

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

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B E T W E E N :

THE COMPTROLLER GENERAL OF  
INLAND REVENUE, MALAYSIA Appellant

AND

ALAN RICHARD KNIGHT Respondent

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CASE FOR THE RESPONDENT

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RECORD

Facts

1. On 23rd August 1954 the Respondent, who resided in Plymouth, England, entered into a written contract of employment with the Federal and Colonial Building Society Limited, a company incorporated and having its registered office in the Colony of Singapore (subsequently known as Malaya Borneo Building Society Limited, and herein called "the Company"). The Respondent's position was that of Staff Surveyor. A copy of the said contract is printed on pages 7 to 14 of the Record. p.7 1.18 to p.14 1.5.
2. The Company wrote to the Respondent in Penang a letter dated 6th February, 1960 in the terms printed on pages 14 and 15 of the Record p.14 1.8 to p.15 to 1.25.
3. By 1965
- (a) the Respondent had risen to Chief Surveyor to the Company
- (b) the policy of the Government of the country was to insist on commercial firms and private enterprises "Malayanising" their staff p.14 1.8 to p.15 to 1.25

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RECORD

4. On 2nd November, 1965 the Board of Directors of the Company passed a resolution

"That

(a) The Society's Chief Staff Surveyor, Mr. A. R. Knight be declared redundant as from 1st December 1965.

(b) Mr. A. R. Knight be given redundancy pay at the rate of one month's basic salary for every completed year's service subject to a maximum of 12 months' pay". 10

5. The Respondent's employment terminated on 30th November 1965, on which day the Respondent left Malaya for London.

6. In accordance with the aforesaid resolution the Company paid the Respondent the sum of \$28,050, the subject matter of this appeal.

7. The Comptroller General of Inland Revenue raised an assessment on the said sum of \$28,050, and the Respondent appealed to the Special Commissioners of Income Tax. The Special Commissioners, by deciding order dated 29th October, 1969 confirmed the assessment. The text of the deciding order is printed as Annexure D on pages 16 to 18 of the Record and the grounds of the decision as Annexure E on pages 18 to 31 of the Record. 20

p.16 1.27 to  
p.18 to 1. 11  
p.18 1.12 to  
p.31 1.13

8. The Respondent by letter of 31st October 1968 required the Special Commissioners to state a case for the Opinion of the High Court pursuant to paragraph 34 of Schedule 5 to the Income Tax Act, 1967 and the Special Commissioners so stated a case on 25th March 1969. 30

p.39 1.18 to  
p.51 1.38

9. The case was heard before Chang Min Tat J. on 4th April and 9th May, 1969 when judgment was reserved. On 30th August, 1969, judgment was given in favour of the Respondent with costs

10. The Appellant appealed from the decision of the High Court on 22nd September, 1969. The 40

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case was heard before the Federal Court of Malaysia (Appellate jurisdiction) Federal Court Civil Appeal No. X 98 of 1969 (Asmi, Lord President, Malaysia, and Suffian and Gil F.JJ.). On 2nd March, 1970 judgment was given unanimously in favour of the Respondent, with costs, confirming the decision of the Court below.

p.52 l.1 to  
p.53 l.13

p.90 l. 1  
to p.108  
l.44

- 10 11. The Appellant having moved the Federal Court on 8th June, 1970 to grant conditional leave to the Appellant to appeal to Her Majesty in Council, such conditional leave was granted that same day and final leave so to appeal was granted on 6th October, 1970.

p.109 l. 1to  
p.111. l.26

p.112 l. 1 to  
p.115 l.17

Submissions to the Respondent

12. The Respondent submits:

- 20 (a) The Special Commissioners erred in law in finding that the said contract of employment, and in particular clause 11 (a) thereof, was varied by embodying therein the provisions of the said letter
- (b) The true and reasonable conclusion to be drawn from the primary facts found by the Special Commissioners is that the said sum was "Malayanisation money" or compensation for loss of office or alternatively a retiring gratuity within section 13 (1) (i) of the Income Tax Ordinance 1947

Ad (a)

- 30 13. There was no evidence that the said letter constituted an offer.

14. If the said letter had been an offer, then there was no evidence that it was accepted by the Respondent.

15. If there had been such offer and acceptance the terms of the letter made no provision for any consideration to move from the Respondent and there was no evidence that any such consideration had moved.

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16. The provisions of the said letter even if (contrary to the Respondent's submission) they had become binding on the Company would not have conferred on the Respondent any right to the sum of \$28,050 or any other sum. The Company would have been obliged to "consider" the making of redundancy payments. As regards loss of office due to Malayanisation, the Company would at most have been bound to draw up a scheme for the Board's approval: there was no evidence that any such scheme was drawn up or approved

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17. Insofar as the evidence bore on this aspect of the matter the finding of the Special Commissioners was against the weight of it and in particular:-

(i) The said letter on the face of it did not take the form of an offer nor did it invite acceptance

(ii) Although the Company Secretary could not speak to the events of 1960 (when the said letter was received), he could and did speak to the events of 1965 (when the payment was made). The Special Commissioners rejected this evidence relating to 1965 on the grounds that the Secretary was not in office in 1960: the Respondent says that they were wrong to do so and that the right inference to be drawn from the Secretary's evidence is that the parties did not regard themselves as bound by the terms of the said letter. Even if (contrary to the Respondent's submission) the Secretary's evidence ought to be rejected, the Respondent says that insofar as the Special Commissioners considered that the mere absence of evidence indicated the nature of the events of 1960 they were wrong to do so.

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(iii) The Board Resolution authorised the payment to the Respondent of a sum called "redundancy" pay and directed the manner in which it was to be calculated. Paragraph (b) of the said Board Resolution would have been superfluous and meaningless if the Company had been under

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any contractual obligation to pay any sum to the Respondent.

Ad (b)

18. The said contract of the 23rd August 1954 was the only contract between the Respondent and the Company. The payment of the said sum of \$28,050 was not made pursuant to that or any other contract between the Respondent and the Company.

10 19. The Board's references to redundancy were a euphemism. The Respondent was dismissed without notice, not because the post of Chief Surveyor was abolished but so that his post could be filled by a Malayan. This was in accord with Government policy. But the Company (as it well knew) had no legal or moral right to deprive the Respondent of his job in this way. The Board very properly decided to compensate him for loss of office, and did so.

20 20. A payment made not pursuant to a contract of employment but by way of compensation for loss of office or employment is not taxable as an emolument derived from the office or employment: Hunter v. Dewhurst (1932) 16 T.C. 605. This is so even where the office need not continue, if it is likely to continue: Chibbet v. Joseph Robinsons & Sons (1924) 9 T.C. 48. A retiring gratuity is exempt from income tax by s.13 (1) (i) of the Income Tax Ordinance 1947.

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21. It is respectfully submitted by the Respondent that this appeal ought to be dismissed for the following among other

R E A S O N S

(a) BECAUSE the said payment of \$28,050 was a capital payment made for compensation of the loss of the Respondent's office or employment, and not taxable under the Income Tax Ordinance, 1947, or alternatively a retiring gratuity exempt from income tax by section 13 (1) (i) of the said Ordinance

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- (b) FOR the reasons given in the Judgment of the Federal Court of Malaysia.
- (c) FOR the reasons stated in more detail elsewhere in this Case

MILTON GRUNDY

No. 49 of 1970  
IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

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B E T W E E N:

THE COMPTROLLER GENERAL OF INLAND  
REVENUE Appellant

- and -

ALAN RICHARD KNIGHT Respondent

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C A S E FOR THE RESPONDENT

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SLAUGHTER & MAY,  
35 Basinghall Street,  
London, EC2V 5DB

Agents for the Respondent