

1954
March 18

PHILIPPOS
K. VARDAS
v.
THE POLICE.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]
(March 18, 1954)

PHILIPPOS KLEANTHOUS VARDAS,
Appellant,

v.

THE POLICE, *Respondents.*

(Case Stated No. 89)

Employment of Labour—Offence under Port Workers (Regulation of Employment) Law, 1952—Section 2, definition of port worker—Ship's crew excluded.

Before the Magistrate, a clerk of a ship's agent was held to have aided a ship's master in employing the ship's crew to off-load certain cargo into a lighter. By regulations made under the Port Workers (Regulation of Employment) Law, 1952 (Law No. 35 of 1952) it is an offence to employ port workers who are not registered under those regulations. The clerk was convicted under the regulations, it being held that the ship's crew were "port workers" not registered in accordance with the regulations.

Upon a case stated to the Supreme Court,

Held: The ship's crew were not "port workers" within the definition of that expression in section 2 of Law No. 35 of 1952. Conviction and sentence set aside.

Note: Following upon this decision the definition of "port worker" was amended by Law No. 47 of 1954.

Appeal from the decision of the District Court of Larnaca (Case No. 2365/53).

G. Nicolaides for the appellant.

R. R. Denktash, Crown Counsel, for the respondents.

Judgment was delivered by:

HALLINAN, C. J.: The s.s. *Heron* arrived at Larnaca in the afternoon of the 8th September, 1953. The appellant who is the clerk of the ship's agents in Larnaca was unable to obtain registered port workers to unload certain packages from the ship into the lighter as the office of the Labour Exchange was closed. As a result of what the clerk told the master of the ship, the master caused the crew to unload the packages into a lighter manned by registered lightermen. The appellant was charged with an offence under Regulation 5 (2) of the Port Workers (Regulation of Employment) Regulations, 1952 (made under Law No. 35 of 1952) because he had employed port workers who were not registered in accordance with the regulations.

The learned Magistrate found: (1) that the ship's crew who off-loaded the packages into the lighter were port workers within the definition of that expression in section 2

of the Port Workers (Regulation of Employment) Law, 1952 ; and that (2) the appellant was guilty of the offence with which he was charged because he had aided and abetted its commission.

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The questions raised in this case stated are two : first, whether the crew were "port workers" within the meaning of Law No. 35 of 1952 and, secondly, whether there was sufficient evidence of aiding and abetting to support the conviction.

The definition of "port worker" in section 2 of the Law of 1952 is as follows:—

" 'port worker' means a person employed or to be employed in any port on work in connection with the loading, unloading, movement or storage of goods, or on work in connection with the preparation of ships, aircraft or other vessels for the receipt or discharge of goods, but does not include—

- (a) a member of an engineering or other craft ;
- (b) any clerical employee or a member of the administrative staff of an employer ;
- (c) any Customs porter or employer's porter ;
- (d) any licensed boatman who conveys passengers' luggage to or from a ship, aircraft or vessel in any port."

In construing the Law of 1952, it must be borne in mind that freedom of contract is one of the fundamental freedoms which British subjects enjoy and which British Courts are careful to protect. Any legislation which restricts this freedom should be carefully scrutinized, so that the subject's liberty is not restricted beyond the intention of the legislature.

Now if the expression "port worker" is given the interpretation for which the respondent contends, a ship's crew who are not registered port workers may not do any work in connection with the loading or unloading of cargo or even with the preparation of their ship for the receipt or discharge of goods : for example, the crew could not open a hatch or prepare derricks and pulleys in order to load or off-load cargo. If this interpretation is accepted two results must follow : The seamen of which the crew is composed, having special training and experienced in the handling of ship's gear, would be prohibited from doing acts which it was within their particular competency to perform. Secondly, a ship with a small number of packages to off-load might, for want of registered port workers, incur considerable expense through delay, whereas the crew might easily place the packages on the slings as they did in the present case. To require a

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ship's master to wait for registered port workers in these circumstances is surely an absurdity and contrary to the public interest which requires shipping to enjoy reasonable facilities.

But the interpretation to which the appellant's counsel (in our view) rightly objects does not only give rise to restrictions which are unreasonable and unnecessary—it entails results which it was not the object of the legislative authority to effect. Most labour legislation in the colonial territories derives from similar legislation in the United Kingdom and the statute comparable to our Law of 1952 is the Dock Workers (Regulation of Employment) Act, 1946. The definition of "dock worker" in that Act corresponds with our definition of "port worker" and is as follows:—

“ ‘dock worker’ means a person employed or to be employed in, or in the vicinity of, any port or work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or for leaving port.”

Now whatever shadow of doubt there might be as to whether a crew may not, while in port, prepare their ship for the receipt or discharge of cargo, the seamen must surely be allowed to prepare their ship for leaving port. Clearly then in the English Act, the expression "dock worker" does not include the ship's crew. A master is at liberty to use his crew for any purpose covered by their contract of employment ; he is only restricted to registered dock workers if he seeks to employ on his ship any one other than his crew for the purposes mentioned in the definition of "dock worker."

It is reasonable to assume that the objects of our Law of 1952 are the same as the objects of the English Act, and that it was the intention of the Legislative Authority to restrict the labour which a master might employ only if he wished to employ persons other than his crew. It is not intended that the law should prevent a crew from doing work which the master required done and which they were willing to perform.

We consider, therefore, the learned Magistrate was not correct in deciding that the Law and Regulations of 1952 for regulating the employment of dock workers precluded the crew of a ship from loading cargo onto the slings prior to its discharge. In view of our conclusion on this point, it is unnecessary to determine the question whether the evidence that the appellant had aided and abetted this offence was sufficient to support his conviction.

The conviction and sentence must be set aside.