

MOAP, Appellant
v.
KAPUICH, Appellee
Civil Action No. 82
Trial Division of the High Court
Truk District
June 30, 1958

Action for reimbursement for expenses for serving as witness at trial before Community Court, in which Community Court awarded expenses. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that witness could receive as reimbursement for travel expenses no sum greater than that provided for in Trust Territory Code.

Modified and affirmed.

1. Courts—Witnesses

Testifying in court is public duty and essential to our system of justice in order that true facts may be brought to attention of court by any party, no matter how unpopular he may be.

2. Contempt—Criminal—Failure to Obey Witness Summons

Failure by any person without adequate excuse to obey witness summons may be deemed contempt of court. (Rules of Crim. Proc., Rule 19f; Rules of Civ. Proc., Rule 23)

3. Courts—Witnesses

Every ordinary witness, subject to be summoned in Trust Territory to appear and testify, has public duty to testify truthfully as to things within his personal knowledge subject to limitation against self-incrimination.

4. Courts—Witnesses—Fees and Expenses

Witness is entitled to no compensation for his time and travel other than that specified in Trust Territory Code. (T.T.C., Secs. 259, 260)

5. Courts—Witnesses—Fees and Expenses

In certain cases, witness in Trust Territory may have to testify without any fee. (T.T.C., Secs. 261, 262)

6. Courts—Witnesses—Expert Witness

Expert witness testifying as to professional opinion is in position different from ordinary witness.

7. Courts—Witnesses—Fees and Expenses

Obligation to testify without further compensation than written law provides is requirement in countries which follow English and American system of common law.

8. Courts—Witnesses—Fees and Expenses

Voluntary payment to witness of more than law provides is improper unless amount paid is clearly no more than enough to reimburse witness for expense or loss to which he has been put by his attendance as witness.

9. Courts—Witnesses—Fees and Expenses

Witness' right to fees for travel is limited by words "unless suitable transportation is provided without expense to him" in applicable Trust Territory law. (T.T.C., Sec. 259)

10. Courts—Witnesses—Fees and Expenses

Parties and witnesses should cooperate in making the best of what transportation to site of trial is available at moderate cost and commonly used between points involved.

11. Courts—Witnesses—Fees and Expenses

Parties' counsel should arrange for transportation that is as convenient for witness as reasonably can be, but witnesses should not refuse transportation because it will not permit them to do personal business or because trip is not by most direct or convenient route possible.

12. Courts—Witnesses—Fees and Expenses

Witness may not claim reimbursement for travel to "celebration" of victory of person for whom he testifies.

FURBER, *Chief Justice*

OPINION

This is an appeal from the decision of the Truk District Court in its Civil Action No. 51, affirming a judgment of the Community Court of Fefan in favor of the appellee Kapuich as plaintiff, for services as a witness in a civil action in the High Court, rent of a motor boat to return home after testifying, and rent of a motor boat on another occasion to attend a "celebration party" to which the defendant had invited him. The defendant has appealed on the ground that the amounts awarded in connection with the plaintiff's services and travel as a witness are excessive and that there is no sound reason why the defendant should pay anything for the plaintiff's travel to the party.

[1, 2] This appeal discloses a serious misunderstanding by the plaintiff and both of the lower courts involved, as to a person's obligation to appear in court as a witness. Testifying in court is a public duty. It is not like a voluntary employment, where the employee may ask whatever he thinks fair or the employer is ready to pay. The performance of this duty is essential to our system of justice in order that the true facts may be brought to the attention of the court by any party, no matter how unpopular he may be. Testifying as a witness usually is somewhat of a burden, but it is similar to a tax or a requirement to perform unpaid island work, which in this instance is imposed upon a witness to support the system of law which protects his rights as well as those of others. Failure by any person without adequate excuse to obey a witness summons (or an oral order issued in place of a witness summons in a Community Court, where such an oral order is authorized) may be deemed a contempt of court under Rule 19f of the Rules of Criminal Procedure, which rule has been made applicable equally to civil actions by Rule 23 of the Rules of Civil Procedure.

[3-6] Every ordinary witness, subject to be summoned in the Trust Territory to appear and testify, has this public duty to testify truthfully as to things within his personal knowledge (subject to a very few limitations such as that against self-incrimination), without any compensation for his time and travel other than that specified in the Trust Territory Code. In certain instances, this may result in a witness having to testify without receiving any fees whatever. See Sections 261 and 262 of the Code. An expert testifying as to his professional opinion based on special investigation made for the purpose and requiring his particular type of skill or training, is in a somewhat different position, but that is not involved in this case.

[7] This obligation to testify without any further compensation than that which the written law provides, is a usual requirement in countries following the English and American system of common law. 58 Am. Jur., Witnesses, §§ 874, 875, 882.

Thus the Supreme Court of the United States stated, in *Blair v. U.S.* (1919), 250 U.S. 273, at p. 281, 39 S.C. 468, at p. 471, after reviewing Acts of Congress on this subject:

“In all of these provisions, as in the general law upon the subject, it is clearly recognized that the giving of testimony and the attendance upon court or grand jury in order to testify are public duties which every person within the jurisdiction of the government is bound to perform upon being properly summoned, and for performance of which he is entitled to no further compensation than that which the statutes provide. The personal sacrifice involved is a part of the necessary contribution of the individual to the welfare of the public.”

[8] The amounts to be paid witnesses for travel and subsistence are now specified in Sections 259 and 260 of the Code as amended by Executive Order No. 54 of February 10, 1956. Even to voluntarily pay a witness more than the law provides is improper unless the amount paid is clearly no more than enough to reimburse the witness for expense or loss to which he has been put by having to attend as witness. If a witness were allowed to barter for his testimony, the danger of inducing perjury or of preventing justice by withholding information from the court should be obvious. Testimony just is not a proper subject for purchase and sale. Neither the analogy which the appellee draws to the payment of counsel fees nor the analogy which the appellant draws to the per diem paid to Associate Judges of District Courts and Community Court Judges for each day they sit, is sound.

[9] Under Section 259 of the Code, a witness' right to fees for travel is limited by the words “unless suitable

transportation is provided without expense to him". In this instance, the defendant offered the plaintiff transportation for his return after testifying, without expense to him, by sailboat late at night, and the plaintiff refused this. He complains about the time the transportation was going, that it would not have taken him directly to his home, and that he wanted to stay overnight for his own business.

[10, 11] In the Trust Territory, where transportation is so scarce and often difficult to arrange, the court believes that parties, or their counsel, on the one hand, and witnesses on the other, should cooperate in making the best of what transportation is normally available at moderate cost and commonly used between the points involved. Parties, or their counsel, should try to see that any transportation they arrange is as convenient for the witnesses as it reasonably can be, but at the same time witnesses should not refuse as "unsuitable" transportation offered, merely because it will not permit them to attend to personal business of their own on the same trip or is not going by the most direct or convenient route possible. The court has grave doubt whether the plaintiff was justified in refusing the sailboat ride provided for him by the defendant, but even if he was, he could not properly expect to then hire a motorboat for a special trip and have the defendant pay any more towards it than the travel fees provided in the Code.

[12] As to the plaintiff's claim for reimbursement for travel to the "celebration party", this court can find no justification in either local custom or Trust Territory law for charging the host for the rental of a boat by a guest in order to attend a social gathering, without any agreement by the host to pay for such boat rental. This is not like asking a person to perform travel as part of his employment.

Therefore, the original judgment appealed from can only be sustained for the amount of witness fees allowable under Sections 259 and 260 of the Trust Territory Code as they stood at the time. Making every reasonable allowance in favor of the appellee, these figure out \$2.55.

JUDGMENT

The decision of the Truk District Court in its Civil Action No. 51 and the judgment of the Community Court of Fefan which was therein affirmed, are hereby modified by reducing the amount of the judgment to \$2.55, and as so modified they are affirmed.