

1931

Kenya

No. 17234

SUBJECT

C0533/413

Rights of employees of K. A. R.

Previous

16105/30

Subsequent

17045/32

1 L. L. J. Byrne 84 _____ 27 May 2
Enclose letter from Messrs. Daly & Figgis re rights
of employees of R.M.S. and Harbours; comments on points
raised and especially on right to sue General
manager in Court of Law. Deprecates any alteration
in form of agreement for Indian staff being considered
at present.

In September 1928, Messrs Daly and Figgis
raised two points regarding the terms of service
of non-European employees of the Railway.

(Enclosure to
No. 4 of 51245/
28)

One of these points has been settled. As
regards the other, namely, that employees should
have the right to sue the General Manager in a
Court of Law in certain specified circumstances,
the reply was that the Secretary of State must await
the regulations which were then (and are still now)
in draft, to be issued under Section 7 of the
Transport Order in Council.

(No. 5 on 51245/
28; Copy
registered as
No. 7 on 15441/
28)

Messrs Daly and Figgis now return to the
charge. They have been informed by the High Commr.
that railway servants are Crown servants
and are therefore liable to dismissal at pleasure
and that therefore no agreement can give them a right
to legal redress in the event of dismissal. This
reply is supported by the case referred to in
paragraph 6, in which the ruling was that officials
were not able to sue the General Manager to recover
claims arising outside their contract of service,
but could only proceed by petition after obtaining
the fiat of the Governor. Presumably it is also
supported by the Khan Din case referred to on 10081/
27.

J. L. J. Byrne 84 _____ 27 May
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of employees of R.M.S. and Harbours; comments on points
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in form of agreement for Indian staff being considered
at present.

In September 1928, Messrs Daly and Figgis raised two points regarding the terms of service of non-European employees of the Railway:

(Enclosure to
No. 4 of 51245/
28)

One of these points has been settled. As regards the other, namely, that employees should have the right to sue the General Manager in a Court of Law in certain specified circumstances, the reply was that the Secretary of State must await the regulations which were then (and are still now) in draft; to be issued under Section 7 of the Transport Order in Council.

(No. 5 on 51245/
28. Copy
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Messrs Daly and Figgis now return to the charge. They have been informed by the High Commr. that railway servants are Crown servants, and are therefore liable to dismissal at pleasure and that therefore no agreement can give them a right to legal redress in the event of dismissal. This reply is supported by the case referred to in paragraph 6, in which the ruling was that officials were not able to sue the General Manager to recover claims arising out of their contract of service, but could only proceed by petition after obtaining the fiat of the Governor. Presumably it is also supported by the Khan Din case referred to on 10081/27.

on 2532(2)

In the Circular despatch of the 20th May, 1927, it was laid down that when an officer engaged on agreement and subsequently dismissed brings an action for wrongful dismissal, Colonial Governments in defending such actions should not, save in quite exceptional circumstances, put forward the plea of prerogative. It was said that were the Crown ~~to~~ to exercise its prerogative of dismissing its servants at pleasure in such cases the agreements in their present form would become most misleading; the agreements set out in detail the grounds on which an officer may be dismissed or on which his services may be terminated, and the procedure to be followed to effect dismissal or termination is carefully laid down; these provisions are intended to be exclusive and contain no reference to the overriding power of the Crown to dismiss at pleasure. Officers therefore have a right to be treated, as they on their part are expected to treat the Colonial Government, strictly in accordance with the terms of their Agreement.

Actually, this circular only applied to officers engaged on agreement by the Crown Agents but the principle is clearly the same for officers engaged locally.

What seems to be required is that officials of the Railway Administration should, in the same way as ordinary Government officials under the Petitions of Right Ordinance (copy herewith), have the right, on the obtaining of the fiat of the High Commissioner, to proceed

by

*The above is a
petition of right
for the Crown to
dismiss at pleasure
all its servants
without notice*

by way of petition and that when such petitions are brought they should be decided on their merits and the plea of prerogative should not be raised.

Mr. Duncan will no doubt advise whether the terms of the Petition of Right Ordinance of Kenya and Uganda are sufficient to give railway officials the right to proceed by way of petition. If not it would seem desirable that short ordinances to cover the point should be passed in the Legislative Councils of the two Colonies. I cannot see that the regulations to be issued under Section 7 of the Transport Order in Council really affect the question.

A further point arises, namely as to whether when contracts are signed by the head of a department, they should not be signed on behalf of the High Commissioner, or possibly the General Manager.

The reply to Messrs Daly and Figgis should presumably be on the lines that since railway officials are Crown servants, it is not possible to give them the right to sue the General Manager in regard to matters arising out of the terms of their contract, but that they are always at liberty to proceed by way of petition and that it is a standing instruction to the Administration that when petitions are brought they should be defended on their merits and that the plea of prerogative should not, save in exceptional circumstances, be used.

*Parton
1-7-31*

100

It is true, of course, that under Article 5 (3) of the Kenya and Uganda (Transport) Order in Council the railway servants in question are Crown servants, but it would appear that they are in fact employed by the High Commissioner for Transport under contracts signed on behalf of the General Manager as one of the contracting parties (see paragraph 4 of Note on General 51245/28) - the General Manager being appointed by the High Commissioner under Article 5 (1) of the Order in Council and having such of the High Commissioner's powers and authority as may be delegated to him. In making such contracts, therefore, it seems that the General Manager would be acting for and on behalf of the High Commissioner.

Under Article 1 (2) of the Order in Council the High Commissioner for Transport is a Corporation Sole and may sue and be sued under that name whether in contract or in tort by the ordinary procedure of law, and in these circumstances it is not clear why the railway servants in question should not be able to sue the High Commissioner for Transport in the ordinary way - that is to say, so long as no regulations with regard to appeals by them have been made under Article 7 (d) of the Order in Council.

We might perhaps put the point to the High Commissioner for his consideration.

14/7/31.

H. Duncan.

Mr. Parkinson: (through Mr. Duncan).

I submit draft for conson. (The second and third pages of my earlier minute were based on the assumption that railway servants were liable to dismissal at pleasure. Since grounds have been discovered for considering this to be incorrect, those pages need not be read in endeavouring to understand this paper).

Garland
16/7/31

*This is the same as minutes
submitted made by W. G. ...
the fact of ...
to give with it*

see Parkinson

17/7/31

*The hand of ...
18/7/31*

*Please see in Eastwood's minute
of 11/7/31 or 16/05/30.*

*Thomas
18/7/31*

*Don't think that we can ...
This may be thing like this. ? B. U. in*

3 months

24/11

Bothamley

Director

*B. B. X. ...
to see description*

3 H.C. for Transport — 168 — (17/7/31)
Submits legal Advisers opinion Refers
to a decision of the Supreme Court of Kenya
stating that under the decision to
set aside servants of the Rly Administration
cannot sue the Crown.

The Director might be asked to
consider ③ in connection with
his minutes of 14/7/31

[Handwritten signature]
14/7/31
16

The Governor says, in paragraph
2, that it appears to him "therefore" that servants
of the Administration cannot sue the Crown.
So far as I know, no one has ever
suggested that they can. Of course, I fully
accept the position that if the point is taken
servants of the Crown cannot sue the Crown for
wrongful dismissal. I do not, however, see why
these railway servants should attempt to sue the
Crown, or how they could formulate such an action.
Their contract of service is not with the Crown,
but with the High Commissioner of Transport, who
is not the Crown, but a statutory corporation.
Obviously, therefore, on a contract with the
High Commissioner they would sue the High Commissioner.
What is his answer? We have not got the law
reports containing the case referred to, but, as
I understand it, his answer is - "You cannot sue
me for wrongful dismissal, because you have been
dismissed under the pleasure of the Crown." If

that

that is his case, it is based upon an inaccurate
foundation of fact. The Royal prerogative in this
matter has not been delegated to the High Commissioner
and, in my view, he has neither the authority or
power to express the pleasure of the Crown.

The Law Officers in Kenya must really
make up their minds whether they accept the view
which I take in this matter, or whether they still
adhere to the contrary view. If the case which has
been decided in Kenya upholds the contrary view, we
cannot deny the Government the right to abide by it.
In that case, however, unless the Department think
the position is satisfactory, the Government ought
to be pressed to consider what they are going to do
about it, because I do not think it at all a
satisfactory position that these railway servants
should be liable to dismissal at will, notwithstanding
the contents of their contracts, without any remedy
or redress.

On the other hand, if the Law Officers
are persuaded that the position is as I state it,
it seems to me that the Government need only inform
the solicitors who have sent in this memorial that
that is their view, and that in future, if a railway
official sues the High Commissioner, the point of the
prerogative will not be ^{taken} brought before the Court.

[Handwritten notes]
Sagat
Luth. C.P.D.
17/7/31

17/7/31 11.31

Draft here with for answer
L.M. Allan
18/7/31

Jeffries
14/11

[Handwritten signature]

I have passed the draft of
which has been wished to be
arriving out of Article 5(3) has
been more fully dealt with, but
as the higher course we
had better leave it alone.
I am sure (the Director's
hand) that it was intended
simply to provide the basis of
other arrangements, and to limit the
contractual rights.

H To H.C. 181. — Contd. of H.C. 181
(3. Contd.)

5. H.C. for Transport — 12 — 20/1/32
Has examined the question in
consultation with Legal Adviser
as a result it is not intended to take
the point of prerogative in any action
which may be brought against the H.C.
by a dismissed servant. Has informed
Messrs. Dally & Figgis.

Wait - see on 3099/33

S.D.W.
23/3

(10)

I have passed the draft. It
does not seem to be a
order been wished. The board
arriving out of Article 5(3) had
been more fully dealt with, but
as the British's absence in
had better leave it alone.
I am sure (the British's last
heart) that it was intended
simply to provide the status of officials
to their advantage and to assist their
contractual efforts.

H to H Cr 181. — *Comptroller* 1831
(3. Lewis)

5. H. Cr. Transport — 12 — 187/32
Has examined the question in
consultation with Legal Adviser & that
as a result it is not intended to take
the point of prerogative in any action
which may be brought against the
by a dismissed servant. Has informed
Messrs. Daly & Figgis.

Daly - see on 3099/33
S. J. W.
23/3

(10)

HIGH COMMISSIONER
FOR TRANSPORT

No. 12

56
OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
22 FEB 1932
COL. OFFICE

30th January 1932.

Sir,

I have the honour to acknowledge the receipt of your despatch TRANSPORT KENYA-UGANDA No. 18A dated the 17th December 1931 on the subject of the rights of employees of the Kenya and Uganda Railways and Harbours Administration, and to inform you that I have examined the question in consultation with my Legal Adviser, and that as a result it is not intended to take the point of prerogative in any action which may be brought against the High Commissioner by a dismissed servant.

2. I have also informed Messrs Daly and Figgis of this intention.

I have the honour to be,

Sir,

Your most obedient, humble servant,

H. G. I.
HIGH COMMISSIONER

THE RIGHT HONOURABLE

MAJOR SIR PHILIP CUNLIFFE-LISTER, G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, S.W.1.

ask you to consider the
propriety of ~~exercising that~~ ^{altering that position}

right, since I could not regard it

as satisfactory that such servants

should be liable to dismissal at

will notwithstanding the terms of

their contract without any remedy

or redress. I note that the ~~the~~ ^{Staff}

regulations which accompanied your

despatch No. 21 of the 19th

February 1930, includes a chapter 16105/30

relating to discipline and dismissal,

and I regard it as desirable that the

position of servants of the Transport

Administration in this matter should

be put on a recognised basis as soon

as possible, and that the High Commis-

sioner should not take before the

Court any part of an action arising

out of the decision of the Supreme

Court.

" I have,

etc.

(Sgd) P OUNLIFFE-LISTER

of fact since the Royal prerogative in this matter has not been delegated to the High Commissioner who, I am advised, has neither the authority nor the power to express the pleasure of the Crown.

I must therefore ask you to reconsider the matter further in consultation with your Legal Adviser.

If after doing so you are persuaded that that the position is as stated in the preceding paragraph, it would seem sufficient for Messrs. Daly and Figgis to be informed that that is your view, and that in future if a sergant of the Transport Administration sees the High Commissioner the point of the prerogative will not be taken before the Court.

If, however, the case in the Supreme Court already referred to upholds the contrary view, the legal right of the High Commissioner to act upon it cannot be denied ^{in this case} but I should feel compelled to

ask

upon grounds which cannot be waived, the legal position resulting from the decision must be, I suppose, be recognised

of fact: since the Royal prerogative in this matter has not been delegated to the High Commissioner who, I am advised, has neither the authority nor the power to express the pleasure of the Crown.

I must therefore ask you to reconsider the matter further in consultation with your Legal Adviser.

If after doing so you are persuaded that that the position is as stated in the preceding paragraph, it would seem sufficient for Messrs. Daly and Figgis to be informed that that is your view, and that in future if a servant of the Transport Administration sees the High Commissioner the point of the prerogative will not be taken before the Court.

If, however, the case in the Supreme Court already referred to upholds the contrary view, the legal right of the High Commissioner to act upon it cannot be denied, but I should feel compelled to

upon grounds which cannot be waived; the legal position resulting from the decision must be, I believe, the recognized

not in dispute, but it is by no means

clear to me why ^{Railway Employees} such servants
^{of the Transport Admin.}
should attempt to sue the Crown,

*Shanmukh
Bansal
Buck's work
1/10/50*

nor how they could formulate such
an action since, as stated in my
predecessor's despatch, their contract
of service is not with the Crown but
with the High Commissioner for Transport,
who is not the Crown but a statutory
corporation. Therefore on a con-

tract with the High Commissioner the

^{names} servant shall sue the High Commissioner

^{Volume X of the Kenya Law Book which contains a}
The report of the case *Khair v. Din v. the*

High Commissioner for Transport to which

^{has not been received}
your Legal Adviser refers is not on record

in the Colonial Office. But the suggestion

would appear to be that it would be a good

answer to an action brought by servants of

the Transport Administration against the

High Commissioner, that a servant dismissed

^{by the High Commissioner is dismissed}
under pleasure of the Crown cannot sue for

wrongful dismissal. If this is the suggest-

ion, it is based upon ^{an} inaccurate foundation

not in dispute, but it is by no means
clear to me why ^{Railway Employees} such servants
of the Transport Admin.
should attempt to sue the Crown,

*See section
of the
Buckley v. Buckley
1170*

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an action since, as stated in my
predecessor's despatch, their contract
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in the Colonial Office. But the suggestion
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answer to an action brought by servants of

the Transport Administration against the
High Commissioner, that a servant dismissed
by the High Commissioner is dismissed
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wrongful dismissal. If this is the suggest-
ion, it is based upon ^{an} inaccurate foundation



56

HIGH COMMISSIONER
FOR TRANSPORT.

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

No. 12

RECEIVED
20 FEB 1932
H.M. OFFICE

30th January 1932

Sir,

124

I have the honour to acknowledge the receipt of your despatch TRANSPORT KENYA-UGANDA No. 181 dated the 17th December 1931 on the subject of the rights of employees of the Kenya and Uganda Railways and Harbours Administration and to inform you that I have examined the question in consultation with my legal adviser and that as a result it is not intended to take the point of prerogative in any action which may be brought against the High Commissioner by a dismissed servant.

2. I have also informed Messrs Daly and Figgis of this intention.

I have the honour to be,

Sir,

Your most obedient, humble servant,

HIGH COMMISSIONER

THE RIGHT HONOURABLE

MAJOR SIR PHILIP SUNLIFFE-LISTER, C.B.E., M.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, S.W.1.

17234/31/Kenya.

C. O.

Mr. Allen 11/12

Mr. Bushe 12/12

Mr. Allen 17/12

Mr. Tomlinson 14/12

Sir O. Bottomley 15.12

Sir J. Shuckburgh

Sir G. Grindle

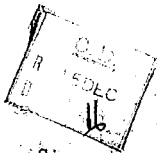
Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State

DOWNING STREET,

17 December 1931.



Sir,

I have the honour to

acknowledge the receipt of your

despatch No. 166 of the 12th of

October regarding the rights of

employees of the Kenya and Uganda

Railways and Harbours.

2. As regards the opinion

expressed in paragraph 2 of your

despatch, I would point out that

there was no suggestion in my pre-

decessor's despatch No. 94 of the

31st of July that servants of

the Transport Administration had

any right to sue the Crown. The

fact that if ^{the} point is taken,

servants of the Crown cannot sue the

Crown for wrongful dismissal is

not

DRAFT *Cause*

(3)

TRANSPORT

KENYA-UGANDA

No. 181

High Commissioner

(2)

not in dispute, but it is by no means
clear to me why such servants
Railway Employees
of the Transport Admin
should attempt to sue the Crown.

*Shawcross
Kearney
Bush & Wilson
1870*

nor how they could formulate such
an action since, as stated in my
predecessor's despatch, their contract
of service is not with the Crown but
with the High Commissioner for Transport
who is not the Crown but a statutory
corporation. Therefore on a con-
tract with the High Commissioner the

man
servant shall sue the High Commissioner
Volume of the High Law which contains a
The report of the case *Khair v. the*

High Commissioner for Transport to which
has not been decided
your Legal Adviser refers in an report

in the Colonial Office. But the suggestion
would appear to be that it would be a good
answer to an action brought by servants of
the Transport Administration against the

High Commissioner, that a servant dismissed
by the High Commissioner is dismissed
under pleasure of the Crown cannot sue for

wrongful dismissal. If this is the suggest-

an
ion, it is based upon inaccurate foundation

not in dispute, but it is by no means
clear to me why ^{Railway Employees} such servants
^{of the Transport Admin} should attempt to sue the Crown,

Handwritten:
to answer the
Buckley motion
1970

nor how they could formulate such
an action since, as stated in my
predecessor's despatch, their contract
of service is not with the Crown but
with the High Commissioner for Transport,
who is not the Crown but a statutory
corporation. Therefore on a con-

tract with the High Commissioner the

servant ^{cannot} sue the High Commissioner

Volume X of the legal reports which contains a
The report of the case *Chair v. Chan*, the

High Commissioner for Transport to which

^{has not been decided}
your legal adviser refers is not an report

in the Colonial Office. But the suggestion

would appear to be that it would be a good

answer to an action brought by servants of

the Transport Administration against the

High Commissioner, that a servant dismissed

^{by the High Commissioner is dismissed}
under pleasure of the Crown cannot sue for

wrongful dismissal. If this is the suggest-

ion, it is based upon ^{an} inaccurate foundation

of fact since the Royal prerogative in this matter has not been delegated to the High Commissioner who, I am advised, has neither the authority nor the power to express the pleasure of the Crown.

I must therefore ask you to reconsider the matter further in consultation with your Legal Adviser. If after doing so you are persuaded that the position is as stated in the preceding paragraph, it would seem sufficient for Messrs. Daly and Piggis to be informed that that is your view, and that in future if a servant of the Transport Administration sees the High Commissioner the point of the prerogative will not be taken before the Court.

A. If, however, the case in the Supreme Court already referred to upholds the contrary view, the legal right of the High Commissioner to act upon it cannot be denied, but I should feel compelled to

upon grounds which cannot be waived, the legal position resulting from the decision must be accepted, he

of fact since the royal prerogative in this matter has not been delegated to the High Commissioner who, I am advised, has neither the authority nor the power to express the pleasure of the Crown.

I must therefore ask you to reconsider the matter further in consultation with your Legal Adviser. If after doing so you are persuaded that the position is as stated in the preceding paragraph, it would seem sufficient for Messrs. Daly and Figgis to be informed that that is your view, and that in future if a servant of the Transport Administration sees the High Commissioner the point of the prerogative will not be taken before the Court.

4. If, however, the case in the Supreme Court already referred to upholds the contrary view, the legal right of the High Commissioner to act upon it cannot be denied but I should feel compelled to

upon grounds which cannot be waived, the legal position resulting from the decision must be observed, he

ask you to consider the propriety of ~~exercising that~~ *altering that position*

right, since I could not regard it as satisfactory that such servants should be liable to dismissal at will notwithstanding the terms of their contract without any remedy or redress. I note that the *draft*

regulations which accompanied your

despatch No. 21 of the 19th

February 1930, includes a chapter

16105/30

relating to discipline and dismissal,

and I regard it as desirable that the

position of servants of the Transport

Administration in this matter should

be put on a recognised basis as soon

as possible, ~~and that the High Commis-~~

~~sioner should not take before the~~

~~Court. Any part of an action arising~~

~~out of the decision of the Supreme~~

~~Court.~~

I have,

etc.

(Sgd.) P. CUNLIFFE-LISTER.

ask you to consider the propriety of ~~exercising that~~ *exercising that discretion*

right, since I could not regard it as satisfactory that such servants should be liable to dismissal at will notwithstanding the terms of their contract without any remedy or redress. I note that the *draft*

regulations which accompanied your

despatch No. 21 of the 19th

February 1930, include a chapter 16105/30

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and I regard it as desirable that the

position of servants of the Transport

Administration in this matter should

be put on a recognised basis as soon

as possible, ~~and that the High Commis-~~

~~sioner should not take before the~~

~~Court any part of an action arising~~

~~out of the decision of the Supreme~~

~~Court.~~

I have,

etc.

(Sgd.) P. CUNLIFFE-LISTER.



RECEIVED
9-NOV-1931
COL OFFICE

39

17234
31

HIGH COMMISSIONER
FOR TRANSPORT.

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

No. 168

2nd October, 1931

Sir,

No 2
3

I have the honour to refer to Lord Passfield's despatch Transport, Kenya-Uganda, No. 94 of the 31st of July, and to state that I have consulted my Legal Adviser whose opinion I quote below:-

"It has been held by the Supreme Court of Kenya in the case of Khair Din v The High Commissioner for Transport (Law Reports of Kenya Vol. 2, page 109) that an officer working upon the Kenya and Uganda Railway is, like other servants of the Crown, liable to dismissal at the pleasure of the Crown. It follows that they can bring no action in the ordinary way.

"Article 5 (2) of the Kenya and Uganda (Transport) Order in Council authorises the High Commissioner to appoint in addition to the General Manager, such servants as may be necessary for the efficient working of the Services". Article 5 (3) goes further in my opinion than the intention placed upon it by the despatch of the 31st July, 1931. It states definitely that persons so appointed (that is by virtue of Article 5 (2) shall be.....in the Service of the Crown".

"Until the decision of the Court referred to is reversed, it is Law which is binding on servants of the High Commissioner in this Colony."

2. It appears to me, therefore, that until the decision of the Supreme Court is set aside, servants of the Administration cannot sue the Crown.

3. A letter has been sent to Messrs. Daly and Figgis in accordance with the final paragraph of Lord Passfield's despatch.

I have the honour to be,
Sir,
Your most obedient,
Humble servant,

HIGH COMMISSIONER.

THE RIGHT HONOURABLE
J.H. THOMAS, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, S.W.1.

Answered 18/11 DEC 1931

10
2

C O

Mr. Eastwood 16.7.

Mr. Duncan 17.7.31.

Mr. Bushe 22.7.

Mr. Perrin 26.7.31

Downing Street,

31 July, 1931.



Mr. C. Boltonley

Mr. J. Shuckburgh

Mr. C. Grylls

Permit, U.S. of S.

Party, U.S. of S.

Secretary of State

Sir,

I have the honour to acknowledge the receipt of your despatch No. 67 of the 24th May, in which you submitted a letter addressed to me by Messrs. Barty and Tibbo

DRAFT for London

advocates, Nairobi, regarding the rights of employees of the Kenya and Uganda

TRANSPORT

KENYA-UGANDA

No. 94

High Commr

Railways and Harbours Administration to me the General Manager in a Court of law

Railway servants, it would appear, are in fact employed by the High Commissioner for Transport under contracts signed on behalf of the General

Manager as one of the contracting parties, the General Manager being appointed by the High Commissioner under

Article 5(1) of the Kenya Railways (Drafting) Order-in-Council, 1928

and having such of the High Commissioner's powers

power and authority as may be delegated to him.

In making such contracts, therefore, it seems that

the Railway Manager would be acting for and

on behalf of the High Commissioner. It is true

that Art 5(5) of the Order in Council provides

that these employees "shall be and remain in

the service of the Crown", but their immediate

contracts of employment are not with the Crown

but with a statutory Corporation, and there seems

to be no reason why ~~such~~ an ~~action~~ contracts

should be brought against the Crown at all.

Under Article 122 of the Order in

Council, the High Commissioner for Transport

is a Corporation Sole who may sue and be sued

under that name whether in contract or in tort

by the ordinary procedure of law. In these

circumstances, it is not clear why Railway

servants should not be able to sue the High

Commissioner for Transport in the ordinary

way - that is to say, so long as no regulations

with regard to appeals by them have been made

under

powers and authority as may be delegated to him.
in making such contracts, therefore, it seems that
the Deputy Manager would be acting for and
on behalf of the High Commissioner.
that Act 53 of the Order in Council provides
that these employees shall be and remain in
the service of the Crown, but their contracts
contracts of employment are not with the Crown
but with a statutory Corporation, and there seems
to be no reason why ~~an action~~ contracts
should be brought against the Crown at all.

Under Article 122 of the Order in
Council, the High Commissioner for Transport
is a Corporation Sole, who may sue and be sued
under that name whether in contract or in tort
by the ordinary procedure of law. In these
circumstances, it is not clear why railway
contracts should not be able to sue the High
Commissioner for Transport in the ordinary
way - that is to say, so long as no regulations
with regard to appeals by them have been made
under

11

under Article 7 (d) of the Order-in-Council. The object of the provisions in Article 5 (3) of the Order in Council was to preserve for the persons in question their "status" and it might be argued that their present position is that of persons having the nominal status of Crown servants during their actual employment by a third party.

4. I note that Messrs Daly and Figgis have been informed that railway servants are Crown servants and are therefore liable to dismissal at pleasure and I also note the decision in the case of Rainey v. the General Manager, Uganda Railway, to which you refer. In view, however, of the argument set out in the preceding paragraphs, I should be glad to have your further observations on the matter.

5. In the meanwhile, I have to
request

11

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request that Messrs. Daly and Figgis may be
informed that I have received their letter;
that it is receiving my consideration, but
that it has been necessary for me to refer to
you for your further observations, and that
a definite reply will be sent to them as soon
as possible.

I have, etc.,

(Signed) BRASSFIELD

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as possible.

I have, etc.,

(Signed) MASSFIELD



HIGH COMMISSIONER
FOR TRANSPORT

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

No. 87

RECEIVED
22 JUN 1931
COL OFFICE

27 May 1931.

Forwarded by 81 JUN 1931 A.

My Lord,

I have the honour to enclose herewith a letter from Messrs Daly and Figgis, Advocates, Nairobi addressed to Your Lordship, dealing with the rights of employees of the Kenya and Uganda Railways and Harbour

2. Correspondence on this matter has taken place with Messrs Daly and Figgis for over two years, and the letter to which they refer, dated September 1928, was the letter forwarded by Sir Edward Glegg with his Transport despatch No. 128 dated 12th of October, 1928.

No. 11 in 51245/28 G

That letter from Messrs Daly and Figgis raised two main points:— (1) that certain provisions of the Railway Ordinance should be modified, (2) that employees should have the right to sue the General Manager in a Court of Law in certain specified circumstances.

No. 5

3. On receipt of Mr Amery's despatch TRANSPORT KENYA-UGANDA Miscellaneous dated 2nd January 1929, the question of the modification of certain provisions of the Railway Ordinance was reconsidered, and as a result Section 73 of the Railway Ordinance was repealed by the Kenya and Uganda Railway (Amendment) Ordinance, 1929.

No. 1 in 51245/30 G

4. Accordingly, there only remains the question of employees having the right to sue the General Manager in a Court of Law in certain specified circum-

stances...

THE RIGHT HONOURABLE
LORD PASSFIELD,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, S.W.1.

circumstances. I am advised that Railway Servants are Crown Servants (vide Article 5 (3) of the Kenya and Uganda (Transport) Order in Council), and are therefore liable to dismissal at pleasure. In these circumstances no agreement can embody a principle that Railway employees should work under definite contracts with the General Manager of the Railway by means of which they might have a right to legal redress in the event of dismissal since such an agreement could not bind the Crown and would be of no effect. The Railway Asian Union have been informed that if they are dissatisfied with a decision of the General Manager, they are always at liberty to seek redress through the usual official channels.

*That line
now point
of the case
referred to
below cases
to the
house of
dismissal
at pleasure
is not to
be made*

5. I have already informed Messrs Daly and Figgis in the sense of the preceding paragraph and also stated that whenever there is an Asian vacancy in this Administration under existing conditions, there are several applicants, and that this would appear to show that the Asians consider the conditions of service with this Administration to be not unfavourable since if they did consider these conditions unfavourable and desired similar employment they would always have the alternative of service with private employers.

6. As regards para.6 of Messrs Daly and Figgis' letter, all Railway employees, irrespective of grade, are treated in the same manner as other Government employees in accordance with Colonial Office Circular despatch dated 20th May 1927, and there does not appear to be any force in the argument that it is inequitable that Railway employees should be in the same position as other Crown Servants in respect of their contracts.

25320/27/26

In paragraph 9 of Messrs Daly and Figgis' letter, the statement that the Asian employees are now asking for a return to the conditions under which many have for years been employed is incorrect and attention is invited to the

case.....

case of Rainey v the General Manager, Uganda Railway,
 page 58, Vol. IX, Law Reports of East Africa, in which it
 was held that :-

"A European Railway guard employed by the Administration of the Uganda Railway may not sue the General Manager to recover any claim arising under his contract of Service, but he may proceed by petition after obtaining the fiat of the Governor."

7. As Your Lordship is aware from correspondence ending with Sir Edward Grigg's despatch TRANSPORT No. 21 dated 19th February, 1930, the revision of the staff rules and regulations is now in hand, and at the same time the forms of agreement are being considered. Although the Committee which is undertaking this work has made considerable progress the task has been one of unexpected magnitude and has required constant reference to the Legal Adviser. It is hoped, however, that the revised draft regulations will shortly be available.

I appreciate any alteration in the form of agreement for Asiatic staff being considered at the present time.

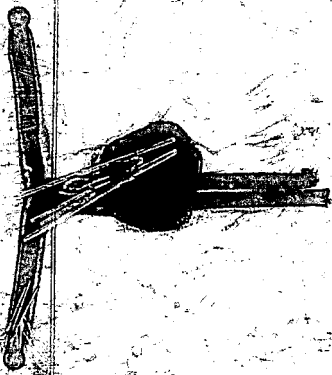
I have the honour to be

My Lord,

Your Lordship's most obedient, humble
 servant,

HIGH COMMISSIONER.

Handwritten notes:
 taking
 have
 for
 No. 1 to 3. 16/05/30 J.D.G.



NAIROBI,
27th March, 1931.

The Rt. Hon. His Majesty's Secretary
of State For The Colonies,
10, Downing Street,
LONDON. S.W.1

through/
His Excellency The High Commissioner
For Transport,
Kenya & Uganda Railways & Harbours,
NAIROBI.

Sir,

RIGHTS OF EMPLOYEES OF THE KENYA & UGANDA RAILWAYS.

We had the honour to communicate with you in September 1928 on the question of the position under their contracts of the employees of the Kenya & Uganda Railways, to which communication the Colonial Secretary of Kenya replied on the 28th January 1929 under Ref. No. S. Rly. 1/3/11/21.

We placed before you at that time this matter and another to the letter of which you had the kindness to accede, but postponed making a decision on this question pending further consideration.

We now understand from the High Commissioner for Transport that he does not see his way to give effect to the conditions which we have previously submitted, and we presume that after consideration this is your final decision on the point which had been previously postponed.

We would again ask you to reconsider the matter.

The points which we raised were that these employees are at present working under contracts signed by Heads of Departments and not by the General Manager, and on occasions it would appear that certain injustices have occurred, owing possibly to the caprices of authorities holding delegated power.

It has been pointed out to us that these employees are Crown Servants and dismissable at pleasure and that it is

-2-

therefore not of any great import who signs their contracts. Still it seems inequitable that the Railway employees should in this regard be placed in the same position as other Crown Servants, such as Administrative Officers, whose many privileges they do not enjoy. They are not really in the same category as these latter and dismissal at pleasure imposes a far greater hardship on a Railway employee than on other more highly placed officials.

As the Law stands at the moment, an employee dismissed without adequate reason has no redress but by the unnecessarily expensive and portentous method of appealing to His Majesty's Secretary of State.

The employees have long asked for an alteration of the present Law which would embody the principle of employees of the Railway working under definite contracts with the General Manager on which they could have legal redress, should the occasion arise; but despite repeated requests the High Commissioner has indicated his inability to recommend such alterations.

We may mention that prior to 1927, the practice of the Railway under the Railway Ordinance of 18th May 1910 gave effect to the principles for which the employees now contend, so that they are really merely asking for a return to the conditions under which many of them have for years been employed.

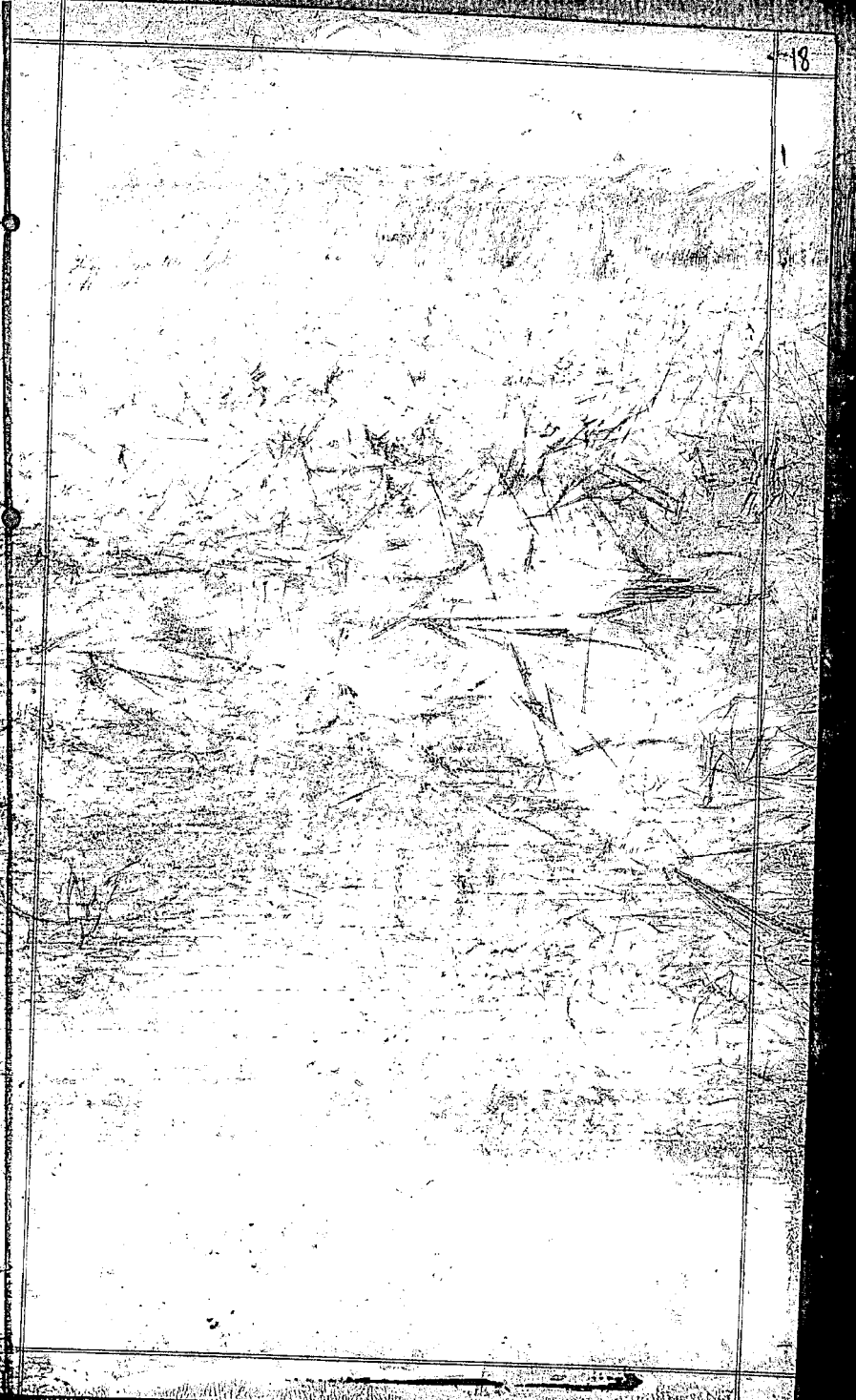
Under the circumstances, we place the matter before you trusting that you will give it your favourable consideration and provide for whatever alterations, if any, you may deem just.

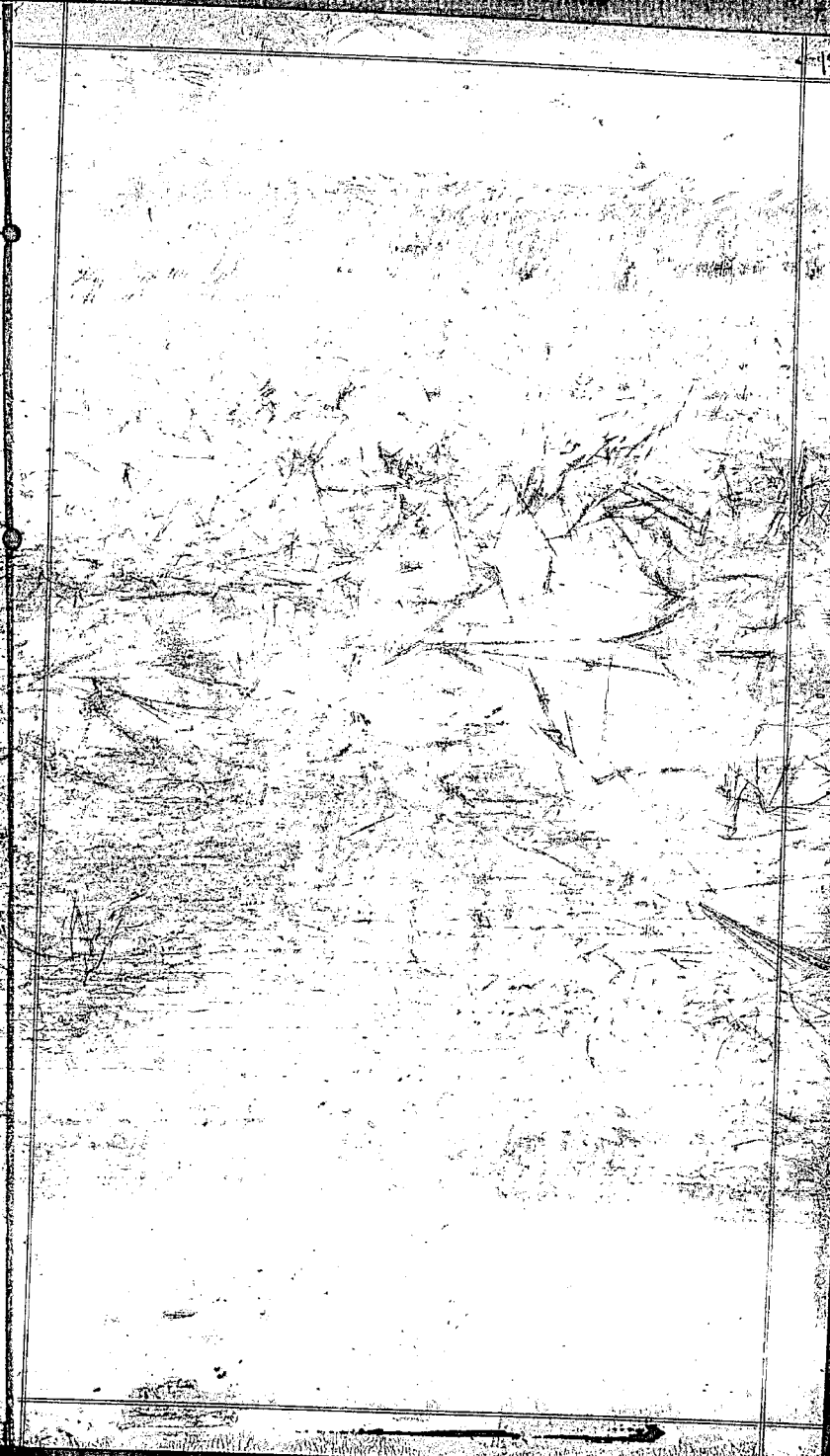
We have the honour to be, Sir,

Your obedient servants,

For DALY & FIGGIS,







~~Ch. Am.~~

19
END

You will wish to
register attached dep (no. 84
from H. L. D. dated 24 May '31)

General of ~~the~~

You let us have reg
no. please

thous

X E A

No. In a front note
(see first sentence of Mr. Jeffers 22/6/31
40 on 5/15/31
4 on 5/15/31)

~~5/15/31~~

~~Ch. Am.~~

19
END

You will wish to
register attached slip (No. 84
from H. C. D. dated 24 May '31)
General. If so, will
you let us have reg.
no. please.

Thanks

XE A

No. in a front row
(see front entrance of mi. Jefferson 22/6/31
minute above
4 on street spoken)

~~5/28/31~~

PUBLIC RECORD OFFICE

END

TOTAL EXPOSURES →

PUBLIC RECORD OFFICE

C0533/414

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