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

(Dec. 9 and 14, 1946)

PANAYIS TH. PIKKOS, *Appellant,*

v.

THE MUNICIPAL CORPORATION OF LIMASSOL, *Respondents.*

(*Civil Appeal No.* 3781.)

Municipal Corporations Laws, 1930 to 1944, sections 67 and 69—Power of dismissal of officers—Grounds on which a Court can intervene—Prescribed notice—Effect of failure to give prescribed notice—Interpretation Law, 1935, sections 2 (21) and 30 (1)—"Days" means clear days.

Section 69 of the Municipal Corporations Laws, 1930 to 1944, relates to appointments to subordinate offices and applies to such appointments certain provisions of section 67. Under these latter provisions every person appointed under section 69, like those appointed to more important posts under section 67, holds office "during the pleasure of the Council" but cannot be dismissed or removed from office except in accordance with certain requirements. These are (*a*) a resolution of the Council passed by a majority of at least two-thirds of the Councillors present at a meeting specially convened for the purpose after notice of "not less than seven or more than fourteen days before such meeting", and (*b*) the approval of the Commissioner.

Section 30 (1) of the Interpretation Law, 1935, provides that "a period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done." In addition, section 2, item (21) of the same Law declares that "days" means clear days.

Held: (1) The requirement of "not less than seven days" notice in section 67 (4) of the Municipal Corporations Laws, 1930 to 1944, must be read as meaning that not less than seven clear days must elapse between the notice and the meeting. Both the day of the notice and the day of the meeting must be excluded.

(2) A resolution of a Municipal Council dismissing a person from their service is illegal and of no effect if the prescribed notice was not given for the meeting at which the resolution was passed, and its subsequent approval by the Commissioner cannot cure its invalidity.

(3) The power of a Municipal Council to dismiss at pleasure is a very wide power and the only grounds upon which a Court of law can intervene are dishonesty and bad faith.

1946
Dec. 14

PANAYIS TH. PIKKOS
v.
THE MUNICIPAL CORPORATION OF LIMASSOL.

Judgment of the District Court of Limassol (Action No. 91/44) dismissing the action reversed.

Sir Panayotis Cacoyannis for the appellant.

J. Potamitis with *J. Limnatitis* for the respondents.

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

JACKSON, C.J. : This is an appeal from the decision of the District Court of Limassol, dismissing a claim for £1,000 damages by an employee of the Municipal Council for wrongful dismissal.

On the 1st January, 1943, the appellant was appointed as a messenger on the permanent staff of the Council at a salary of £36 a year, rising by annual increments of £3 to £84. In April, 1942, the post of messenger was made pensionable. In addition to his salary the appellant received " war bonus " which at the time of his dismissal, on the 21st January, 1944, amounted to £3 a month.

It was agreed by both parties to this appeal that the appellant's appointment was made by the Council under the powers given by section 69 of the Municipal Corporations Laws, 1930 to 1944. This section relates to appointments to subordinate offices and applies to such appointments certain provisions of section 67. Under these latter provisions every person appointed under section 69, like those appointed to more important posts under section 67, holds office " during the pleasure of the Council " but cannot be " dismissed or removed from office " except in accordance with certain requirements. These are : (*a*) a resolution of the Council passed by a majority of at least two-thirds of the Councillors present at a meeting specially convened for the purpose after notice of " not less than seven or more than fourteen days before such meeting " ; and, (*b*) the approval of the Commissioner.

On the 3rd October, 1943, ten months after the appellant's permanent appointment as messenger, the Municipal Council against which this action was brought, was returned to office by election. Ten days later the appellant was instructed by letter from the Mayor to take over the duties of sanitary labourer. His salary was to be unchanged. On the same day the appellant protested against his transfer from the permanent and pensionable post of messenger to that of sanitary labourer which was neither permanent nor pensionable. He added he had no experience of the work and refused the transfer. By a letter of the 18th October the Mayor told the appellant that on the 14th October the Council had approved his transfer to the post of sanitary labourer. The Mayor repeated that the

appellant's salary would not be affected and added that he would still be a permanent employee of the Council. He warned the appellant of the consequences of disobedience if he failed to take up his new duties. On the same day the appellant, in reply to the Mayor's letter, again refused the transfer, on the ground of the status of the post of sanitary labourer and his own lack of experience of that work. At that time the appellant was a little under 50 years of age.

Six weeks later, on the 29th November, 1943, the Mayor informed the appellant by letter that the Council had decided to transfer him to the permanent and pensionable post of municipal weigher, at a salary of £36 a year rising by increments of £3 a year to £111. By letter of 30th November the appellant declined to accept this transfer on the ground of defective eye sight, lack of education and of knowledge of that particular work. He added that if he went to the post of weigher he would very soon be found inefficient and his dismissal would follow.

The last statement by the appellant indicates his real ground of complaint about everything that occurred. He believed that he had been victimised by the Mayor and the Council because it was known that he had voted against their party at the election by which they were returned to office six weeks earlier.

He had been a municipal messenger, first in a temporary and then in a permanent capacity, for nearly two years before that Council took office and there had never been any complaint of his work. The main burden of his case accordingly was that by ordering his transfer from his post of messenger, first to the lower post of sanitary labourer, and then to the post of weigher, the work of which he could not do, the Mayor and Council were simply looking for excuses to dismiss him and were acting maliciously and in bad faith.

Some further correspondence followed the appellant's refusal, on the 30th November, to accept his transfer to the post of weigher but he maintained his refusal and on the 30th December a special meeting of the Council was held to consider the question of his dismissal. The Mayor and seven of the eight other Councillors attended it. The appellant was heard in explanation of his refusal to take up the duties of weigher and attempts were made by the Councillors to persuade him to do. He still declined and the Council resolved unanimously to dismiss him. On the 21st of January, 1944, he was told by a letter from the Mayor that he had been dismissed by the Council, because of wilful and continuous disobedience to their orders and that the Commissioner had approved of his dismissal. He was

paid his salary and war bonus, at the rates already mentioned, up to the date when his dismissal was communicated to him by the Mayor.

Turning now to the proceedings in the District Court, one of the appellant's contentions was that his dismissal was illegal and of no effect because the requirements of section 67 (4) of the Municipal Councils Laws had not been fulfilled. We have already referred to these requirements at the beginning of this judgment. The particular failure alleged was that less than seven days notice had been given of the special meeting of the Council which had been summoned to consider the question of his dismissal. The notice is dated the 23rd December, 1943, and the meeting was held on the 30th of the same month.

The District Court, having considered section 30 (1) of the Interpretation Law, 1935, held that the notice given was sufficient. The Court also held that the Council had power to transfer the appellant from one post to another against his will, as they had done in the two instances mentioned, that the appellant had no reasonable excuse for declining to take up the post of weigher and that the Council had not acted maliciously in transferring him to it. The Court accordingly dismissed the appellant's claim and ordered him to pay costs.

The first point to be considered is the sufficiency of the notice given for the special meeting of the Council at which it was resolved to dismiss the appellant from the Council's service. Unless that meeting was held in accordance with the requirements of section 67 (4) of the Municipal Councils Laws, the dismissal of the appellant was not lawful and its subsequent approval by the Commissioner could not make it lawful. By withholding his approval the Commissioner could, no doubt, prevent an unwise, or unfair decision from having effect, but he could not, by giving his approval, cure an illegality in the Council's action.

The provision of the Law that has been quoted required that, for a special meeting of the Council, summoned to consider the question of dismissing one of the Council's servants, there must be a " notice of not less than seven or more than fourteen days before such meeting." Section 30 (1) of the Interpretaion Law, 1935, reads as follows :—

> " a period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done."

In addition, section 2, item (21) of the same Law declares that " days " means clear days.

Mr. Potamitis, for the respondents, asked us to take no notice of section 2, item (21), for if it is read with section 30 (1) the latter sub-section, he said, becomes superfluous. He may well be right as far as concerns the particular point with which we are now dealing. Section 30 (1) is designed for the interpretation of a variety of statutory provisions some of which may be quite different from the one that we are now considering. An example would be a provision that something must be done within a certain number of days after something else. But there is nothing inconsistent between section 2, item (21), and section 30 (1), nor is there anything in section 67 (4) of the Municipal Councils Laws which would suggest that the period of days there mentioned means something other than clear days. Quite the contrary. A serious subject is to be considered, namely, a suggestion that some employee of the Council should be deprived of his employment, and the sub-section requires that members of the Council shall have proper time to enquire into the matter before they are asked to give their opinions. We must read the requirement of "not less than seven days" notice in that sub-section as meaning that not less than seven clear days must elapse between the notice and the meeting. Both the day of the notice and the day of the meeting must be excluded. Neither can be reckoned as a "clear day" in the period of notice. If that is done no possible computation of time can discover seven clear days between a notice given on the 23rd December and a meeting held on the 30th December.

On this particular point this case is exactly the same as the case in *re Railway Sleepers Co.* (29 C.D. (1885) p. 204) which was cited for the appellant in the District Court. The District Court declined to follow that case on the ground that they had to construe a special statutory provision, section 30 (1) of the Interpretation Law, and the English Court had not. But it seems that the attention of the District Court was not called to section 2, item (21), of our Interpretation Law. If it had been they could hardly have come to any other conclusion than the one that we have reached. They might have put aside the English case on the ground that it was unnecessary as indeed it is, but certainly not on the ground that it was inconsistent with a proper interpretation of our Law.

We must hold therefore that the resolution of the Council dismissing the appellant from their service was not passed in accordance with the provisions of section 67 (4) of the Municipal Councils Laws, 1930 to 1944, because the prescribed notice of the meeting was not given. The resolution was invalid and its subsequent approval by the Com-

1946
Dec. 14

PANAYIS TH. PIKKOS
v.
THE MUNICIPAL CORPORATION OF LIMASSOL.

missioner cannot cure its invalidity. Consequently the appellant has not been dismissed and is still in the service of the Council.

This conclusion by itself requires that we should allow this appeal and it is not strictly necessary that, for the purposes of that decision, we should consider the other questions decided by the District Court, that is to say: (*a*) the question whether or not the Council had power to transfer the appellant against his will either to the post of sanitary labourer or to the post of municipal weigher; and (*b*) the question whether or not the District Court was justified in finding, on the evidence, that, in purporting to dismiss the appellant, the Council was acting in good faith. Nevertheless it seems very desirable, for practical reasons, that we should say something about those issues for, if we do not, the parties cannot know where they stand. We ought not to leave them in confusion. Further, we must give some guidance to the District Court as to the principles which they should follow when we remit this case to them, as we must, to assess the payment that should be made to the appellant. In the first place the appellant, being still in the service of the Council, is entitled to pay and allowances since the date up to which he was paid, that is to say, since the 21st January, 1944. He has done no work for the Council but, after that date, at any rate, this was not his fault. But at what rate should he be paid? Fortunately it is not necessary for us to determine, in order to answer this particular question, what post he held at the time when he left the Council's service. His rate of pay did not alter. Increments normally depend on good service, but we have no evidence as to the rules of the Municipal Council on this point. If those rules take the normal form, then, since the appellant has in fact done no work, he would not, we think, be entitled to annual increments or to be paid at a higher rate, including war bonus, than he was receiving on the 21st January, 1944.

We must remit the case to the District Court in order that they may assess the payment to be made to the appellant according to these principles. The District Court must determine whether annual increments are payable or not. No interest on the amount of deferred salary should be included and the date up to which the Court should calculate the payment to be made to the appellant should be the date of the order of the District Court.

What is to happen after that? If the Municipal Council now proceeds to dismiss the appellant, by a resolution which fulfils the prescribed conditions, and for the same reasons for which they purported to dismiss him in 1944,

are they to be liable to a further action to have their decision upset on the same ground upon which it was sought to upset it in the District Court, namely, that it was made dishonestly and in bad faith ? So far as we can properly remove doubt on that point, we ought to do so in order that both parties may know where they stand on these particular matters. The District Court held, as we have said, that the Council had not acted maliciously or in bad faith. That was really the only issue that the Court had to determine once they had decided that the resolution of the Council dismissing the appellant complied with the provisions of the law. There are numerous authorities on this point but it will be sufficient to refer to the following three :—

Hayman v. *The Governing Body of Rugby School* (43 L.J. (1874) 834), *Short* v. *Poole Borough* (95 L.J. (1926) 110), and *Brown* v. *Dagenham Urban Council* (98 L.J. (1929) 565).

It was not strictly necessary for the District Court to decide whether the Council had or had not power to transfer the appellant from one appointment to another against his will and it is, in our view, very doubtful whether the Court had evidence before it which would entitle it to come to a conclusion on that point. A power to order an employee to do any work that his employer wants him to do, even though it may be quite outside the normal duties of the particular post he holds at the time, is a very different thing from a power to transfer him from one post to another against his will and to put another person into his former post. That was done in this case. There can be little doubt that the Council has the first power but, in our view, it is not clear, upon the evidence, that it has the second. However that may be, the importance of these transfers for the particular point before the District Court was not the question whether, in making them, the Council had exceeded its power or not, but the question whether they indicated that, in dismissing the appellant because he refused to accept them, the Council acted dishonestly and in bad faith. The District Court declined to infer bad faith on the part of the Council from these transfers and here we feel unable to say that the Court was wrong. The Council evidently believed that they had power to make transfers of that kind. They declared that belief very plainly in their letter of 7th January, 1944, to the Commissioner when they set out at length their reasons for asking him to approve of the appellant's dismissal ; and the Commissioner did approve of it.

There was also other evidence from which the District Court was asked to infer bad faith on the part of the Council, namely, the Mayor's behaviour towards the appellant

almost immediately after the former had assumed office. But it must be remembered that the resolution dismissing the appellant was not the act of the Mayor alone. It was unanimously passed at a meeting of eight members of whom the Mayor was one. Must bad faith be inferred on the part of all of them? Or should the inference be that the Mayor's power over the Council was such that no independence of judgment could be exercised by any of the members? Either inference would require a good deal more evidence to support it than there is in this case. There was evidence about the meeting of the 30th December at which the resolution was passed and that evidence is not suggestive of bad faith. The appellant attended it and gave his reasons for declining to be transferred to the post of weigher. The members heard him and assured him that full allowance would be made, when he was being taught his new duties, for the weaknesses which he thought unfitted him for them. After all, it was for the Council to judge of his fitness for the new post and not for him. We are asked to infer that all these assurances were dishonest, not only on the part of the Mayor but also on the part of all the members who gave them. On the evidence, at any rate, that seems to be going a little too far. As the appellant had been a satisfactory messenger and was obviously so full of suspicion of the Council that he dared not try anything else, it might have been much wiser to leave him alone. But we are not concerned with the wisdom or unwisdom of the Council's decisions. The only grounds upon which a Court can intervene in them are dishonesty and bad faith.

The truth is, of course, that a power to dismiss at pleasure is a very wide and arbitrary power and the circumstances in which Courts of law can check its exercise are very limited indeed. That is abundantly clear from the authorities that we have cited and from many others as well. In the case of *Brown* v. *Dagenham Urban Council* McCardie, J., took the view that the dismissal by the Council of one of its officers "was not only harsh but unjustifiable," but he held that he could not interfere, since it was not dishonest or in bad faith.

It is no doubt partly, at any rate, because of the very limited power of the Courts to intervene when Municipal Councils dismiss their servants that our law provides a special safeguard by requiring the approval of the Commissioner. He can intervene when Courts cannot.

We can now conclude. We have already held that the resolution of the Council dismissing the appellant was illegal and of no effect, because the prescribed notice was not given for the meeting at which the resolution was passed.

Consequently the appellant is still in the service of the Council and this case must be remitted to the District Court to calculate the payment due to him according to the principles that we have indicated.

For the guidance of the parties and to avoid the possibility of further actions on the same facts, we have also thought it right to say that if we had been obliged to decide this appeal on the imputation of bad faith on the part of the Council, we would have held that the evidence was not sufficient to justify our intervention on that ground.

Having regard to all the circumstances we think it just that the appellant should have his costs in this Court and in the Court below.

There was a second appeal lodged in connection with the one that we have just decided. This was an appeal, No. 3780, against an order of the District Court refusing an application by the appellant to amend his claim in that Court.

We see no reason to make any order on that appeal, either as to the merits or as to the costs. No purpose whatever would be served by doing so at this stage. There can be no doubt that we have power, on the main appeal, to make any order which the case seems to us to require and the order that we have made is in fact the order which the appellant sought in the Court below by means of the amendment which that Court would not allow him to make.