

91363

1967/6

No. 3 of 1966

IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL

---

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

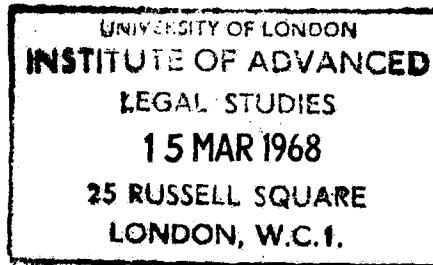
---

B E T W E E N :-

TIO CHEE CHUAN (Plaintiff) Appellant

- and -

10 1. KHOO SIAK CHIEW  
2. KWAN YUI MING  
3. WONG CHUNG MAN  
4. SEAH TEE SHU  
5. TAN TZE SHU  
6. CHOI WING  
7. TAN SEI JOO  
8. TAN TECK BAK  
9. WU KWOK LIANG  
20 10. CHAN YUEN YAN (Defendants) Respondents




---

CASE FOR THE RESPONDENTS

---

Record

20 1. This is an appeal from the judgment of the Federal Court of Malaysia (Wylie C.J. Borneo, Tan Ah Tah F.J. and Simpson J.) allowing the Respondents' appeal from the judgment of Harley J. in the High Court of Borneo awarding the Appellant damages for wrongful dismissal, assessing these damages at \$5676.00 down to the date of trial and declaring that he would be entitled to further damages at the rate of \$330 per month from the date of trial until the 31st day of December 1964

30 if he could not obtain employment during that period or, if he could obtain such employment but at a remuneration of less than \$330 per month, at the rate of the difference between his remuneration and \$330.00 per month.

2. The Appellant was employed as a teacher in the Chinese Secondary School at Sandakan known as Chung

Record

P.24 1.12 Hara Senior School, Sandakan on the terms of a written contract which provided for his employment for four years from the 1st day of January 1961 until the 31st day of December 1964. The Appellant was an unregistered teacher and by a document dated the 21st day of January 1959 and made under the provisions of The Education Ordinance No. 10 of 1954 of the Colony of North Borneo the Director of Education gave his authority for the Appellant to be employed as a teacher at Chung Hara Senior School, Sandakan, provided that his teaching was limited to junior middle classes only. 10

P. 4 1. 1 3. The Appellants said contract of employment was made between the Appellant of the one part and the Management Committee of Chung Hara Senior School, Sandakan, of the other part and it was signed by the Appellant, the first Respondent as the Supervisor, the ninth Respondent as the Head of the Education Sub-committee of the Chinese Chamber of Commerce, Sandakan and the headmaster of the school. 20

P.17 1.19 4. The Respondents were the persons registered as members of the Management Committee of Chung Hara Senior School, Sandakan, at the 26th day of February 1964.

5. By clause 4 of the Appellant's said contract of employment, which was in Chinese, it was provided that:

P.32 1.1 "No teacher or clerk of the School may seek release from his contractual obligations during the validity of the service contract except for cogent reasons. If, under special circumstances, it should be necessary to seek release from or a cancellation of the contract, the party seeking such release or cancellation shall serve 3 months advance notice on the other party." 30

P.25 1.28 6. The Chung Hara Senior School, Sandakan, was a school which depended on the receipt of grants from the Education Department of the Colony of North Borneo for its existence and this fact was well known to the Appellant. 40

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED LEGAL STUDIES  
15 MAR 1968  
25-RUSSELL SQUARE  
LONDON, W.C.1.

7. By the Education (Salaries) Rules 1961 the Director of Education of the Colony of North

Borneo introduced a unified salary scale for teachers in grant aided schools in the Colony of North Borneo and by a letter dated the 30th day of November 1961 and sent by the Director of Education to the Appellant he was assimilated on the Scale Class III Grade 1(g) at the salary of \$330 per month with effect from the 1st day of January 1962.

P.26 1. 2  
1.20

10 8. From the 29th day of May 1962 until the 10th day of October 1962 the Appellant was with his agreement employed by the headmaster of Chung Hara Senior School, Sandakan, to teach a senior middle class at the school and received an additional salary of \$100 per month whilst being so employed.

P.24 1.18

9. Whilst the Appellant was employed to teach the senior middle class as aforesaid Chung Hara Senior School, Sandakan, had an adequate number of teachers to teach the junior middle classes at the school and these teachers only had authority to teach those classes and the Appellant knew this.

P.25 1.37

20 10. The Education (Central Education Fund) Rules 1961 (hereinafter called the 1961 Rules) inter alia provided by Rule 5 that grant-aided schools should be conducted in accordance with any written law of the Colony and by Rule 6 that if a grant-aided school was not conducted in such a manner that it would qualify under Rule 5, the Director of Education might reduce or cancel the grant-in-aid of the school.

30 11. Before October 1962 the Governor in Council of the Colony of North Borneo had published proposals amending the 1961 Rules with effect from the 1st day of January 1963 and these proposals were adopted in The Education (Central Education Fund) (Amendment) Rules 1963 (hereinafter called the 1963 Rules) made on the 18th day of April 1963 and deemed to have come into operation on the first day of January 1963. By the 1963 Rules a new rule was inserted after Rule 5 in the 1961 Rules namely

40 "5A. (1) The Director may direct, either generally or in particular cases, the maximum number of teachers who may be employed in any grant-aided school.

(2) The Director may permit any school to employ teachers over and above any maximum laid down under sub-rule (1): Provided

Record

that no grant may be paid towards the cost of the salary of such teacher."

- P.26 1.34 12. By the beginning of October 1962 the Appellant and Respondents knew of the proposals in paragraph 11 hereinbefore mentioned and the Director of Education had directed that the number of teachers being employed in the Junior classes of the Chung Hara Senior School, Sandakan, was the maximum number of teachers which might be so employed and that the Appellant should not be employed to teach a senior middle class. 10
- P.24 1.23 13. On the 2nd day of October 1962 the Education Sub-Committee of Chung Hara Senior School, Sandakan, met and decided that in view of the changes created by the proposed 1963 Rules which would take effect on the 1st day of January 1963, of the Directors' directions on the maximum number of teachers to be employed at the school and on the Appellant being limited to teaching junior middle classes only, of the right to terminate the Appellant's employment in special circumstances and of the need to give the Appellant three months' notice of termination, the Appellant should be given a notice of termination of his employment. A letter dated the 8th day of October 1962 signed by the second Respondent as acting supervisor and chairman of the Education Sub-committee was sent to the Appellant terminating his employment on the 8th day of January 1963 and a further letter dated the 10th day of October 1962 was subsequently sent to the Appellant giving the reasons for his dismissal. 20
- P.24 1.27 14. The trial Judge in construing clause 4 of the Appellant's service contract held that the parties' intention was not to widen but more likely to restrict the Common Law reasons for dismissal, that if the contract was ambiguous it should be construed against the Respondents and that the Appellant could not be dismissed merely because the contract was becoming burdensome or inconvenient. The trial Judge did not consider the Defence that the Defendants were not the correct parties to the action. 30
- P.33 1.24 15. The Federal Court of Appeal unanimously allowed the Respondents' appeal on the grounds that the change brought about by the 1963 Rules was obviously contemplated at about the time 40
- P.46 1.19

10 that the Appellant was given notice of termination, that the notice was given as a result of that change, that if the school management body did not comply with the 1963 Rules from the 1st day of January 1963 the school's grant-in-aid would be jeopardised and that these circumstances were special circumstances entitling the school management body to dismiss the Appellant. The Court did not think it necessary to consider any of the other grounds of appeal including the question as to whether the Respondents were the proper party to be sued.

16. On behalf of the Respondents it will be contended that the judgment dismissing the Appellant's claim is right and should be upheld for the following and other

R E A S O N S

- (1) BECAUSE the trial Judge misdirected himself on the proper construction of the contract of service.
- 20 (2) BECAUSE the facts proved in the evidence of the parties and by judicial notice amounted to special circumstances enabling the Appellant's contract to be terminated on three months' notice.
- (3) BECAUSE the Respondents were not the proper parties to be sued as Defendants.
- (4) And upon the grounds stated in the judgment given by Chief Justice Campbell Wylie of Borneo.

J. LLOYD-ELEY.

30

No. 3 of 1966

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

---

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA

---

B E T W E E N :-

TIO CHEE CHUAN  
(Plaintiff) Appellant

- and -

1. KHOO SIAK CHIEW
  2. KWAN YUI MING
  3. WONG CHUNG MAN
  4. SEAH TEE SHU
  5. TAN TZE SHU
  6. CHOI WING
  7. TAN SEI JOO
  8. TAN TECK BAK
  9. WU KWOK LIANG
  10. CHAN YUEN YAN  
(Defendants) Respondents
- 

CASE FOR THE RESPONDENTS

---

KINGSLEY WOOD & CO.,  
6-7, Queen Street,  
London, E.C.4.

Solicitors for Respondents.