

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 839 of 1994

BETWEEN

ARTHUR DUVERNAIS

Plaintiff

and

ST. LUCIA AIR & SEA PORTS AUTHORITY

Defendant

Appearances

Ms. Cybille Cenac for the Plaintiff

Ms. Roheman for the Defendant

2001: May 14

JUDGMENT

[1] **Saunders J:** The Plaintiff, along with other persons, was employed with the Civil Aviation Authority from 1981 as a Security Guard. In or about 1984 the responsibilities of the Civil Aviation body were taken over by the St. Lucia Air and Sea Ports Authority ("the Authority"). When the Authority became the Plaintiff's employer, the employment of most of the Security Guards was terminated. The Authority only retained the services of the plaintiff and three others.

[2] The Act of Parliament establishing the Authority made provision for the constitution of a body of Police to be known as the Saint Lucia Port Police. The functions previously carried out by the plaintiff were absorbed into the duties allocated to the Port Police. After 1984, the plaintiff performed for the Authority all the regular functions of a Port Police Constable. One of his colleagues who used to work for the Civil Aviation body, a Mr. Goodman, was expressly made a Port Police Corporal. Mr. Goodman had not received a great deal of formal education, but he used to be a prison officer. He was highly respected, he was well thought of and it was decided to make him a Corporal. The plaintiff, and probably the other two as well, were never explicitly upgraded to the rank of Constable.

[3] The plaintiff was a good, solid, reliable worker. Unfortunately, his academic level was weak. He had apparently been a Primary School dropout. The Authority maintained a policy of only recruiting as Constables persons of an educational background well above that of the plaintiff's. Importantly however, there was no statutory impediment to the employment as a Port Police of a person with an academic level like that of the plaintiff's.

[4] Typically, persons recruited as Port Police would first undergo training. Upon the conclusion of their training they were either inducted into the Port Police as Probationary Constables or discharged. A few who failed to

impress at the training were kept on as recruits and given basic or minimum tasks to perform. But it was unheard of for any such "recruit" to be so kept on for as many as ten years.

[5] The plaintiff continued to perform all the services of a regular Constable. He was good at his jobs. Sometimes he would be placed in charge of shifts that included regular Constables. From time to time the plaintiff was sworn in as a Special Constable. The duties of a Special Constable are more onerous and wider than that of a regular Constable. Despite all of this, the plaintiff always received a wage that was substantially less than that of a Constable. The plaintiff struck me as a gentle, quiet person. Whether for this or for some other reason, he never saw fit to raise any great concern about his plight until 1991 when he complained that he was not receiving the same uniform allowance as the Constables. This complaint was readily addressed and he began receiving the requisite allowance. In 1993 the plaintiff again complained about what he referred to as a salary anomaly. I suspect that this letter was written for the plaintiff by some very knowledgeable person who had begun to take an interest in the unfair treatment the plaintiff was receiving. Among other things, the plaintiff said in his letter:

“I find it extremely difficult especially in view of the fact that I have been in charge of shifts from time to time because of my seniority to be paid less than those whom I supervise. Naturally it appears this is an anomaly to be rectified with due compensation for such an oversight.”

[6] This letter went unanswered. The following year the plaintiff retired. His pension and gratuity were computed on the basis not of a Constable but rather of some lesser ranking employee. The plaintiff therefore filed this action against the Authority. He is claiming the difference in emoluments between what he obtained and that received by a Constable from the year 1987 up to the date of his retirement. He is also seeking further and other relief as the court considers just.

[7] The Authority's defence is that the plaintiff is not a Constable and is not entitled to the relief sought. They claim that the plaintiff never commenced his employment with them as a Constable and that at no time subsequently was he ever so appointed. The Authority, perhaps recognising that the plaintiff has all along been performing the duties of a Constable, tried to convince the court that the plaintiff was merely a recruit Constable. They say that he never rose to the rank of Constable and that when he underwent training his academic level was too weak to allow for him to be appointed as a Constable.

[8] Curiously enough, the plaintiff did undergo some training in 1993 and was granted by the Authority a Certificate of "Successful Completion". This training was described as a refresher course.

[9] I have no hesitation in rejecting the defence of the Authority and holding that the plaintiff must be deemed to have been employed as a Constable. The plaintiff in its Reply to the pleaded Defence did not specifically plead estoppel. I am however entitled to take cognisance of the fact that the Chief of the Port Police issued documents describing and holding out Mr. Duvernais as a Constable, as distinct from being either a Recruit Constable or a Temporary Constable.

[10] It seems to me that when the Authority took over the plaintiff's employment they were faced with three options. They could have let go Mr. Duvernais if they thought he was not the kind of material they were seeking. Alternatively, they could have made him a Port Police as they did with Mr. Goodman. Their remaining option was to let the plaintiff know what was required of him in order to appoint him to the position of a Constable and give him an opportunity to bring himself in line. This would then enable him to consider his options one of which may have been to take classes to improve his academic level. The Authority failed to exercise any of those alternatives. What the Authority did instead was to use the plaintiff's services as a Constable, even place him in charge of Constables, and underpay him on the dubious pretext that he lacked the requisite academic qualifications. The plaintiff was deliberately kept in limbo while the Authority benefited from his services. In my view the Authority was not entitled to take that stance.

[11] I believe that Mr. Duvernais is entitled to judgment in his favour. The only question that bothered me in this case was, on what basis could you select a date from which to deem the plaintiff to have been employed by the Authority as a Constable. The plaintiff's Counsel provided ample justification for choosing the year 1987. Three years, she said, was a reasonable time frame for the Authority to have taken some decisive step in relation to the plaintiff's employment. The plaintiff should thereafter be taken to have been employed as a Constable. I accept that submission.

[12] It has not been specifically pleaded, but it follows that if in fact the plaintiff is to be regarded as having been appointed as a Constable in 1987 then there must be a corresponding adjustment to the computation of his salary and gratuity. I will therefore give judgment to the Plaintiff as claimed and order that his gratuity and pension be adjusted to take effect as if he had been employed as a Constable from 1987.

Adrian D. Saunders
High Court Judge