

THE COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 11 of 2003

BETWEEN:

JOSEPH JNO. LEWIS

Appellant

and

[1] THE COMMISSIONER OF POLICE
[2] THE POLICE SERVICE COMMISSION
[3] THE ATTORNEY GENERAL

Respondents

Before:

The Hon. Mr. Albert Redhead
The Hon. Mr. Adrian D. Saunders
The Hon. Mr. Michael Gordon, Q.C

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. J. Gildon Richards for the Appellant
Ms. Gloria Augustus for the Respondent

2003: November 13;
2004: January 26.

JUDGMENT

[1] **SAUNDERS, J.A.:** Joseph Jno. Lewis, the appellant, enlisted in the Commonwealth of Dominica Police Force in November, 1999. He was placed on an initial probationary period of two years. Just about a week before the end of his probation, he was summoned to Police Headquarters. He met with the Commissioner of Police who spoke to him. The conversation ended with the Commissioner handing Lewis a letter of dismissal from the police service. Mr. Lewis was aggrieved. He sought judicial review of his dismissal. He claimed that the Commissioner had acted in breach of the principles of natural justice and outside of his jurisdiction. When the matter came on for hearing the judge examined relevant sections of the Police Act, the Police Service Regulations and the Constitution of

Dominica. The judge found that Lewis was indeed given an opportunity to be heard and that as such there was no violation of natural justice principles. The judge also found that the Commissioner had acted within his powers. The judge dismissed the application for judicial review. Mr. Lewis is again aggrieved. He has appealed to this court.

[2] This concise statement of the facts in this case of course does little justice to the several affidavits of evidence and cross-examination recorded in the matter. There are, for example, substantial areas of difference between the accounts of the Commissioner and of Mr. Lewis as to what exactly transpired in the Commissioner's office. The judge seemed inclined to believe the Commissioner's version which was to the effect that Lewis was summoned to his (the Commissioner's) office; was informed of reports that he (Lewis) was constantly absent from work; was further informed of the Police Regulations; and an explanation was demanded from him. Lewis had nothing to say and in consequence, the Commissioner terminated his service as a police officer.

[3] Mr. Lewis disputes that version. His grounds of appeal include several against the judge's findings of the above facts. I don't think it is productive to enter into a determination of those findings. Irrespective of which version of what transpired that day one accepts, this appeal will have the same result. It is important however to mention the other uncontested factual circumstances in the matter.

[4] During his first year as a police officer, Lewis was posted at various police stations including at Roseau and at Calibishie. He performed creditably. Indeed, his Performance Appraisal Report was placed in evidence. It evinces an officer with promise. One who could improve with assistance and direction. A person willing to work and to learn. An officer who showed potential. No adverse reports were made against him during his first year.

[5] On the 16th December, 2000 Lewis was transferred to Soufriere. A few months later he started reporting ill. Between 4th April, 2001 and 22nd October, 2001, Lewis was absent

from work for an aggregate of over 50 days. For all of those days, save two of them, he submitted sick leave forms. His uncontradicted explanation for these bouts of sickness is that after he was posted to Soufriere he began experiencing dizzy spells. He subsequently discovered that the Soufriere water was making him ill. He claimed that he sought a transfer but this was refused. The Commissioner denied that any transfer was ever sought. The Commissioner was of the view that Lewis was a malingerer, plain and simple. When he summoned Lewis to his office he had already made up his mind to fire Lewis because his letter to Lewis was in fact dated a full week before the day it was handed over.

The Relevant Legal Provisions

[6] Section 7 of the Police Act states:

7.(1) A police officer on first appointment to the police service shall be required to serve on probation for a period of two years; and during this period shall be deemed to be a constable on probation.

(2) If, at any time during the period of probation, the Constable is found wanting in character or intelligence, or otherwise unfitted to be a member of the police service his appointment may be terminated.

Counsel for Lewis spent a considerable amount of time submitting that section 7(2) was unconstitutional. His submission ran like this. The section pre-dated the Constitution and in its original form, it stated that the appointment may be terminated by the Chief of Police. When, after the Constitution was promulgated, the laws were revised, the draughtsman excised the words "by the Chief of Police". The law revision Commissioner had no power to make alterations of substance to the law. Section 7(2) therefore still purports to give the Commissioner, as Chief of Police, a power to dismiss officers and such a power is, in light of the Police Service Regulations, unconstitutional.

[7] I don't agree with Counsel that it is necessary to hold Section 7(2) to be unconstitutional. What one must do however is to read the section in such a manner as to bring it into conformity with the Constitution. I agree with Counsel that the Commissioner or Chief of Police has no power, merely by virtue of his office, to terminate the services of a police

officer below the rank of Deputy Chief of Police. See: **Kanda v. Gov't of Malaya**¹. It must be taken that the Constitution now vests that power in the Police Service Commission since the power to appoint such officers specifically resides in the Commission². Importantly though, the Constitution permits the Police Service Commission to delegate that power of dismissal to the Commissioner³. If properly delegated therefore, the Commissioner may validly exercise the power to terminate but when the Commissioner does so, the Commissioner is exercising not a power the Commissioner has by virtue of his office but rather a power of the Police Service Commission that has been delegated to the Commissioner.

[8] There can hardly be any doubt that the Police Service Commission here did delegate to the Commissioner or Chief of Police the power "to remove from office police officers below the rank of Sergeant". We have seen the Instrument of Delegation. It is in proper form. It is dated 29th June, 2000 and it specifically includes the power in question. The real question in this case is whether, in carrying out his delegated function, the Commissioner or Chief of Police acted in accordance with the spirit and content of the Regulations that the law stipulates must govern the Police Service Commission. Interestingly, in those Regulations there are quite specific provisions that relate to probationers like Mr. Lewis.

[9] In order to answer the question posed above, I'm afraid I shall have to quote in their entirety sections of the Police Service Regulations.

39.(1) In the case of a police officer serving a two-year period of probation, the Commissioner shall furnish to the Secretary and Permanent Secretary three confidential reports as follows:

- (a) a first report after the police officer has completed one year's service;
- (b) an interim report six months before the period of probation expires; and
- (c) a final report one month before the period of probation expires.

(2) In the case of a police officer serving a one year period of probation, the Commissioner shall furnish to the Secretary and Permanent Secretary two confidential reports as follows:

¹ (1962) A.C. 322

² See section 92(2) Constitution of Dominica

³ See section 92(3)

- (a) a first report six months before the period of probation expires;
- (b) a final report one month before the period of probation expires.

(3) The Secretary shall report to the Commission whenever the Commissioner fails to submit a confidential report on an officer on probation within the terms specified in this regulation.

(4) In submitting the final report, the Commissioner shall make a firm recommendation –

- (a) that the police officer be confirmed in the appointment;
- (b) that the period of probation be extended;
- (c) that the police officer's appointment on probation be terminated;
- or
- (d) that the police officer returns to his former grade of office.

(5) The report of the Commissioner under this regulation shall not be seen by the police officer on probation, but any adverse comments on his work shall be in specific terms; the officer shall be notified in writing in duplicate as early as possible, so that he should have sufficient time in which to make an effort to correct his shortcomings before his period of probation expires. The police officer shall retain the original notification and shall sign the duplicate and return it to the Commissioner for the record.

40(1) Before any recommendation is made to the Commissioner for the extension of a police officer's period of probation or for the termination of his appointment, the Commissioner shall inform the police officer of this recommendation and of the specific reasons therefore and he shall invite the police officer to submit any representations he may wish to make.

(2) Subject to the provisions of these Regulations, the first appointment on probation of a police officer may, at any time during the period of probation, be terminated by the Commission without assigning any reason.

[10] The intendment of the above provisions is that probationers should be accorded compassionate treatment. They must be given "sympathetic supervision" and "such assistance as may be possible to enable [them] to correct ... faults". Provision is made for regular reports to be made on their performance. Regulation 39(5) requires a probationer to be informed in writing "as early as possible" of adverse comments on his work. The officer is entitled "to have sufficient time in which to make an effort to correct his shortcomings before his period of probation expires". Regulation 40(1) contemplates that,

before dismissing a probationer, the Commissioner should fully comply with the principles of natural justice.

[11] In relation to Lewis, it cannot be said that there was adherence to these principles by the Commissioner. Even accepting the Commissioner's version of what occurred in his office, no real opportunity was extended to Lewis to submit any representations that he wished to make on the adverse allegations made against him. It was necessary for those allegations to be put to him in writing and for him to be given a reasonable time to make a considered response. What transpired in the Commissioner's office can only be regarded as a breach of the principles of natural justice and those principles apply even to police officers on probation. See: **Chief Constable of North Wales v. Evans**⁴ which was applied by Harisprashad-Charles, J. in the Anguilla case of **Johnson v. Chief of Police**⁵.

[12] I would therefore allow this appeal. I don't think however that it is in the interests either of Mr. Lewis or the Police Force that I should order his reinstatement in the Police Service. Instead I would remit this matter to a judge in Chambers to determine what measure of damages should be paid to Mr. Lewis consequent upon his unlawful dismissal from the Police Service. The appellant is entitled to his costs both in this court and the court below. I would fix those costs at \$20,000.00.

Adrian Saunders
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal [Ag.]

⁴ (1982) 3 A.E.R. 141

⁵ *Anguilla Civil Suit No. 111 of 2000*