

1944
 March 24
 COSTAS
 M. PIKIS
 v.
 THE POLICE.

[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]

COSTAS M. PIKIS,

Appellant,

v.

THE POLICE,

Respondents.

(Case Stated No. 26.)

*Cabaret—Meaning of “shop”—“shop assistant”—“In or about a shop”—
 The Shop Assistants Law, 1942, section 2.*

The appellant, who is owner of a cabaret and employer of artistes and musicians for the purpose of his business, was charged under section 11 of the Shop Assistants Law, 1942, with failing to keep a list of shop assistants employed in his shop and a table of their working hours. It was contended by the appellant that artistes and musicians are not shop assistants, and do not come within the provisions of the section.

Held: The term “shop” means the place or premises where a certain kind of business is carried on. The term “shop assistant” in section 2 of the Shop Assistants Law, 1942, contemplates the employment on which such a person is engaged and not merely the place where he is employed.

Appeal by way of Case Stated from a conviction of the District Court of Nicosia.

A. *Emilianides* for the appellant.

P. N. *Paschalis*, Acting Solicitor-General, for the respondent.

The facts are fully set forth in the judgment of the Court which was delivered by:

JACKSON, C.J.: This is a case stated by the District Judge, Nicosia, at the request of one Costas Pikis, the owner of the “Chanteclair” Cabaret, Nicosia, who was convicted by the District Court of failure to comply with certain provisions of the Shop Assistants Law, No. 21 of 1942.

The breaches of the law with which he was charged were that he, being a shopkeeper, failed to keep a list of the shop assistants employed in his shop, and a table of their working hours, as required by section 11 of the Law quoted. The employees of the cabaret in respect of whom these breaches of the law were alleged to have been committed were 13 girls who gave performances at the cabaret and four musicians who composed the orchestra.

The appellant’s defence was that the “Chanteclair” cabaret was not a shop, and that the persons to whom the charge related were not shop assistants within the meaning of the Shop Assistants Law. These are the points of law which have been submitted to us by the District Judge for our opinion.

By section 2 of the Law quoted, “shop” is defined as meaning any premises where any retail trade or business is carried on and by the same section “retail trade or business” is defined to include the sale of intoxicating liquors. The “Chanteclair” cabaret is licensed for the sale of intoxicating liquors and, in our opinion, there can be no doubt whatever that it is a shop within the meaning of the Law. This position is not affected by the fact that the cabaret falls within the definition of “theatre” under the Municipal Bye-laws and that entertainment duty is payable by the customers. Nor is it affected by the fact that the cabaret opens only at night. Special provisions are made by the Law, and in particular by section 19, to adapt it to the special requirements of special

businesses. The main business of the cabaret is the sale, by retail, of drinks and refreshments and it clearly falls within the definition of "shop".

We were informed by the appellant's advocate that the provisions of section 11 of the Shop Assistants Law are in fact observed in the cabaret with respect to waiters employed in serving customers, but he argued that these provisions did not apply to the cabaret performers or to the members of the orchestra.

This second argument requires an examination of the meaning of the term "shop assistant" as used in the Law. This term is defined by section 2 as follows:—

"'shop assistant' means any person employed in or about a shop, but does not include a shopkeeper or any person employed solely as a caretaker or as a cleaner or other domestic servant."

It was contended for the Crown that this definition includes everyone employed in or about the premises of a shop, no matter in what capacity, provided, of course, that he is not expressly excluded from the definition. This argument laid emphasis on the *premises*, being a shop, in or about which a person is employed and not on the nature of his employment.

Definitions of the term "shop assistant" in the English Shops Acts of 1912, 1913 and 1934 do not directly help us. These definitions are much narrower than ours and are framed in quite different terms. For similar reasons we cannot expect to find any precise guidance in the interpretations of the English definitions that are found in English cases. Nevertheless, it is to be noted that in defining those classes of persons who are to be regarded as shop assistants for one purpose or another, emphasis is laid by the English Acts not solely or mainly on the premises, being shop, in which a person is employed but also and mainly on the nature of his employment.

The English Act of 1934, for example, uses the phrase "employment about the business of a shop" to include employment elsewhere than in the shop itself, and it is to be noted that the Cyprus Law refers to any person employed in or *about* a shop. "About" must mean something different from "in", and it seems to us, following the English Acts on this particular point, that the phrase "a person employed about a shop" must be interpreted to include a person employed elsewhere than in the shop itself. If, then, it were necessary to determine whether or not such a person were a shop assistant, it would clearly be necessary to look at the nature of his employment and to determine whether or not he was employed in connection with the business of the shop, the business, that is to say, by reason of which the shop is a shop. In other words, the emphasis must be laid on the business and not on the premises.

We think that the same principle should be applied in interpreting the whole definition of "shop assistant" in the Cyprus Law. It is the business in or about which a person is employed that is the deciding factor. Thus, in our view, the phrase "any person employed in or about a shop" means any person employed in or about the business of a shop; in or about the business, that is to say, by reason of which the shop is a shop. To interpret the definition

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otherwise and to regard the *premises* in or about which a person is employed as the deciding factor, because those premises are a shop, might lead to consequences which the legislature could not be supposed to have intended.

It is true that the term "shop" is defined by the Law to mean "premises" where a certain kind of business is carried on. A shop must be a place. But when we come to the definition of "shop assistant" we are concerned, not with places, but with people and it is the kind of employment in which they are engaged that matters and not merely the place where they are employed.

Even with the interpretation which we have given to it, the definition of shop assistant in the Cyprus Law is very much wider, and very much vaguer, than the definitions in the English Acts, and it remains to be determined whether the persons with whom we are concerned in this case, namely the 13 cabaret girls and the 4 members of the orchestra, fall within the definition.

In our opinion the members of the orchestra clearly do not. The business of the shop, the business by reason of which the cabaret is a shop, is the sale of drinks and refreshments and the members of the orchestra have no concern with that. No doubt the orchestra serves to attract to the cabaret customers who will buy refreshments and drinks, and no doubt the artistes are an attraction not less strong, but that seems to us to be too remote a connection with the business of selling refreshments and drinks to make it proper to regard such persons as shop assistants within the meaning of the Law for that reason alone. In the case of the members of the orchestra there is no other reason for so regarding them.

The 13 cabaret girls are described by the District Judge in his statement of the case as performing floor-shows consisting of dances and we cannot go beyond the facts as stated in the case. Everyone knows that it is sometimes part of the business of such girls to sit with the customers between shows and to persuade them to buy drinks. Sometimes the girls get a percentage on the bills of the customers sitting with them. If we had any such facts before us in this case, our view would, obviously, have been affected by them. But we have no such facts. According to the case before us, these girls give floor-shows and do nothing else. They have, therefore, in our opinion, no more connection with the business of selling refreshments and drinks than the members of the orchestra and cannot be regarded as shop assistants within the meaning of the Law.

We think, therefore, that the District Judge was wrong in convicting the cabaret-owner for failing to include these girls and the members of the orchestra in his list of shop assistants, and for failing to exhibit a table of their working hours.

The conviction must therefore be quashed.

Appeal allowed.