

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2006/0334

BETWEEN:

LYNDON COOPER

Claimant

and

PUBLIC SERVICE BOARD OF APPEAL

Defendant

Appearances :

Mr. G. Charlemagne & Mr. B. Stephen for Claimant
Mr. D. Theodore for Defendant

2007: June 26;
July 12.

JUDGMENT

- [1] **COTTLE, J.:** The Claimant sought judicial review of the decision of the Defendant to uphold a ruling by the Public Service Commission that the commission agreed that the Claimant had vacated his post as a civil servant in March 2002.
- [2] The facts are not contested, but I shall lay them out here.
- [3] In August 1997, while the Claimant was on sick leave from his post as Accounts Clerk III in the Ministry of Finance, the Permanent Secretary directed him to remain on leave. He was arrested and charged for stealing \$2,000.00 from his place of employment. In October 1997 the charge was dismissed by the

Magistrates after witnesses failed to appear. The Claimant remained on administrative leave with full pay. In October 1999 the Claimant went to the United Kingdom and embarked on a course of study. He did not seek the permission of his employers. Indeed he did not inform them. He continued to receive full salary. Obviously this situation could not continue but it was not until 18th March 2002 that the Claimant was written to by the Permanent Secretary. He was directed to return to work. In his Affidavit which was not challenged, the Claimant says that he **“was unable to return to work on 28th March 2002 because (he) had decided to further (his) education overseas.”**

- [4] On 8th April, 2002 the Claimant wrote the Permanent Secretary. He indicated that he was unable to resume duty as he was studying for an LLB. He requested study leave with pay until July 2002. On April 26th, 2002 the Permanent Secretary wrote to the Claimant informing him that the Public Service Commission agreed that he had vacated his post as of March 28th, 2002.
- [5] On 15th October, 2002 the Claimant appealed against the decision of the Public Service Commission. He was then still abroad. He returned to St. Lucia in September 2003.
- [6] On March 24th, 2004 the Public Service Board of Appeal, comprising Chairman Mr. Errol Walker and members Messrs Winston Taylor, Cyril Matthews and Peter Eudoxie heard the appeal. Shortly thereafter the Chairman left the Board of Appeal to assume a position on the magisterial bench.
- [7] On 7th December 2003 the decision of the Board of Appeal was delivered. It was signed by the three members of the board but not by the then Chairman Mr. Walker. The appeal of the Claimant was dismissed. The Board of Appeal considered that the Claimant, by his conduct, had repudiated the contract of employment which repudiation was accepted by his employer. The Board of

Appeal upheld the decision of the Public Service Commission. It is that decision by the Board of Appeal that the Claimant now challenges.

[8] Mr. Charlemagne for the Claimant attacked the decision on several grounds. Firstly, he says it is signed only by three of four members. The Chairman Mr. Walker did not sign. This ground was only faintly pursued before me. Mr. Charlemagne accepted that it was open to the Public Service Board of Appeal to make a majority decision. Clearly 3 of 4 members would at the very least constitute a majority. It was not suggested that the Chairman even dissented from the judgment signed by the three members. In fact the judgment on the face of it expressed itself to be a judgment of the entire Board of Appeal. The absence of one signature is of no moment.

[9] The main complaints of the Claimant against the decision fall under three board heads:

- (1) Illegality or ultra vires;
- (2) Irrationality;
- (3) Unreasonableness.

Illegality or Ultra Vires

[10] Under this head the Claimant says that he raised several issues before the Board of Appeal failed to address all of the issues raised on his behalf. He identified these issues in paras 46 of his Affidavit in Support as follows:

- a. the issue of Chapter 1 Section 1.6 of the Staff Orders which pertains to disciplinary action in respect of a breach of any of these orders.
- b. the issue of Chapter 6 Section 6.6. of the Staff Orders which pertains to Compulsory Leave;

- c. the issue of Chapter 6 Section 6.7 of the Staff Orders which pertains to **absence without leave**;
- d. the issue of Chapter 6 Section 4.5 of the Staff Orders which states that **an officer who absents himself from duty without permission except in case of illness or other unavoidable circumstances shall render himself liable to disciplinary action**;
- e. the issue of Chapter 6 Section 6.8 of the Staff Orders which pertains to **leave not due**;
- f. the issue of whether vacation of post was archaic and whether the Staff Orders addressed the issue of vacation of post;
- g. the case of Hackett v CXC (1988) WIR 40 as submitted by my solicitor (see exhibit "LKC23");
- h. the issue of vacation of post, as it pertains to the dismissal at pleasure which was outlawed by the famous case of Thomas v The Attorney General [1982] A.C. 113; [1981] 32 WIR; (see exhibit "LKC24");
- i. the issue of Section 85 of the Saint Lucia Constitution Order 1978 as it pertains to the Public Service Commission whether it was wrong in all of the circumstances of this case that it was for the Public Service Commission to **"agree"** to the recommendation that I have vacated my post (see exhibit "LKC25");
- j. the issue of Section 86 (1) of the Saint Lucia Constitution Order 1978, as it pertains to the Public Service Commission, whether it was wrong in all the circumstances to examine and deal with the subject of vacation of post (see exhibit "LKC26");

k. the issue of Section 8 of the Saint Lucia Constitution Order 1978 as it pertains to Natural Justice, requiring that an enquiry be *held* by the Public Service Commission into the circumstances surrounding the Claimant's unavailability to return to work (see exhibit "LKC27").

[11] Mr. Theodore for the Defendant points out that Section 96 (1) (a) of the Constitution of St. Lucia empowers the Board of Appeal to hear appeals by civil servants from a decision by the Public Service Commission **"to remove a public officer from office or to exercise disciplinary control over a public officer. Decisions of the Board require the concurrence of a majority of all its members. In this case, Mr. Theodore says the Board acted within its powers when it considered the Claimant's appeal and dismissed it.**

[12] I consider that the position advanced by Mr. Theodore is the correct one. I can find no ground for suggesting that the actions of the Board of Appeal were in any way outside of the area of competence conferred on the Board by the constitution.

[13] Despite the fact that the decision of the Public Service Commission was not to dismiss the Claimant but to agree that the Claimant had vacated his post, the Board still considered all of the arguments put forward on behalf of the Claimant. The failure to repeat the arguments in the decision does not indicate that the arguments were not considered. The decision merely refers to the ratio decidendi, the main reason why the Board upheld the decision of the Public Service Commission.

Irrationality

[14] The Claimant largely repeats the factors referred to above in support of his contention that the Defendant acted illegally.

The suggestion by the Claimant that the Defendant failed to consider the submission made on behalf of the Claimant is not supported by an examination of the record. Before the Board of Appeal the Claimant was represented by Counsel who helpfully provided the Board with his legal submissions in writing. Most of these submissions are in fact referred to by the Board in its decision. The Board considered the arguments of vacation of post and legitimate expectation. The issues of bias and malice were also considered by the Board. The Board looked at the case of Hackett v CXC 40 WIR at pages 38 and 51. By its decision the Board of Appeal clearly rejected the arguments of the Claimant.

- [15] I do not find there to be any justification in the claim that they acted irrationally by failing to consider the Claimant's case and the Claimant must also fail before me on this point.

Unreasonableness

- [16] The Claimant argues that the decision of the Board is unreasonable. This is a concept that is long known to the law. Lord Greene MR in the case of Associated provincial picture Houses Ltd v Wednesbury Corporation 1948 1KB 223 puts it well. So too does Lord Diplock in CCSU v Minister for the Civil Service 1984 3 All ER 935 at p. 951 where he defines 'wednesbury unreasonableness' thus: **"It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."**

- [17] I cannot say that the decision of the Board of Appeal merits this description. The Board had the benefit of the assistance provided by Counsel for the Claimant. The Board considered the arguments advanced on behalf of the Claimant and decided to dismiss the appeal of the Claimant. I can find no reason to fault the board in their dealing with the Claimant's case, save that there was delay in the delivery of the decision.

[18] For all of the foregoing reasons, I find that the Claimant must fail. The claim is dismissed and the relief sought by the Claimant is refused. It is common in cases brought for judicial review for the Court to make no order as to costs against an unsuccessful litigant. However, I consider that in this case, the Claimant should pay the costs of this action to the Defendant.

[19] I assess those costs at \$14,000 under CPR 2000 Part 65.5 (2) (iii).

BRIAN S. COTTLE
HIGH COURT JUDGE