

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

CORAM : Clarkson, J.

THE QUEEN v. EDWARD JOHN WHITAKER

1969
February
1,
MADANG.
Clarkson, J.

The accused is indicted for allegedly stealing the sum of \$474.10.

The facts briefly are that the accused was at the relevant time the Superintendent of the Beon Corrective Institution at Madang. Apparently he was the only European on the staff of the Institution. At this Institution a club existed for the benefit of the warders and through it they purchased their personal requirements of cigarettes, foodstuffs and other goods. The accused ran the Club without any real participation by any other member.

Late in 1966 the accused devised a system of interposing himself under the name of Sisiak Social Club between the Beon Club and the suppliers. His practice then was to purchase from the New Guinea Company and supply to the Beon Club goods which that Club could quite easily have purchased for itself from the New Guinea Company.

The accused's conduct in the position he held was in my view highly improper and to be censured. Apart from anything else it is open to the criticism that he placed himself in a position to make a personal profit at the expense of his own warders and his failure to keep proper records did nothing to allay this suspicion.

When the Beon Club was wound up accounts prepared by the accused showed a payment of \$474.10 to the New Guinea Company by the Beon Club. Investigations revealed that no such payment had been made by Beon to New Guinea Company. When questioned the accused at first insisted that the money had been paid to the New Guinea Company and clearly implied that the payment had been made by the Beon Club. It was demonstrated to him by reference to bank statements and other documents that this was not so whereupon he suggested that the money may have been paid by the Beon Club to the Sisiak Club and then by Sisiak to

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the New Guinea Company. The reason now given for this subterfuge of showing the payment direct from Beon to the supplier is that it was in effect to conceal his questionable activities from his superiors, but in view of a statement from the bar that there are other proceedings pending I will say no more about the accused's conduct than is necessary for me to decide this case.

It is clear that the accounts he submitted were false in at least two respects in that they concealed his part as Sisiak in the transaction and in that contrary to his undertakings given to his superiors he was selling to the warders on credit.

But this does not establish stealing. And the inherent difficulty in the situation which faced the Crown was that while attacking the accuracy of the accounts kept by the accused it was forced to rely on those accounts largely to endeavour to establish that the sum of \$474.10 was stolen by the accused.

The Crown case against the accused was presented fairly and in detail. And in fact the assiduous efforts of the Crown to collect and to present all the relevant documents have in the view which I have taken done more to assist the accused than his own evidence has.

I do not attempt to reconcile all the figures but of some critical facts I am satisfied.

Firstly, I am satisfied that on the 24th February the accused did in fact have the \$474.10 in cash in his possession. I am also satisfied that there was a physical division of the remaining stocks and of some moneys. It is also clear that on the same day the accused deposited in cash with his bank a sum slightly in excess of \$474. which with other moneys was drawn against on the same day to pay the New Guinea Company for goods to a value exceeding \$1000 supplied by that Company to the Sisiak Club during January.

Secondly, I am satisfied that Beon must have received stocks during January and February. I discussed the relevant figures with counsel during argument and I do not now repeat them. The chances are that whatever stocks were supplied to Beon were supplied by the accused, that is Sisiak. And to the extent that he did supply stocks he would be entitled to claim as a creditor against Beon and to receive payment.

This I think is the nub of the case. The defence of a claim of right to the moneys is clearly and distinctly raised and the onus is on the Crown to negative it. This in my view the Crown has been unable to do.

The Crown concedes that the accused probably supplied some stocks for which he would be entitled to payment but is unable to show what amount and, more importantly, is unable to disprove the accused's claim that he supplied stocks to the value of \$474.10.

I find myself left in a position of doubt and of this the accused must receive the benefit.

I should add that I have reached my decision largely on the evidence which the Crown itself quite fairly and properly has provided, and it is therefore unnecessary for me to express in any detail the views I have formed where Crown evidence and that of the accused conflicts. I say no more about the case for the reason already given.

Verdict: Not Guilty.

ADDENDUM

I referred in these reasons to certain figures discussed with counsel during argument. The basis of this discussion as appears from my notes made at the time was as follows.

It is probable that Beon received stocks from some source during January and February, especially if one accepts the stock in hand entry at the end of December, namely \$424.82.

Thereafter cash sales of at least \$696.81 were made in January and February and it is known that all stock was not sold.

Where did those stocks come from? Beon did not purchase any but Sisiak purchased over \$2500 worth from New Guinea Company in January/February.

If the \$474.10 was not paid for stock by Beon then presumably it would represent profit on a total stock, according to the accounts, of \$424.82 plus \$89, that is a little over \$500, which is highly unlikely.