officer who has on some occasion fallen from grace.

Apart from the incident in question no adverse material was produced. The normal increments had been granted without deferment and a number of students from Mr. Whatman's class attended the hearing and made it clear that they had respect and regard for the appellant as a good teacher and that they want him to come back to their class. We infer from the information available to us that the appellant is a competent and efficient officer.

This Appeal Board is not concerned to decide whether the appellant has committed a criminal offence or whether he might be liable in civil proceedings, either for compensation or otherwise. These liabilities, if they exist, will be in no way effected by the decisions of this Board.

The first point to consider is whether the appellant's attack on HOTE constituted improper conduct within the meaning of the Ordinance. The facts are now clear, but on the first report, based on HOTE's account of what took place, some apparent errors led the Department into the view that when he discovered that the young girl was pregnant, the appellant and a man named HAKA both attacked HOTE. Mr. Whatman's more detailed account of what happened is not challenged and makes the position clear.

Mr. Whatman and his wife had assumed a good deal of responsibility for the young girl HEPA and had become closely attached to her. When they returned from leave and found that the girl was pregnant Mr. Whatman and his wife were greatly upset and tried to find a sympathetic solution to the problem. Mr. Whatman went to HOTE and peacefully took him out in his car so that they could have a private conversation. Mr. Whatman, who had been reliably told that HOTE was the cause of the pregnancy

and had frequently visited the girl, hoped that HOTE would be prepared to marry her. To his surprise Mr. Whatman was told by HOTE that he had not had anything to do with the girl and knew nothing about her. This left Mr. Whatman in a position of uncertainty as to the facts, so he drove back to the house and brought HOTE inside where Mrs. Whatman, the relatives of the girl and the girl herself, HEPA, were sitting around the dinner table. HEPA again identified HOTE, who again denied any knowledge at all of the matter. It was not until this point that Mr. Whatman struck HOTE with his fist, whereupon HOTE fell against a glass door breaking the glass. He then threw himself against a fly-screen door, bursting it open and breaking the mechanical door closer. HOTE then fled back to his dormitory.

Our assessment of these facts is that in a situation of responsible concern and in circumstances of great stress, Mr. Whatman momentarily lost his temper and struck HOTE. There is nothing in this unusual incident to suggest that Mr. Whatman has some deficiency of character or self-control that would lead to a recurrence of this behaviour. Having regard to what is known of the appellant, we think that this occurrence, with all its implications, is more likely to prevent any recurrence. At this stage, therefore, we think that the incident should be treated as an unfortunate occurrence which should not be the occasion for a substantial loss of status or privileges upon the footing that it indicates any unfitness on the part of the appellant to carry out his duties in a proper manner, or to conduct himself as an officer should.

Since other responsibilities remain unaffected, we think that a fine of five dollars constitutes an adequate indication of disapproval. The punishments imposed by the Director would involve cumulative losses throughout Mr. Whatman's career, which would be out of all proportion to the character of the offence.

In the course of the appeal we noticed some defects in the filing system. This case did not involve any challenge of the integrity of the files, but in a different kind of case the Department might have been

embarrassed. Some papers on Mr. Whatman's personal file were apparently out of order and one folio was not numbered and quite a number were missing. In the event it turned out that some papers were taken off the file to be copied for the benefit of members of the Board, but the file had not been noted accordingly.

This judgment is subject to the
judgment handed down on 21st June, 1967.

This judgment was not intended to
copy in existence and is held at the

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Port Moresby.

21st June, 1967.