

1938

38086/

CO 533/492
KENYA

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30

Petitions and memorials

Illias Din

Previous

197

Subsequent

194

297 7/

304 8/9

Mr. Parkin 8

R 298 10/9

A. 297 20/9

307 /

297 14/10

309 14/10

Mr. Parkin 19/X

Mr. Hibberd 20/X

Mr. Jeffries 24

Mr. Down 24

LEND DUFFERIN 3/11

C1 Petitions
nominal

1. H. S. L. Polak & Co. 7.9.38. 2
Offers assistance in dealing with petition
of Illam Din which is being forwarded
by H.C. for transport.

The petition has not yet been received.

? Reply as in draft herewith.

Clifford White

8.9.38.

To H. S. L. Polak & Co.

10 SEP 1938

- 3 H. Cr Transport 118. 16/9/38
Two copies of petition from Mr. Illam Din. In circ
suggests that petitioner should be informed
that I of S. is not prepared to consider his
re-instatement or payment of further compensation.
- 4 H. Cr Transport 125. 29/9/38
Requests that error in wording occurring
in para 8 of No 3 be amended.

Illam Din entered the service of the K.U.R.
in 1920 and up to 1927 his services were satisfactory.
In that year he had an accident to his leg which has
resulted in permanent injury. Following his
complaints that he was unable after the accident to
carry on his former work he was transferred to
another Department where he eventually earned an
increase in salary. No compensation was due to
him on account of his injury because, according to
the system then in force, sick pay had to be

deducted from any compensation which might be paid; and in this case the sick pay was greater than the amount of compensation payable.

In June, 1936, Illam Din's services were terminated owing to his failure over several years to free himself from his ineffectiveness. It appears from the General Manager's comments (permitted to be enclosed to No. 3) on the petition to the High Commissioner (second enclosure that Illam Din's services had been unsatisfactory for some time and that this was an additional reason for his dismissal. Illam Din was not entitled to any gratuity under the provisions of the Act but in order to afford him some relief, it was possible, and as no other provision was made, an ex gratia gratuity was paid of Rs. 100.

The petitioner has now submitted a petition to the High Commissioner asking that he may be reinstated in the post from which he was dismissed. This has been examined with regard to the extent of his incapacity resulting from the injury. This had been assessed at 10% but he continued to assert that he was in fact totally incapacitated. A medical board sat in August this year and put the incapacity at 10%. This part of the petition has therefore already been dealt with.

(b) That he may be reinstated in the post from which he was dismissed. This

neither the Governor nor the General Manager can recommend in view of his past behaviour and of his present ability.

As an alternative to these Illam Din asks (c) for an increased gratuity on the ground that the circumstances of his dismissal amounted to retrenchment. The Governor states that there was in fact no question of retrenchment arising in this case.

(d) For increased and adequate compensation for his injury. The Governor points out that the amount of gratuity already paid (to which he had no right) exceeds the amount of compensation which could be paid to him, if sick pay were not deducted, and if the calculation were based on his wages either at the time of the accident or at the time of his dismissal, under both the Indian Workmen's Compensation Act and the new Model Workmen's Compensation Ordinance (still under discussion and to which the petitioner refers). To re-open his claim for compensation would also involve the danger of a number of similar claims being brought up once more.

There would appear to be no doubt that the petitioner has been generously treated and that although there may be some hardship in this case it has been due to his own fault and not to any act of omission by the A.S.A. There would not seem to be any case for suggesting to the High Commissioner that still more favourable treatment should be given to him.

? Request the High Commissioner to inform the petitioner that the Secretary of State

has considered the petition and is not prepared to intervene.

Charles White

11.10.38.

I agree that Mr. Iliam Din was properly dismissed, that there is no case for his reinstatement, and that in view of the payment to him of a gratuity of Sh.3,520 to which he was not entitled, there is no case for the payment of further compensation in respect of his injury. (I am however passing this file through Mr. Hibbert in case he has any comments to make on this aspect of the question.)

It seems to me, however, that the following two points call for comment:

(a) In the letter of the 16th July from the Chief Mechanical Engineer, the reason given for the termination of his employment was "the increased amount of your indebtedness" but no attempt was made, either in the General Manager's notes or in the covering despatch, to controvert Mr. Din's statement in his petition that his indebtedness had actually been reduced, still less that it had been increased. Moreover, the General Manager's comment on paragraph 5 of the petition makes it quite clear that Mr. Din's indebtedness was not the real reason for the termination of his employment.

(b) Mr. Din had been in the employment of the railway for sixteen years, and I should have thought

that

that, although of course his case would not be governed by the Colonial Regulations, he ought to have been given a clear statement of the grounds on which it was proposed to dispense with his services, and given an opportunity to make representations in rebuttal thereof.

? Reply as proposed by Mr. Costley-White, but add comments as at (a) and (b).

J. P. Bacon

19. 10. 38.

So far as a compensation paid is concerned, I agree that the petition has the generality there.

J. P. Bacon
20/10/38

? as proposed by Mr

Parker

C. J. ...

24/10

H. J. ...

24. 10

24. 10. 38.

S. J. H. b. Transport 70. 3 & 4 (broad). 18. 11. 38.

C. O.

38086/30/38 Kenya. 54.

Mr. MacDougall 9.11

Mr. Pascoe 11/11 J.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

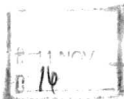
Sir C. Bottomley.

Sir J. Shackburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.



Downing Street,

18 November, 1938.

Sir,

I have etc. to acknowledge the

receipt of your Transport despatch ¹²⁵ No. 125 of the 29th September ~~and previous~~

correspondence regarding a Petition

addressed to me by Mr. Illam Din, lately employed by the Kenya-Uganda Railways and Harbours Administration, # 6

~~I have in request that you will~~
^{may be} inform the petitioner that I have received and considered his petition, but that I am not prepared to intervene on his behalf.

^{have} I observe that Mr. Din has been in the employment of the Railway for sixteen years. The Colonial regulations do not, of course, apply to his case; nevertheless, it would in my opinion have

DRAFT. conson.

(4)

TRANSPORT

KENYA-UGANDA

NO: 70.

High Commissioner.

FURTHER ACTION.

been preferable to have furnished him with a clear statement of the grounds on which it was proposed to dispense with his services, and to have given him an opportunity to make representations in rebuttal thereof.

3. I wish also to invite your attention to the fact that, although in the Chief Mechanical Engineer's letter/ of the 16th July, the reason given for the termination of Mr. Din's

employment was the increased amount of his indebtedness, *there is no reference, in the General Manager's notes on this case, to* ~~no attempt has been made to~~ *Mr. Din's* ~~statement in his petition that~~

his indebtedness had actually been reduced *it seems* and that, moreover, *as is clear from the*

General Manager's comment on paragraph 5 of the petition, ~~indebtedness was not the real~~ *is it any note the principal* reason for the termination of Mr. Din's employment.

I have, etc.

(Signed) MALCOLM MacDONALD.



TRANSPORT
KENYA-UGANDA

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

NO./25

R
4
C

29th September, 1938.

Sir,

I have the honour to refer to my transport despatch, No. 118. of the 16th of September, regarding a petition addressed to you by Mr. Pflam Din, late employee of the Kenya and Uganda Railways and Harbours Administration, and to request you to amend an error in wording which occurs in paragraph 8. The second sentence of that paragraph in my despatch reads as follows:-

"The payment made was based, as is the practice of the Administration, only on the salary received at the time of the accident."

Will you please substitute for that sentence the following:-

"If compensation had been paid it would have been based, as is the practice of the Administration, only on the salary received at the time of the accident."

In point of fact, the gratuity paid of Sh.5,520/- was based on salary at the time of discharge

I have the honour to be,

Sir,

Your most obedient, humble servant,

H. G. Richards

for
HIGH COMMISSIONER

THE RIGHT HONOURABLE
MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, S.W.1.



TRANSPORT

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

KENYA-UGANDA

NO. 118

RECEIVED
16th September, 1938.

Sir,

I have the honour to enclose copies of a petition addressed to you by Mr. Illam Din son of Mohamed Ramazan, late employee of the Kenya and Uganda Railways and Harbours Administration. The petitioner asks for reinstatement in the post he occupied before his discharge or, alternatively, for payment of an increased gratuity and compensation for an injury which he received while in the service of this Administration.

2. This man entered the service on the 2nd of February, 1920, and on the 21st of December, 1927, met with an accident in the workshops during the course of his duties which has left a slight permanent disturbance of blood supply to the left leg. Up to the time of his accident his services had been satisfactory. He stated that as a result of the injury he was unable to carry out the duties of an artisan. He was tried out on other work, and eventually given employment in the Locomotive Stores. No reduction was made in his rate of pay in consequence of the accident, and his wages were actually increased up to a maximum of Sh. 440/- per month on the 1st of June, 1935.

3. Over a period of years heavy Court attachments were made against him, and he was repeatedly warned that the question of his retention in the service would have to be considered if he persisted in accumulating debts. In June, 1936, the Chief Mechanical Engineer stated that the petitioner had been given every opportunity to clear himself

THE RIGHT HONOURABLE
MALCOLM MACDONALD, M.P.,
SECRETARY OF STATE FOR THE COLONIES

of/

of indebtedness, but that his affairs were so complicated that it was unlikely, even given time, that he would ever free himself of financial embarrassment. His services were therefore terminated at one month's notice.

4. The question of compensation for the injury was considered at the time, but nothing was due to the petitioner because in accordance with the method of assessment of compensation then employed, sick pay had to be deducted from the amount due, and this was in excess of the sum payable in accordance with the provisions of the Indian Workmen's Compensation Act.

5. Illam Din was not entitled to any gratuity under the regulations in force, but in order to afford as generous treatment as possible, and bearing in mind that no further compensation was due, a gratuity of half a month's pay in respect of each completed year of service, amounting to Rs. 5,520, was sanctioned. Representations were later made by his lawyers that he was entitled to the higher rate of gratuity which is applicable to retrenched servants. No such payment was of course due, as there was no question of retrenchment in the petitioner's case.

6. I enclose the detailed comments of the General Manager on the main points raised in Mr. Illam Din's petition.

7. As you will have observed from the form of the petition addressed to you, the petitioner has already made representations to me in the matter, and after a careful and sympathetic review of his case I came to the conclusion that he had been generously treated, and that there was no justification for reinstating him, or for making any additional ex gratia payments to him. Nevertheless in view of the new request that he has made in his petition to you that he should be re-examined medically, I arranged for an

examination to be made by a Medical Board consisting of the Acting Surgical Specialist and another medical officer. The medical report is enclosed, and you will note that in the opinion of the Board the amount of permanent disability cannot be regarded as exceeding ten per cent, which is only half the original assessment.

8. It should be noted that the gratuity which was paid, based on half a month's salary in respect of each completed year's service, was not due as of right, but was awarded as a special case in view of the fact that no compensation for the injury sustained on duty was payable according to the practice of the Administration at the time. ~~The payment made was based~~, as is the practice of the Administration, only on the salary received at the time of the accident. Actually in this case, owing to the incidence of the maximum compensation, there would be no difference under the basis of the Indian Act in the amount of compensation which might have been paid, whether assessed at the rate of salary at the time of the accident or on the salary at the time of termination of service.

The following are ~~are~~ comparative figures:-

Assessment of compensation at 20% disability, as assessed by the first Medical Board:-

- | | | |
|---|---|-------------|
| (1) Under the Indian Act, based on wages at time of accident, without deduction of any sick pay; | } | Rs. 1,050/- |
| (2) under the draft Workmen's Compensation Ordinance, on wages at time of accident, without deduction of any sick pay; | | |
| (3) under the Indian Act, based on wages at termination of services, without deduction of sick pay; | } | Rs. 1,050/- |
| (4) under the draft Workmen's Compensation Ordinance, based on wages at termination of services, without deduction of sick pay. | | |

If compensation had been paid it would have been based

(See para 7)

On the present assessment of ten per cent. these figures would be halved. It will be seen that the gratuity paid is in excess of any of the compensation figures quoted. I do not consider that there is any justification for taking into consideration the medical report by Captain Little, I.M.S., in view of the local medical reports, and especially the report of the Medical Board held on the 8th of August, 1938.

9. I suggest therefore that the petitioner be informed that you have given sympathetic consideration to his case but that, in your opinion, the petition is based on inadequate grounds, and that you are not prepared to consider his reinstatement nor, in view of the generous treatment which has already been accorded to him, are you ready to sanction the payment of any additional gratuity or compensation.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R Brooke Poplan

HIGH COMMISSIONER

13th July 1938.

The Right Honourable
The Secretary of State for the Colonies,

Through His Excellency the Governor of Kenya Colony, Nairobi.

Sir,

The humble petition of Illam Din s/o Mohamed Ramazan,
late employee of the Kenya and Uganda Railways and Harbours,
most humbly and respectfully sheweth :-

1. Your humble petitioner worked in the Railway
Workshop of the Kenya and Uganda Railways and
Harbours from 2nd February 1920 to 16th July 1936 when his
services were terminated in the circumstances mentioned in
detail in a petition submitted by the petitioner to His
Excellency the High Commissioner for Transport in December
1937. His Excellency the High Commissioner for Transport
replied on 2nd March 1938 stating his inability to accede
to the request of the petitioner.

2. Your humble petitioner wishes to appeal
against the order of His Excellency the
High Commissioner for Transport for the reasons mentioned
in his petition and the enclosures attached thereto.

3. Although the Medical Board who sat on your
humble petitioner on 10th July 1936 declared that the
efficiency of your humble petitioner was impaired to the
extent of 20 per cent, the fact nevertheless remains that
your humble petitioner is totally incapacitated and unfit
for following any other occupation.

4. Your humble petitioner therefore prays,

- (i) That an order be given for a medical
board to re-examine him with a view to
ascertaining the exact degree of his
incapacity at the present time.

(ii) That he be reinstated in his

and failing,

- (a) That full gratuity be granted because the termination of the humble petitioner's services has resulted in considerable economy to the Railway Administration and therefore comes under the category of retrenchment.

- (b) That adequate compensation calculated at in any case not less than 20 per cent of the salary the humble petitioner was in receipt of at the time of his services being terminated, which in effect amounted to wrongful and ruthless dismissal, be granted.

For which act of kindness Your Humble Petitioner and his large family will ever remain grateful.

I beg to remain,
Sir,
Your Most obedient and humble
Servant,

M. M. Ali

P.S.-

In substantiation of the statement made by your humble petitioner in the concluding ~~paragraph~~ part of paragraph 6 in the petition to His Excellency the High Commissioner, your humble petitioner begs to enclose copy of his letter to the Chief Mechanical Engineer dated 18th July 1936 and the reply thereto dated 22nd July 1936 (Appendix "J" & "K").

M. M. Ali

His Excellency,
Sir Robert Brook Popham,
Knight Grand Cross of the Royal Victorian Order,
Knight Commander of the Most Honourable Order
of the Bath, Companion of the Most Distinguished
Order of St. Michael & St. George, Companion of the
Distinguished Service Order upon whom His Majesty has been
pleased to confer the Air Force Cross, Air Chief Marshal
in the Royal Air Force, Governor and Commander-in-Chief
of the Colony and Protectorate of Kenya.

May it please Your Excellency,

The Humble Petition of Illam Din, s/o Mohamed Ramazan
ex-employee of the Railway.

The humble petition of Illam Din s/o Mohamed Ramazan,
employee late of the Kenya and Uganda Railway, most humbly and respectfully
sheweth:-

1. Your humble petitioner commenced his service with the
Railway Administration on the 2nd February 1920 as a fitter in the
Railway Workshops at Nairobi. During the course of subsequent
8 years your Humble petitioner performed duties in various depart-
ments of the Workshops diligently and to the satisfaction of his
superior officers receiving periodical promotions as a token of
approved service.
2. In the year 1927, just four days before Christmas,
while Your humble petitioner was on duty and was discussing with
the European Foreman in charge the details of a piece of work he
was asked to perform, a hot piece of iron flew out of the furnace in
front of which he was working, pierced his left thigh and cut the
main artery. As a consequence of this injury Your humble petitioner
was admitted to the K.A.R. Hospital (my accident copy in your Office
Secretariat in the File D/21/12/27) where he remained under
treatment for nearly four months and suffered indescribable pain and
agony. On being discharged from the Hospital, Your humble petitioner
was advised by the Government doctors to continue the treatment of
the Radiologist (Dr. Walter) as well as to have regular massage, a
process which not only subjected the humble petitioner to continuous
pain, but also involved considerable expense. In support of this
statement Your humble petitioner begs to attach herewith a copy of

Surgeon in charge of the Civil Dispensary who attends the Railway and Government employees. (Appendix A). After continuous and prolonged treatment under the Radiologist and Medical authorities Your humble petitioner was informed ultimately by all concerned that no further improvements could be effected and he was consequently recommended for being given light duty of which a nature as did not involve strenuous use of the injured limb but the petitioner was advised to continue the process of massage for an indefinite period which he did up to 1935 at his own expense especially as he was definitely advised by the Medical Authorities that the cessation of continuous massage would in all probability necessitate the amputation of the whole leg.

3. As a consequence of this serious injury sustained by Your humble petitioner while admittedly on duty, he was transferred to the Stores Department as assistant to the Loco Despatcher after having been found unable to work as a fitter in Fitting Shop and Electric Shops, etc. In the Stores Department Your humble petitioner performed his duties so diligently and to the satisfaction of all his superior officers that he rose to the salary of Shs.440/- per month from Shs.330/-. Apart from this increment, the services of Your humble petitioner were approved and found to be so satisfactory that on the 21st January 1936 he was placed on Permanent Establishment ^{present} as will be seen from the copy of the Chief Mechanical Engineer's letter No. E.G.144 dated the 21st January 1936 (Appendix B). This confirmation of the appointment of Your Humble petitioner on the Permanent Establishment, carries with it according to the Railway Weekly Notice No.220 of 4th January 1926 "All privileges etc. provided for in the Staff Regulations, applicable to non-pensionable staff. If brought under retrenchment such staff will be eligible for a gratuity calculated at the rate of one month's salary for each completed year of service, subject to a maximum of 15 months salary".

4. In May 1936, however, Your humble petitioner, believing the confirmation of his appointment to permanent Establishment as the recognition of his past approved services, unfortunately enough for him committed the fatal blunder of submitting an application

for promotion to a higher grade. This application though natural according to human instinct for an advancement, was mainly submitted as a result of the repeated instigation of the clerk who now occupies the position of Your humble petitioner, who was also the writer of such applications which he deliberately couched in a provocatively arrogant language since Your humble petitioner was unable to write English himself. This naturally gave offence as the Petitioner now realises, to his superior officers who construed these applications as abuse of the kindness shown by them to me and as an effort on my part to take undue advantage of the recognition of my past services as being placed on the Permanent Establishment. Apart from these circumstances, Your humble petitioner has also been the victim of considerable amount of tale carrying against him by the very clerk who has not only succeeded him in his position but succeeded in poisoning the ears of the Petitioner's superior officers. A perusal of the copy of letter No. E.P.5860 of 31st August 1936 from the Chief Mechanical Engineer to the Honourable, the General Manager (Appendix C). will throw a flooded light (1) the real cause of the dismissal of the petitioner (2) the ostensible though artificial reason given for which a dismissal (3) the identity of the man who succeeded the Petitioner on lesser remuneration after having himself wrought the ruin of the Petitioner by causing him to submit annoying applications for promotion written by himself and (4) the calumnies alleged to have been disclosed to Mr. Shamsud-Deen who went to plead the case of the Petitioner but gave up the pursuit after hearing what the Chief Mechanical Engineer had been told about the Petitioner.

5. This campaign of calumny reached the climax during the fortnight (8th June 1936 to 22nd June 1936) when owing to a revival of very acute pain in the injured thigh of the Petitioner he had to remain on the sick list. This was immediately prior to the notice of termination of the Petitioner's services being served on the 16th July 1936. In order to show that this statement is not merely based on the Petitioner's imagination he begs to enclose herewith an original letter (Memo No.56) dated 5th June 1936 (Appendix D). which was written by the clerk who was seeking to replace the

Petitioner and duly signed by the Loco Despatcher but since the Petitioner was still on duty and had not gone to the Hospital yet, the Memo in question was cancelled by the Loco Despatcher as being without justification and also because I was expected to be in a position to give satisfaction but after the Petitioner had gone to the Hospital on the 8th June the clerk in question succeeded in his second attempt and managed to get a complaint sent against the Petitioner by his immediate officer, the Loco Despatcher and examination by a Medical Board, a copy of whose report is attached hereto and marked Appendix (E). It will be seen from this report that 20% of the earning capacity of the humble petitioner for mechanical work has been reduced. But this is on a presumption that the Petitioner was working in some industrial district such as Sheffield, London, Delhi or Lahore where one could, on being dismissed by one Industrial establishment go to another and be employed on 20% less than the usual wages paid to men of his class. But in a country like Kenya where no such circumstances prevail and a man eliminated by the Railway is left to the shere world, the formula of 20% loss of earning capacity does not really apply. Who is going to employ a cripple who hobbles about having been maimed for the whole life by the Railway works? If he is no good to the Railway on whose works he got crippled he is no good to anyone else. Your Humble Petitioner also voluntarily submitted himself for medical examination and advise of Captain J.P.J.Little, L.M.S., Government Civil Surgeon Lahore on the Petitioner's recent visit to Lahore in the beginning of this year and he begs leave to refer to the opinion of Captain Little (Appendix F) in which he definitely opines that the Petitioner is permanently unfitted for work as a fitter.

6. The Report of the Medical Board was obviously unfavourable for purposes of the Railway authorities as implied by it, it recommended the petitioner being retained in the position he was then occupying or the Railway Administration being confronted with the problem of compensation to the extent of 20% of the earning capacity of the Petitioner. A new and easier method of getting rid of the Petitioner was therefore resorted to. The Petitioner, owing

long which were within the knowledge of the Railway Administration and by an arrangement with the Courts the Railway agreed to allow these to be paid off gradually since his duties did not in any manner involve opportunities where embezzlement of Railway funds would be any temptation in the way of the Petitioner. This was known to the authorities long before 21st January 1936, when the Petitioner's appointment was confirmed and he was put on the permanent establishment Your Humble Petitioner, had, however, been warned on the 19th March 1935 as per Chief Mechanical Engineer's letter No. E/5860 (Appendix G) that his services were liable to be terminated in the event of further Court attachments being received. The indebtedness of Your Humble Petitioner did not increase and in fact nothing happened between January 1936, when he was put on permanent establishment and 16th July 1936 when the notice of termination of services was served upon him without any previous warning of any description as per copy of letter attached hereto (Appendix H) with the exception of the indiscretion of the Petitioner in applying for being promoted to the Special Grade. Your humble Petitioner submitted in vain that his indebtedness had not increased and his friends and relatives even offered to pay off the whole of the debts of the Petitioner if that course would have him from the loss of his livelihood and from being thrown on the street. Your humble Petitioner begs leave to mention here that it is on Railway records that in several cases even Bankrupt employees have been allowed to continue service, in exceptional circumstances.

7. The perusal of the letter mentioned in the preceding paragraph (Appendix C) would also show that by throwing the Petitioner on the street, the Railway Administration has effected an economy of not less than Shillings 140/- per month or £80 per annum which according to the definitions given in the Railway Regulations brings the termination of the Petitioner's services in the category of "retrenchment" owing to reasons of economy and which would entitle the Petitioner to a gratuity equivalent to one month's salary for every completed year of service not exceeding

reluctantly been awarded to the Petitioner which is totally inadequate and not even enough to keep him and his large family in maintenance for six months or at the utmost a year.

8. Nothing has been paid to the Petitioner as compensation even for the 20% loss admittedly declared by the Medical Board, the refusal being based on a novel argument contained in a letter No.S.P.II503 dated 7th November 1936 addressed by the Honourable, the General Manager to Mr. Black Malcomson, Advocate, copy of which letter is annexed hereto and marked (Appendix I.) In this letter the Honourable, the General Manager lays down two principles, (1) that the Railway Administration in the absence of any other laws in force in the Colony generously enough deals with compensation to workmen in accordance with the workmen's Compensation Act in force in India and (2) that under that Act moneys paid by the employer to the workman prior to settlement shall be deducted from the final sum payable. The Petitioner most respectfully submits that the arbitrary decision of the Honourable the General Manager to apply the Indian Workman's Compensation Act is ultra vires and contrary to the instructions laid in the Order-in-Council of 1921 which lays down as a principle that where Indian Acts are not specifically applied and enforced in the Colony, and where the same do not apply, all cases will be dealt with "in conformity with the substance of the Common Law, the doctrine of equity and the statutes of general application in force in England" subject of course, to the local circumstances.

In dealing with the case of Your Humble Petitioner, the Honourable the General Manager has evidently taken into account all the Medical expenses incurred by the Administration while Your Humble Petitioner was in Hospital, the costs of the electrical treatment and the wages paid to the Petitioner while in Hospital.

This dangerous principle if countenanced by the Government would mean that the longer an employee has the misfortune to remain under medical treatment owing to the seriousness of his injuries, the lesser compensation he would get because of the larger medical expenses etc., whereas all rules

employee has been subjected to pain and agony as a result of the injury suffered by him while on duty, the more merciful consideration he deserves with the correspondingly greater amount of compensation. When the local circumstances of the Colony are taken into consideration where a disabled workman has no reasonable chances of getting any further employment when his efficiency has been appreciably impaired, a just Government has to take into consideration the reasonable amount which would suffice for the maintenance of the injured workman and his family for the rest of their lives.

In this connection Your Humble Petitioner wishes to draw Your Excellency's attention to the proposed Workman's Compensation (East & West Africa) Model Ordinance and the Report of a Sub-Committee of the Colonial Labour Committee appointed by the Colonial Office to revise the Model Ordinance.

The Sub-Committee consisted of Sir Alison Russel, K.C. Chairman, Mr. H. F. Downie, O.B.E., (replaced by Mr. O. G. R. Williams, C.M.G., during the concluding stages), Mr. J. P. Paskin M.C., Mr. J. G. Hibbert, M.C., Mr. W. L. Dale and Secretary, Mr. F. Farmer of the Colonial Office. The sub-committee after taking evidence of all the interests concerned in West and East Africa has proposed a revised Model Ordinance which is now being circulated by the authority of the Government of Kenya for criticism and will no doubt be introduced in the Legislative Council before long.

In the case of the humble Petitioner it has been accepted by the Railway Authorities without any question that Your Humble Petitioner was injured while performing his duties on the service of the Railway whereas Section 5 (2) of the proposed Model Ordinance even provides for compensation for the workman notwithstanding the fact that the "workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or any orders given by or on behalf of his employer, if such act was done by the workman for the purpose of and in connection with his

monthly earnings of a workman shall be computed in such a manner as is best calculated to give per month at which the workman was being remunerated during the previous twelve months".

Section 8 (I) provides for compensation for permanent partial incapacity resulting from the injury. The second schedule to the said Model Ordinance provides that where permanent or partial incapacity resulting from the loss at or above knee is concerned, which is the case of Your Humble Petitioner the percentage of incapacity is to be calculated at the rate of 70% of the earning capacity.

In the explanation of the Schedule it is stated that "total permanent loss of the use of a member shall be treated as a loss of such member."

Section 15 (5) of the said proposed Model Ordinance provides that when a workman is required by the employer to submit to the examination of a medical practitioner to be named by the employer the workman, shall be entitled to have his own medical practitioner present at such examination, but at his own expense. While no such privilege was granted to Your Humble Petitioner and the medical practitioner appointed by the Railway arbitrarily assessed his incapacity at 20% the medical practitioner of the Petitioner, a Government Civil Servant in-charge of the capital of the Province of Punjab (British India) Captain J.P.J. Little, I.M.S., has certified that Your Humble Petitioner has been permanently unfitted for work as a fitter.

Section 27 of the proposed Model Ordinance not only provides for compensation for injury in the ordinary course but also contemplates the retention of the injured servant in the service and provides for the compensation for any further injury although it permits the "Workman who has obtained compensation in respect of permanent partial or permanent total incapacity", to "enter into a contract reducing or giving up his right to compensation under the Ordinance in respect of any future personal injury by accident if such contract is certified to be fair by a District

Ordinance the Committee's remarks on page 12 of the report:-

"The Mining Companies in Northern Rhodesia that this Clause as it stood in the earlier draft required qualification because it prevented a partially disabled workman from giving up his full right to compensation in the event of an accident resulting in his further disablement, and that on account of the extra risk due to his existing disablement, employers would be naturally very disinclined to give him employment. They suggested therefore that a partially incapacitated workman should be allowed to enter into a contract reducing or giving up his right to compensation under the Ordinance in regard to future personal injury by accident, if such contract is certified to be fair by a District Officer".

"The sub-committee are aware that such a provision is not contained in the Acts of the United Kingdom, but they consider that having regard to conditions in Africa and to the safeguards which be afforded by the intervention by the District Officer, a provision of the lines proposed would be desirable".

Your Humble Petitioner is surprised that the Honourable the General Manager states in his letter No.S.P. 11503 dated 7th November 1936 addressed by him to Mr. Black Malcomson "the Administration deals with compensation to workmen in accordance with the provisions of the Workmen's Compensation Act in force in India", whereas the sub-committee of the Colonial Labour Committee in their report on page 8 remark:-

"Clauses 6, 7, 8 and 9 - Amount of compensation payable,

"The Joint West Africa Committee and Gold Coast Chamber of Mines maintained that the scale of compensation provided in clauses 6 & 7 were too high; on the other hand the Mining Companies in Northern Rhodesia expressed the view that the scales provided inadequate compensation in the case of Europeans. The Joint Committee of the East African Section of the London Chambers of Commerce and the Joint East African Board recommended that the amounts laid down in clauses 7, 8 and 9 should be considered as maximum payments, and that the Courts should have power to award such amounts of compensation as they considered right up to those maximum payments. The Sub-Committee have carefully considered these representations. The scales of compensation now provided are already in operation in India, and a number of Colonies and the Sub-Committee see no reason for modifying those scales in the to be enacted in Africa".

Your Humble Petitioner would be quite content if the provision contained in the proposed Model Ordinance recommended by the sub-committee of the Colonial Labour Committee should form the basis of compensation being awarded to the Petitioner.

in the Colony is bound to be passed into Law before long.

Your Humble Petitioner further states on the termination of the services of any Railway employee he is entitled to a discharge certificate setting out the nature of his work and character. A certificate was made out in the ordinary course by the immediate officer of the Petitioner describing his work and character as very good, but this was subsequently altered to "good" work and "fair" character which is clearly an undue reflection on the character of the Petitioner without any reasonable cause but due, of course, to the ears of my superior officers having been poisoned as mentioned earlier.

Your Humble Petitioner therefore prays that:-

1. Taking into consideration the most pitiable circumstances to which Your Humble Petitioner has been subjected through no fault of his and having no less than eleven members of the family, that he be re-instated to enable him to support himself and his large family.

2. That failing the first submission he should be awarded:-

(a) Full gratuity because the termination of his services has effected considerable economy and saving to the Railway Administration and the same decidedly comes under the category of retrenchment.

(b) Adequate compensation calculated at in any case not less than 20% of the salary he was drawing at the time of his services being terminated which in effect amounts to nothing less than wrongful and ruthless dismissal.

3. That a proper certificate setting out the description and true nature of the work and character of the Petitioner be issued to him.

For which act of kindness Your Humble Petitioner and his large family will ever remain grateful.

I beg to remain,

Your Excellency's most obedient and
humble servant,

Sd/- Illam Din.

28.4.28.

13

To,
The Chief Mechanical Engineer,
Rly Workshops.

I am returning Mr. Illiam Din No.177 for light duties such as he was formerly doing in the Loco Stores. I think he could easily manage to execute these duties, as I understand they did not entail much walking or standing.

He is being treated by Dr. Walter Radiologist, who has informed me that he should his Sepery for electric treatment and massage for at least another 3 to 4 months. 2 to 3 times weekly; for which a 2 hour absence of work will be necessary.

I will be able to inform you of his progress at a later date, but Dr. Walter is optimistic of great improvement in a short time.

Sd. W. Sargeant,
A.S.

General Dispensary,
Nairobi.

"B"

CHIEF MECHANICAL ENGINEER'S OFFICE.

E.G.144;

Dated 21.1.1936.

Mr. Illam Din, Art. B.
Thro' Loco Despatcher,

CONDITIONS OF SERVICE.

With reference to Weekly Notice No. 220 dated the
4th January 1936, I have the honour to advise that
your present appointment is classified as an;

Establishment Appointment.

Sd. K.C. Strahan.

Chief Mechanical Engineer.

Chief Mechanical Engineer's Office,
Nairobi, 31.8.36.

No.E.P.5860.

Hon.General Manager,

The reason for the termination of the services of this man was given as financial embarrassment come a reply which was amply sufficient according to the regulations of the service.

2. This man is a fitter by trade, but has been unable to follow his trade, according to his own statement, owing to his disability, at the time of the retrenchment he was (again owing to his disability) not retrenched as he should have been on the score of technical ability, he was put into the electrical shop and given a stool to sit on. He complained that he was unable to undertake such work and asked to be put back on to the Workshops lorry and in the Loco Stores which was done.
 3. This man's pay as an artisan "B" Class has been Shs.440/- since 1.6.1935. His duties are being carried out by a clerk on Shs.300/- at the moment, But his accident which was in the sense a fortunate occurrence for him, his services, as not being worth retaining, would have been terminated years ago.
 4. The subject of Mr. Illam Din's possible reinstatement was raised by Mr. Shams-ud-Din in a recent interview. After the position was explained to him, he stated, in effect, that he did not propose to pursue it further.
- No gratuity is due under the regulations.
Copy to C.A.

Chief Mechanical Engineer,
Sd/- K.C. Strahan.

D

The Chief Mechanical Engineer,
Kenya and Uganda Railways & Harbours,
Nairobi.

Sir,

As I am not satisfied with the working of Mistry Illam Din in Loco Stores, I beg to apply to have him transferred to some other Department and to have him replaced by a good clerk.

I find that Illam Din, since he has been refused the grade, has become very careless and has to be constantly checked for wrong issues of material and also for complete neglect of duty and for coming to work when he likes in the mornings.

I wish to state that I am very dissatisfied with him in general and would be grateful if you could see your way clear to have him replaced.

Sgd/- Gillies,
Loco-Despatcher.
5-6-36.

10th July 1936.

5/186/36.

The Chief Mechanical Engineer,
K.U.R. and Harbours,
Nairobi.

RE: MR. ILLAM DIN.

Ref. Your No. E.P.5860 of 4/7/36.

We are of opinion that as long as Mr. Illam Din continues in his present occupation, and provided his salary is not reduced, there is no disability but, in the event of his discharge, we consider that his earning capacity for mechanical work is reduced to the extent of 20%.

Sd. T.C.J. Callahan,
Senior Medical Officer.

"P"

Lahore, 3.2.1937.

Captain J.P.J.Little,
I.M.S.
Civil Surgeon.

Illam Din.

Certified that Mr.Illam Din whose employment was previously a Fitter in the K.U.Railways and Harbours whose signature is given above has been permanently unfitted for work as a Fitter. Owing to an accident to his left thigh and in my opinion is unable to work for eight hours per day.

Sd. J.Little.

Capt. I.M.S.

Civil Surgeon, Lahore.

"G"

Incl. (A)
Kenya and Uganda Railways and Harbours,
Office of the Chief Mechanical Engineer,
Nairobi, 19th March 1935.
Reference E.P.5860.

Mr. Illam Din,
Thro' The Loco Despatcher,
Nairobi.

COURT ATTACHMENT.

With reference to the Court Attachment for Shs.580/04 recently received against your salary, you are hereby warned in accordance with paragraph 11910 of Weekly Notice No.632 dated the 6th February, 1926, that your services are liable to be terminated in the event of a further Court Attachment being received against you.

Sd. R.I. Kirkland,
for Chief Mechanical Engineer.

"H"

30

Kenya & Uganda Railways and Harbours.

Office of the Chief Mechanical
Engineer,
Nairobi, 16th July 1936.

Reference...E.P.5860.

Illam Din,
Thro' Loco Despatcher,
Nairobi.

TERMINATION OF SERVICES.

You are hereby given one months notice
of termination of your services in accordance
with clause 7.A. of your agreement on account
of the increased amount of your indebtedness.

Please acknowledge receipt.

Chief Mechanical Engineer,

for and on behalf of,

General Manager.

32

"J"

General Managers Office,
Nairobi, 7th November, 1936.

No.S.P.11503.

R.Black Malcomson, Esqr.,
Advocate,
York House,
Government Road,
Nairobi.

Dear Sir,

ILLAM DIN S/O MOHAMED RAHMAN.

You are no doubt aware that there is no liability upon the Administration to make any compensation payment whatever but as I have previously informed you in another case, the Administration deals with compensation to workmen in accordance with the provisions of the Workmen's Compensation Act in force in India - under that Act moneys paid by the employer to the workman prior to settlement shall be deducted from the final sum payable. As the amounts received by your client are in excess of the amount he would have received under this Act, there is no further payment due to him.

Yours faithfully,
Sd. G.D.Rhodes,
General Manager.

"J" "K"

Nairobi,
18th July 1936.

The Chief Mechanical Engineer,
K. & U. Railways & Harbours,
Nairobi.

Sir,

With reference to your letter No. E.P.5860 of the 16th instant giving me notice of termination on the grounds of the increased amount of my indebtedness, I most respectfully beg to lay the following facts for your kind information.

My indebtedness I beg to say has been decreased and not increased. I have honestly endeavoured to pay off my debts and have not incurred any fresh debts since 1934.

I have been keeping my expenses as low as possible in order to pay off the old debts.

I am a family man having 9 children and wife to support and if I am deprived of my service by which I am supporting myself and my family I respectfully beg to lay before you that it would be a great hardship on me and I pray that the notice above referred to be cancelled and I may be allowed to continue in the service.

The attachment of Meraj Din has been reduced by Shs.2000/ which he agreed to waive out of his claim and I can produce evidence to that effect either through Court or otherwise.

If you think, Sir, that the other attachments should be removed, my creditors are willing to withdraw the same in the event of your retaining me in the service. My whole indebtedness is now Shs.6500/-.

I most humbly and respectfully pray that you will, Sir, kindly take into consideration my loyal and faithful services rendered to the Administration and cancel the notice above referred to.

Thanking you and praying for the cancellation of the notice

"K" "L" 34
Office of the Chief Mechanical Engineer,
Nairobi, 22nd July, 1936.
Reference E.P.5860.

Mr. Illam Din,
Artizan,
Thro' Loco Despatcher,
Nairobi.

TERMINATION OF SERVICES.

In reference to your appeal dated the 18th instant, I have carefully considered your case but it is regretted that no alteration to my letter E.P.5860 dated the 16th instant can be made.

Sd. K.C. Strahan,

CHIEF MECHANICAL ENGINEER.

KENYA AND UGANDA RAILWAYS AND HARBOURS.

OFFICE OF THE HIGH COMMISSIONER
FOR TRANSPORT.
NAIROBI. KENYA.

NO.t/S/B.4.

2nd March 1938.

Sir,

In pursuance of my letter of the 21st of December 1937, I am directed to inform you that your petition to the High Commissioner for Transport has been laid before His Excellency who, after full consideration of the statements made therein, regrets that he is unable to accede to your requests.

2. I am to add that a certificate of service which sets out fairly the nature of your work and ability was prepared for you on the 19th of August last, but it is understood that you refused to accept it.

I am,

Sir,

Your obedient servant,

Sd/- H.G.Richards.

For SECRETARY TO HIGH COMMISSIONER.

Mr, Illam Din,
s/c Mohamed Ramazan,
P.O.Box 524,
Nairobi.

11 AUG 1938
COLONY AND PROTECTORATE OF KENYA

Proceedings of Medical Board.

A Medical Board composed as under assembled at the Native Hospital, Nairobi on the 8th of August 1938 for the purpose of reporting on Mr. Illam Din, K.U.R.&H., as to the degree of incapacity resulting from an accident sustained during the course of his duties.

- President Dr. J.H.H. Chataway, Ag. S.S.
- Members { Dr. M.A.W. Roberts, M.O.

The Board having assembled proceed to investigate the history of the case and examine the patient.

It is difficult to estimate the exact degree of incapacity resulting from this disturbance of blood supply to the left limb but it is considered by the Board not to exceed 10%.

(President)..... *J.H.H. Chataway*
AG. SURGICAL SPECIALIST.

(Member)..... *M.A.W. Roberts*
MEDICAL OFFICER.

Medical Notes attached.

Remarks by D.M. & S.S.

I concur

Nairobi 11th August 1938

Health Officer
Director of Medical & Sanitary Services.

History: Mr. Illam Din was operated on at the Native Hospital, Nairobi, on 21.12.27 for a perforating wound of the left Femoral Artery. This artery being tied at a high level in the thigh. He recovered satisfactorily and apparently resumed his employment by the Kenya and Uganda Railways and Harbours.

On 10.7.36 a medical board consisting of an S.M.O. and a M.O. estimated his earning capacity for mechanical work to be reduced by 20% in the event of his discharge from employment by the Railway.

Mr. Illam Din now complains of inability to walk a distance with cramp like pains in and near the great toe and calf of the affected limb and just below the site of the wound in the thigh.

Medical Examination: A portly Indian, healthy in appearance but with a somewhat puffy and florid complexion.

B.P. 120/90 - Teeth fair - Tongue and Fauces healthy - No abnormality discovered in the chest or abdomen.

He walks well without a limp. The left thigh shows a well healed scar in the line of the Femoral Artery just below the groin.

Measurements show the left thigh to be $\frac{1}{2}$ " less in circumference than the right, the left calf to be decreased by $\frac{1}{2}$ " in circumference and the left leg and foot is slightly colder than the right. The left toes appear perfectly healthy beyond this very slight decrease in temperature.

(President)..... *M. S. M. M. M.*
AG. SURGICAL SPECIALIST.

(Member)..... *M. S. M. M. M.*
MEDICAL OFFICER.

Para. 3: His appointment was classed as "Establishment" in pursuance of the generous treatment which has consistently been accorded, in view of his accident. As previously stated, however, he was not brought under retrenchment, and the terms of Weekly Notice No. 220 are not effective, in regard to the higher rate of gratuity.

Para. 4: I enclose a copy of his application for promotion, and against his contention that this was "deliberately couched in a provocatively arrogant language" by a Clerk in the Loco. Stores, in order to injure the petitioner, it has been ascertained that the application was prepared by the Loco. Stores Clerk from Illam Din's own draft in Urdu, and at his express instructions. I would also point out that there is a very significant omission (shown in pencil) from the petitioner's copy of the Chief Mechanical Engineer's letter of the 31st August, 1936.

Para. 5: When his application for promotion was turned down, he became very careless and inattentive to his duties, so much so that the officer under whom he was working was at last obliged to request that Illam Din be removed elsewhere. A letter was written to the Chief Mechanical Engineer, with this object, but the petitioner made a personal appeal for its cancellation, and it was agreed to give Illam one more chance. Having attained his object, Illam Din again became careless and boastful of his temporary success in evading removal from his post, so that it was eventually imperative to dispense with his services, in order to maintain proper discipline among the staff in his vicinity. He had been previously involved in debt, and at this time was heavily embarrassed.

The Medical Board was held to assess compensation payable, but as stated in history of the case, no award was made, under the provisions in force.

Para. 7: It is true that the work performed by Illam Din is now being carried out by a Clerk on Shs. 30/- p.m., but it cannot be argued from this, that the former was retrenched. He was employed by the Railway for over ten years at a salary much in excess of his economic value, and on his services being terminated, it was found possible to replace him in the manner stated.

Reference to paragraph 8 (page 8) of Illam Din's petition dated December, 1937, pointing out that incapacity should be calculated at the rate of 70% of earning capacity, the Model Ordinance provides:-

Loss of leg at or above knee - 70%
" " below knee - 40%

In putting the note to the Schedule that "loss of permanent loss of the use of a member shall be treated as a loss of such member", the petitioner is correct, but it is conclusive that Illam Din has not permanently lost the use of his leg. Further the Model Ordinance deals with "loss of earning capacity", and it cannot be assumed that the degree of incapacity (10% - which is physical) has in fact resulted in loss of earning capacity.

Paras. 8, 9 & 10: The refusal to grant compensation was taken into account, when agreeing to payment of gratuity; the amount of the latter was, much more than would have been allowable as compensation, had the amount of sick pay not been deducted.

Paras. 11-18: I cannot accept his contention that his case should be dealt with under a scheme which has not yet been made Law.

Para. 19: It has already been explained to Illam Din's legal advisers that the only Service Certificate recognised is that issued by the Head of Department. The opinion of an immediate superior is for consideration departmentally, and is not published.

Para. 20 (1): His re-instatement is not considered to be advisable, on account of both his ability and past behaviour.

(2)(a): He has been paid the normal gratuity to which he was not strictly entitled, and cannot be regarded as qualified for the higher gratuity by reason of retrenchment.

(b): I cannot recommend that the question of compensation should be reconsidered. If this were done, claims would undoubtedly be received from other staff who were dealt with on the same basis as Illam Din.

(3): A certificate of service, which is considered fairly to state the nature of his work and ability was prepared on 19th August, 1936. This he has refused to accept.

The Works Superintendent.

The application sent you was a rejoinder to the letter I received from you. To my mind, the reply under reference is not based on justice; for this very reply, you could favour me with in the year 1934, since at that time also I was on the same grade.

Consequently your judgment is one sided and I am sure it is also off-hand. You are our judge, it therefore behoves you to administer even-handed - or impartial justice.

To begin with, I say with the blow of the trumpet that of all your charge-hands of your workshop ~~Europeans & Indians~~, I am next to none in efficiency & everything else. I am of the view, that I am conversant with the work of all your Loco and Carriage shops. Is not the claim of one, who is master of all trades, greater, than the one who knows but one thing.

You ought not have barred my way, what justification is there to condemn a man fully acquainted with every single detail of Loco and Carriage work. Ay --- I understand every system of your Railway.

With all this am I worth Shs. 440/- only.

I was hurt to core at the perusal of your letter, although the coming events had cast their shadow before ~~me~~ there was nothing unanticipated in the reply. Then once again, I took my application personally to you, but you told me to go to office viz: Establishment section.

I must convey to you that I am very very capable and an excellent worker. Do not aggrieve me. In case you are bent upon blocking my way, I want my application back.

Of all the Indian employees of Chief Mechanical Engineer's Department, I have the biggest family, consisting of 9 children, (here he doesn't make mention of his 2 wives) mother and 5 daughters from her. (The truth is, he lost his mother when he was yet in teens. He has no unmarried real sister either). I want thousands of shillings for their marriage.

The observation
in brackets was
made by the
Clerk who
recalled the
letter for Mr.
Jr.

One who has been promised a higher grade has a family smaller than mine! Here he is referring to Mistry Nager Ahmed of Loco Machine Shop! and thousands of shillings in the bank. I am senior to him; my case should have been considered. Admitted, there is no vacancy at the moment, yet you could give me a satisfactory reply.

Unlike others, I have worked under 4 Works Managers. They appreciated my work, never refused to give me a grade and always listened to me. As you are a new man, I maintain you have no idea of what I do. Perhaps you labour under the miss-apprehension, that I only do transport work. That is the reason you say Shs, 440/- and no more.

In the year 1927, I met with accident & lost great quantity of blood. On account of the accident I was already feeling pain - when a fresh blow --- contained in your reply, shattered my health.

I appeal to you not to damage my record.

As for my indebtedness, even the Government itself is involved in debt.

(signed) Iltam Din.

41
END

HY. S. L. POLAK & Co
SOLICITORS AND PRIVY COUNCIL AGENTS
HY S L POLAK
ATTORNEY OF THE SUPREME COURT OF S AFRICA
TRANSVAAL AND NATAL PROVINCIAL DIVISIONS
M. H. L. POLAK
COMMISSIONER FOR OATHS
TELEPHONE: HOLBORN 3665
TEL ADDRESS: KALOPH, ESTRAND, LONDON
CABLES: KALOPH, LONDON
BENTLEY'S CODE.

DANES INN HOUSE,
265, STRAND,
LONDON, W. C. 2.

LR/T

7th September 1951.

The Under Secretary of State for the Colonies,
Colonial Office,
Whitehall,
W. 1.

PC/4

Sir,

In reference to the application of Illiam Din which we understand has been transmitted to you by the High Commissioner for Transport, Kenya Colony. We have been instructed to refer Mr. Illiam Din in this matter, and shall be happy to see if any further assistance can be rendered, but I am sorry to say that I am unable to do so at present. I am, Sir, very respectfully,
Yours faithfully,
[Signature]

[Signature]