

S/19/8/58/371

Hutton & Cook,  
27, Taylor Street,  
King William's Town.

11th August, 1958.

The Registrar,  
University College of Fort Hare,  
P.O. Fort Hare.

Dear Sir,

We thank you for your letter of the 6th instant and have carefully gone into the facts contained in the letter. In view of the urgency of the matter we are replying as soon as we could.

The writer clearly recollects, when asked whether the College must continue paying his full salary to Professor Z.K. Matthews, giving an extempore opinion to the effect that there was an obligation on the College to do so. It must also be remembered that at the time the charge against him was not known, nor was it even contemplated that the proceedings in which he subsequently became involved would be as protracted as they turned out to be. It must also be appreciated that the question of his extended leave was not at the time under discussion nor were we asked to consider his position under the leave regulations.

According to the contents of your letter under reply the matter again came up for discussion on the 12th April, 1956, at which meeting Professor Z.K. Matthews was granted leave with full pay and allowances by the Council.

On the 11th October, 1957, at a further meeting Professor Matthews was again appointed Acting Principal. At the same time he was recalled from leave. Until 1st January, 1958, he was Acting Principal and thereafter received the pay and emoluments of a Professor until 30th July last, when he again had to leave to appear at the treason trial.

Fears have now been expressed as to whether or not the Council acted within its rights in granting Professor Matthews leave on full pay while he was away attending the trial and the preparatory examination.

It must be remembered that for practical purposes the supreme body in respect of the University is the Council, and the council in turn deriving its powers from the act, the scheme of Government and the regulations, must in dealing with university matters follow strictly the various procedures and duties laid down. The regulations do not attempt to cover every field in which the council will be called upon to act, and where it deals with matters not specifically covered in the abovementioned regulations etc. the council must act reasonably and legally.

It is relevant to bear in mind that Section 4 of the regulations which we are called upon to deal with in this opinion provides that

"All questions regarding the interpretation and effect of these regulations shall be referred to the Secretary for decision".

The Secretary therein referred to being of course the Secretary for Education, Arts and Science.

The section with which we are concerned with here i.e. 19(a)(ix) in its ordinary plain meaning does not cover the case of Professor Matthews. It reads:-

Special leave with full pay may be granted to an employee -  
----- (ix) when he is absent from service as a result of his arrest on a criminal charge and he is subsequently acquitted or the charge withdrawn, for the period of detention.

In our/.....

In our view, given its ordinary meaning, that section means precisely what it says and no more - namely, that for the period of detention following on an arrest, the council may grant special leave if the accused is acquitted. In our opinion that section can be given no other meaning and certainly not an extended meaning. We referred earlier in this opinion to Section 4 under which question of interpretation shall be referred to the Secretary. In our view this section does not need interpreting as its meaning is obvious, and if it did the Secretary would have to give it a meaning which made sense and conformed to the words used.

This opinion is complicated by the fact that there is so much in the regulations dealing with leave.

There does not appear to be any provision in the regulations which specifically deals with a case of this type. When the regulations were drafted the authorities would not have visualised an employee being away for so long a period as Professor Matthews has been away. There has been no action to suspend him and he is a full member of your staff who has been granted leave from time to time to enable him to attend the enquiry and then the trial. The leave which has been granted to Professor Z.K. Matthews is not classified as special or accumulated, but he has nevertheless been granted leave: as it does not fall within the definition of special leave, it must be regarded as accumulated leave. In view of the special circumstances of this case we would advise you to invoke the provisions of Regulation 2 and approach the Minister to enable you to grant Professor Z.K. Matthews special leave. If you do not do so, the provision of Regulation 20 may apply and the leave granted to him will be deducted from his accumulated leave.

We feel therefore that the provisions of Section 19 (a) (ix) referred to in the instructions do not apply in this case and advise the Council to act as set out in the penultimate paragraph hereof.

Yours faithfully,

(Signed) .....

HUTTON & COOK.