

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 260 OF 2004
BETWEEN:**



ANDRE MARSHALL

Claimant/Appellant

v

- (1) THE CHAIRMAN AND MEMBERS OF THE PUBLIC
SERVICE BOARD OF APPEAL
(2) THE ATTORNEY-GENERAL OF SAINT VINCENT
AND THE GRENADINES**

Defendants/Respondents

Appearances:

Ms. Nicole Sylvester for the Appellant

Ms. Theona Stapleton and Ms. Joselle Jack, Crown's Counsel for the Respondents

2006: March 27
2007: October 5

JUDGMENT

- [1] **BRUCE-LYLE, J:** On the 1st February 1983, the Claimant Andre Marshall was employed as a Civil Servant in the Public Service of Saint Vincent and the Grenadines. He rose to the rank of Senior Customs Officer in the Customs and Excise Department of the Ministry of Finance.
- [2] On the 6th February 2001, the Claimant was informed by letter that disciplinary proceedings would be instituted against him and that he would be interdicted from duty with immediate effect pending investigations. The Chief Personnel Officer by letter dated the 10th May 2001, laid a charge of misconduct contrary to the provisions of Order 3.27 of the Civil Service Orders against the Claimant.

- [3] On the 17th May 2001, as requested, the Claimant gave an answer to the charge laid against him. He also indicated in the said letter that he was prepared to attend before a Board to explain the matter surrounding the circumstances of the charge. A board of Inquiry set up for these purposes duly informed the Claimant by way of a letter dated 28th June 2001, that an inquiry would take place on the 5th July 2001 at 9:00 a.m. at the Kingstown Magistrate's Court.
- [4] After that Inquiry, it is the Claimant's contention that he did not receive a response as to the outcome of the hearing. No decision was communicated to him. The Claimant then wrote to the Chief Personnel Officer inquiring as to the outcome of the inquiry.
- [5] By letter dated the 27th September 2001 from the hand of the Chief Personnel Officer, the Claimant was informed that the Public Services Commission had decided that he should be dismissed from his post of Senior Customs Officer, with immediate effect and further that he would receive one month's salary in lieu of notice.
- [6] The Claimant insisted, by way of a letter dated the 11th October 2001, to the Chairman of the Public Service Board of Appeal, that he had received the letter dated the 27th September 2001 dismissing him from the Public Service, but had not received a copy of the Tribunal's reason for its decision.
- [7] Subsequent to this the Claimant received a report from the Tribunal of Inquiry, where on being informed of his right to appeal the decision of the Tribunal of Inquiry, appeared before the Public Service Board of Appeal (the Defendants) on the 20th December 2001 to present his appeal. What transpired at the hearing of this Board of Appeal boggles the mind to say the least.
- [8] It is the Claimant's contention, and this is not in dispute from the Defendant's case, that at the hearing before the Public Service Board of Appeal on the 20th December 2001, the notes of evidence from the Tribunal of Inquiry were not available. Despite this, the appeal commenced without same and reference was made to material not contained in the notes

of evidence; this despite notification to the Defendants that the notes of evidence were not available. They proceeded notwithstanding and questioned the Claimant.

[9] After some questioning and further intervention by Claimant's Counsel that it was wrong for the Board to have commenced the appeal and questioned the Claimant without the notes of evidence from the inquiry, the Board decided to adjourn the hearing. Claimant's counsel had argued that the Board came to a decision on the appeal as there were no notes of evidence from the Inquiry.

[10] The Claimant's contention at that stage was that the moment the Defendants so acted by commencing the hearing of the appeal without the notes of evidence from the inquiry, they had embarked on an exercise outside of their jurisdiction, and even though the Claimant did not answer all the questions, the initial damage was already done.

[11] On the 1st February 2002, by way of a letter from the Chairman of the Public Service Board of Appeal, the Claimant was informed that the Board would meet on the 7th February 2002 to conclude the hearing of his appeal. The Claimant attended that meeting, he contended and started to comment on issues put to him that were outside of the Notes of Evidence but was stopped from further commenting by his Counsel.

[12] On the 1st March 2002 the Public Service Board of Appeal gave its decision upholding the decision of the Tribunal and dismissing the Claimant's appeal. It is the Claimant's contention that the conduct and procedure adopted by the Defendants in their capacity as members of the Public Service Commission Board was ultra vires, null and void and in breach of the rules of natural justice. It is the further contention of the Claimant that as a result of the decision made by the Defendants, the Claimant has been deprived of his salary and benefit which he would otherwise have earned and has thereby suffered loss and damage.

[13] The issues for this Court to determine are as follows based on the background elucidated on above:-

- (1) Did the Claimant have a legitimate expectation that extraneous matters will not be taken into consideration by the Public Service Board of Appeal?
- (2) Did the Public Service Board of Appeal take into consideration matters outside the ambit of its jurisdiction and beyond the matters which it was entitled to consider?
- (3) What is the effect of the Public Service Board of Appeal taking into consideration matters outside of the Notes of Evidence?

[14] Having set the parameters for the Courts' consideration it will be prudent to tackle the third issue first.

[15] At the first hearing of the Claimant's appeal questions were put to him that were not relevant to the notes of evidence. The Claimant had answered some of those questions, but was later advised by his Counsel not to answer any further questions as they did not relate to the Notes of Evidence. This was since it was only at that stage that it was realized that the Appeal was being conducted without any members of the Board of Appeal being in possession of the Notes of Evidence.

[16] The Board of Appeal still insisted on continuing with the hearing of the Appeal when it was in possession of the Notes of Evidence despite the protestations of Claimant's counsel that the appeal at that stage was ultra vires and ought to be stopped, and that any continuation of this appeal would taint the entire process in light of what had transpired.

[17] In fact, Counsel for the Claimant sent the Board a letter dated 4th February 2002, pointing out the irregularity in the matter and that to participate in such a process would make the appeal unfair. Despite this letter, the appeal purported to continue on the 7th February 2002. The minutes of the hearing dated 7th February 2002 and extracts from those minutes were also objected to by the Claimant's counsel as not representing the true picture of what transpired. This was by way of a letter dated the 3rd May 2002.

[18] Claimant's counsel contends that what is manifestly unjust and inherently bad is that the decision states that it is based on the notes of evidence when as the fact is, at the main hearing there were not such notes of evidence before the Board. I agree on this score with

Learned Counsel for the Claimant without more. That in itself makes the hearing and the decision a nullity, because what transpired was ultra vires the clear rules of natural justice and fair play. Taking into consideration matters outside of the Notes of Evidence by the Board of Appeal and relying on those extraneous matters to arrive at a decision throws the whole process into disrepute. There was no justice nor fair play in the matter and the decision emanating therefrom ought not to stand and I so hold.

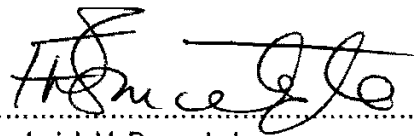
[19] This brings to light the first question posed by the Claimant's counsel for the determination of the Court. It stands clear and uncontroverted that the Doctrine of Legitimate Expectation in essence imposes a duty on the Board to act fairly. Therefore when the Board purported to ask questions of and to consider matters not contained in the notes of evidence as outlined in the history of this case, they obviously deprived the Claimant of fairness. The Claimant was entitled to a fair hearing before a decision adversely affecting his interest was made by the said Board. I entirely agree with all the authorities cited by Claimant's counsel on the issue of the doctrine of Legitimate Expectation. I am more than convinced based on the evidence before me as narrated by the members of the Board who testified, that they definitely took into consideration matters outside the ambit of its jurisdiction and beyond matters which it was not entitled to consider.

[20] When an authority such as the Public Service Board of Appeal is entrusted with the duty to hear appeals relating to the Public Service such a discretion must be exercised judicially, namely –

- (a) The exercise of such a discretion must be a real exercise of the discretion.
- (b) The discretion must be exercised reasonably
- (c) The authority must disregard irrelevant extraneous and collateral matters
- (d) The exercise of the discretion must not be based on bad faith or dishonesty.

I totally endorse all the submissions made by Learned Counsel on behalf of the Claimant. There is no possible way this Court can uphold the decision of the Board in this case in view of the evidence before this Court.

- [21] Applying the principles of the aforementioned submissions and authorities cited, which all go to the gravamen of the Claimant's complaint, it is clear that the conduct of the Public Service Board of Appeal was one influenced by extraneous considerations which ought not to have influenced them and this created a manifest unfairness in the procedure which went to the root of the procedure and exercise of their discretion.
- [22] The Defendants really have no defence. Their submissions do not convince me in the least. I found evidence adduced in Court by the Defendants' witnesses to be unconvincing to say the least.
- [23] In light of the uncontroverted evidence that the Public Service Board of Appeal embarked on the hearing of the Claimant's appeal without the Notes of Evidence and asked questions of him without any reference to the Notes of Evidence, I hold that this is a material and procedural irregularity which went to the root of the fairness of the Claimant's appeal. Accordingly the Claimant has been prejudiced and any conclusion arrived by such a Board is an unreasonable and an improper exercise of its discretion. I order therefore that the reliefs sought by the Claimant in paragraphs Two to Fourteen of his application filed on the 21st May 2004 are granted.
- [24] I further order that damages are to be assessed, and the Defendant will pay the Claimant's costs in the sum of \$10,000.



Frederick V. Bruce-Lyle
HIGH COURT JUDGE