

1973  
Mar. 13

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

ENTAFIANOS HJI MICHAEL,

*Appellant,*

v.

v.

ENTAFIANOS  
HJI MICHAEL  
v.  
THE DISTRICT  
LABOUR OFFICER  
AND SOCIAL  
INSURANCE  
OFFICER

THE DISTRICT LABOUR OFFICER AND  
SOCIAL INSURANCE OFFICER NICOSIA,

*Respondent.*

*(Criminal Appeal No. 3395).*

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*Annual Holidays with Pay Law, 1967 (Law 8 of 1967) section 14 (1) (b)  
—Failure to pay without “good reason” the contributions payable  
under regulation 8 of the Annual Holidays with Pay Regulations,  
1967—Proof of conduct constituting “good reason”—Burden and  
standard of proof—No material giving rise to the defence of  
existence of “good reason”—Appeal dismissed.*

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The Appellant in this appeal appealed against his conviction on six counts of the offence of failing without “good reason” to pay, during a particular time, the contributions payable by him under regulation 8 of the Annual Holidays with Pay Regulations, 1967, in respect of a person in his employment, contrary to section 14 (1) (b) of the Annual Holidays with Pay Law, 1967 (Law 8 of 1967).

The Appellant in his defence before the Court below contended that there existed “good reason” for the aforesaid failure, because though he was ignorant of the relevant legislative provisions, he had done for his employee more than he was obliged to do under the said legislation, by arranging for him to go on leave, for about two or three weeks every year and by paying him each time an amount of £15–£25.

The employee, however, denied the correctness of the above version and testified that whatever money was given to him in relation to his holidays was deducted later from his wages.

Counsel for the Appellant in arguing the appeal complained that the trial Court failed to make a definite finding as to whether or not Appellant’s version was true.

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*Held*, 1. Though the trial Judge did not make expressly such a finding, it is to be clearly derived from his judgment that having watched the demeanour, as witnesses, of both the Appellant and his ex-employee, he could not have been prepared to accept the Appellant's evidence even on the balance of probabilities.

2. It was up to the Appellant to prove conduct on his part on which he could rely as constituting "good reason"; and the degree of certainty with which he had to establish it was not that required in a criminal case in order to prove guilt, but the lesser one sufficient for the purpose of civil proceedings.

3. On the record before us there does not exist any material which could give rise to the defence of the existence of "good reason" and so, this appeal fails.

*Appeal dismissed.*

#### **Appeal against conviction.**

Appeal against conviction by Entafianos Hji Michael who was convicted on the 19th December, 1972, at the District Court of Nicosia (sitting at Morphou (Criminal Case No. 3122/72) on six counts of the offence of failing without "good reason" to pay contributions payable by him under regulation 8 of the Annual Holidays with Pay Regulations, 1967, in respect of a person in his employment, contrary to section 14 (1) (b) of the Annual Holidays with Pay Law, 1967 (Law 8/67) and was sentenced by Hji Constantinou, D.J. to pay a total of £15.500 mils fine and was further ordered to pay the arrears of contributions.

*A. Pandelides*, for the Appellant.

*N. Charalambous*, Counsel of the Republic, with *C. Kypridemous*, for the Respondent.

The judgment of the Court was delivered by:—

TRIANAFYLLIDES, P.: In this appeal the Appellant complains that he was wrongly convicted on six counts, each of which charged him, under section 14 (1) (b) of the Annual Holidays with Pay Law, 1967 (Law 8/67), with having failed without "good reason" to pay, during a particular period of time, the contributions payable by him under regulation 8 of the Annual Holidays with Pay Regulations, 1967, in respect of

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a person in his employment; all six counts related to the same employee of the Appellant.

The defence of the Appellant before the trial Court was that there existed good reason for his failure to pay the contributions, because the Appellant, though he was in fact ignorant of the provisions of the relevant legislation, he had, actually, done for his employee in question more than he was obliged to do under such legislation, by arranging for him to go on leave, for about two or three weeks every year, to Kalopanayiotis, for medicinal baths and by paying him, each time, an amount of £15 – £25.

There is no dispute that if the Appellant's version is not a true one there can be no question of the Appellant having a defence in the matter, irrespective of what interpretation might be given to the words "good reason" in the relevant legislative provision.

The employee of the Appellant has denied the correctness of the Appellant's version; he testified that whatever money was given to him in relation to the days which he spent at Kalopanayiotis was deducted later from his wages; thus what the Appellant tried to present as "holiday with pay" was a mere lending arrangement.

In a case of this nature it was up to the Appellant to prove conduct on his part on which he could rely as constituting "good reason"; and the degree of certainty with which he had to establish it was not that required in a criminal case in order to prove guilt, but the lesser one sufficient for the purposes of civil proceedings.

It has been complained by Appellant's counsel that the trial Court failed to make a definite finding as to whether or not the Appellant's version was true. We are of the view that though the trial Judge did not make expressly such a finding, it is to be clearly derived from his judgment that having watched the demeanour, as witnesses, of both the Appellant and his ex-employee, he would not have been prepared to accept the Appellant's evidence even on the balance of probabilities; therefore, on the record before us, there does not exist any material which could give rise to the defence of the existence of "good reason" not to pay the required contributions and, so, this appeal fails.

*Appeal dismissed.*