

JOINT COURT OF THE NEW HEBRIDES.

The thirteenth day of February in the year One thousand nine hundred and forty two,

Before their Honours :

J.L.TROGNON, French Judge, President.

A.H.EGAN, British Judge,

and Messrs. A. IBENIN, Assessor,

ERRARD, Public Prosecutor "ad hoc"

S.DUBOIS, Registry Clerk.

This is an accusation brought against André NATUREL, French citizen, Planter, living on the island of Aisse (Santo), and his employee Louis Parapara, of having committed various breaches of the Anglo-French Protocol of 6th August 1914 relative to the recruitment and engagement of native labourers.

The accused were examined and submitted their defence at the sitting held on 26th January 1942.

The Court having heard the Public Prosecutor "ad hoc" in his address then considered its judgment.

J U D G M E N T .

André Naturel and the native Louis Parapara were charged with certain offences as set out in the summons dated 21st October 1941. The accused did not contest the material points of the charges and in his defence André Naturel pleaded as follows:

First count : that Edouard was not a native but a British subject, having been born in Australia of an aboriginal mother;

According to the text of the Convention of 6th August

1914/

1914 (Article 8) the word "native" for the purposes of the said Convention is defined as meaning any person of the aboriginal races of the Pacific who is not a citizen or subject or under the protection of either of the two Signatory Powers.

The said Edward who appeared at the Hearing is physically of aboriginal race, he has never himself claimed British nationality (Edward does not speak English, lives in the native manner, etc.). He was also previously recruited as a native by the C.C.I.B. and was later unlawfully enticed away by A. Naturel.

He did not produce or ask for the production of any papers declaratory of his status or conferring on him any such status claimed - not by him - but simply by the accused Naturel for the purposes of his case.

The latter admitted at the Hearing that he had recruited or caused Edward to be recruited as a native and that he only paid to Edward such wages as he usually paid to his other native labourers. He did not prove or attempt to prove that Edward was a British subject or ressortissant.

To make allegations is not the same thing as to prove, and to plead that an aboriginal is a citizen or subject of one of the two co-sovereign Powers, without the production of proof, is an insufficient ground for the rebuttal of the first charge.

The accused André Naturel did in this manner exceed his lawful rights, he was not justified in setting up this form of defence or in attempting to profit by a condition not inherent in him, but existing (according to him) in the supposed British nationality of the native.

This pretension -his only defence- which was only put forward by Naturel in a Court of Justice and had not been claimed by him from the administrative authorities who demanded the appearance of the "native" Edward, cannot be admitted by the Court and is therefore purely and simply rejected.

Second count : The accused André Naturel pleads that he is not required to observe the provisions of Article 39 paragraph 1 of the Protocol by reason of a circular dated 13th November 1935 issued by the French Residency, the said circular being produced at the Hearing.

This circular, which is nevertheless flagrantly irregular and illegal, does not refer however to the provisions of Article 39, of a breach of which the accused is charged, but it concerns Article 31 paragraph 7 of the Convention.

André Naturel is being prosecuted not as "master of the ship" (Art: 31 par. 7) but as "employer" (Art: 39, par. 1), moreover, he does not deny the facts of the accusations brought against him.

Third count : The women Winnie, Matta, Elisabeth I, Lona, Elisabeth II and Gracy were recruited and employed without the consent of their husbands, and the unmarried women Dorothy and Angeline without the authority of the Chief, in contravention of the provisions of the Protocol.

Fourth count : André Naturel pleaded that the "Société Naturel Frères" possesses a recruiting licence and that under the circumstances he was not required to obtain personally a permit as set out in Article 31, par. 1 of the Protocol. This Article however does not only refer to a personal permit for the recruiter but also requires that the vessel used for recruiting operations shall be provided with a recruiting licence.

The illegal recruiting was effected by means of the cutter "Bamboula" and no recruiting licence was issued in respect of this vessel.

In conclusion, the Court finds that there is no legal substance in the defence put forward by the accused, but that the evidence provides sufficient proof against André Naturel of the offences with which he stands charged.

As regards this accused there is occasion to bear in mind that he has shown a systematic attitude of

unwillingness/

unwillingness to conform to the very important regulations concerning native labourers (see conviction recorded against him on 26th August 1941).

With regard to the accused native, Louis Parapara; Article 56, par. 1 provides punishment for breaches of the provisions of the Convention regarding the recruiting and engagement of native labourers, but only when such breaches are committed by non-natives, exception being made of the provisions of Article 12, par. 2(C).

Paragraph 4 of the same Article 56 provides that "In the event of conviction on a serious charge, or for a second offence, the recruiting licence, as well as the right of engaging labourers, may be withdrawn for a period not exceeding two years by the Resident Commissioner of the Power of which the "recruiter" (or employer) is a dependent."

According to the text of the Protocol, the "recruiter", being necessarily a "dependent", cannot be a native, as the natives of the Group do not possess nor can they acquire the status of dependents of other Powers.

The text of the various Articles of the Protocol under the heading "Recruitment of native labourers" entirely confirms the interpretation given above by the Joint Court, that is to say, that recruiters must be British subjects or French citizens or the dependents of another Power but in no case native or foreign (native) workers. (With reference to this latter point see the fifth sentence of Art. 1 par.2.).

The spirit of protection of the natives which inspired the provisions of the Protocol would be radically compromised should the opposite thesis be admitted.

It is however made clear from the documents in the file (minutes of proceedings dated 10th August 1941, see also judgment pronounced this day in the case of the Public Prosecutor v. James Vusi) that the practice of the Joint Administration has been to tolerate, even authorise, the recruitment of natives by a native recruiter/

recruiter without perceiving the grave and dangerous irregularity of this practice nor the legal circumstance that breaches, committed by natives, of the provisions of the Protocol relating to recruiting cannot be punished.

On these grounds,

The Court discharges the native Louis Parapara and convicts André Naturel of the offences of which he is accused; he is accordingly sentenced to pay, in addition to costs, fines as set out hereunder:

- On the first count : Five hundred francs (Fr 500.)
- On the second count : Two hundred and fifty francs (Fr 250.)
- On the third count : Five hundred francs (Fr 500.)
- On the fourth count : Two thousand francs (Fr 2000.)

In the case of non-payment of the fines, the Court orders that the duration of imprisonment be fixed for the minimum period.

J. Maguin
French Judge

A. W. J. M.
British Judge

Assessor

A. H. J. M.

Registry Clerk

S. Dubois