

XMA

the accused

if he were refusing to obey a command. After Lt Learmonth finished I did say that I was of the opinion that the accused did not want to go on draft, I then told Lt Learmonth to carry on with the draft that I was placing the accused under arrest. Upon first approaching Lt Learmonth said "You don't want to put him under arrest

RE-EXAMINED BY THE PROSECUTOR

I told the accused that he must accompany the draft while we were still in the office, I told him several times that whether he got his trades pay or not he still must accompany the draft, outside, beside the truck, I told him that I would give him a direct order to get on the truck and go along, I did this and he did not get on the truck. There was no noise beside the truck, everyone else were in it and waiting.

BY THE COURT

- Q How many seconds elapsed after your final order to the accused before Lt Learmonth entered the conversation?
- A I cannot say but sufficient time for the accused to take action towards getting on the truck, I had time to take my breath and pause and I then got the idea of putting him under close arrest, and I was framing the sentence to tell the orderly sgt to take him away to the guard room.
- Q Why did you think Lt Learmonth said "you do not want to put him under arrest"?
- A I think he must have heard me say that the accused must go or I would put him under arrest.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE PROSECUTION

K 85507 Sgt Malcolm, D.B., on strength No 1 COMERU, having been duly sworn states:

On 11 Sep 44 I was orderly sgt of 1 COMERU, I paraded the accused whom I recognize here as Cfn Chapman, to the orderly officer about his trades pay, the Orderly officer, Lt Miller, who called up the pay office and the records office, he then explained the situation to the accused. However the accused was not satisfied and Lt Miller called up the adjutant and again told the accused that nothing could be done at that time, the accused said that it must be fixed up or he would not go on draft. Lt Miller said he was ordering the accused to go and if he didn't he turned to me and said "sgt you know what to do, take him to the guard room". We got his equipment out of the truck and took the accused to the guard room under close arrest. About the time the order was given another officer came around the truck, about a half a minute later I would say and asked to be allowed to speak to the accused, he tried to advise him to go along and they would take the matter up at the new unit. I was told to take the accused to the guard room after the other officer spoke to him.

CROSS EXAMINATION BY THE DEFENDING OFFICER

After the orderly officer phoned the pay office, the records office and the adjt, the accused still wanted to see someone higher up, as a matter of fact he wanted to see someone after each parade was called, when he asked to see some one higher up Lt Miller asked him who he wanted to see and the accused did not say, he just wanted to see someone else.

In the opinion of the Court it is unnecessary to comply with RP 83(B)