THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV 2010/0487

IN THE MATTER OF AN ORDER CERTIORARI
AND
IN THE MATTER OF A DECISION OF THE COMMISSIONER OF POLICE GIVEN ON THE 7th DAY OF NOVEMBER 2007
AND CONFIRMED BY THE POLICE SERVICE COMMISSION GIVEN ON THE 18th DAY OF SEPTEMBER 2009
TO DISMISS THE APPLICANT, CLIFFORD JACKSON, A FORMER CONSTABLE OF THE POLICE FORCE OF ANTIGUA AND BARBUDA PURSUANT TO SECTIONS 105(1) AND 105(5) OF THE ANTIGUA AND BARBUDA CONSTITUTION ORDER CAP. 23 OF THE REVISED LAWS OF ANTIGUA AND BARBUDA 1992

BETWEEN:

CLIFFORD JACKSON

Claimant

AND

POLICE SERVICE COMMISSION

Defendant

Appearances:

Ms. Samantha Marshall for the Claimant
Dr. David Dorsett for the Defendant

2012: July 24

August 23

JUDGMENT

[1] **Thomas W.R. Astaphan J.:** On the 2nd April 1997, the Claimant, Mr. Clifford Jackson, became a Member of the Royal Antigua and Barbuda Police Force.

[2] From the evidence before me, it appears that the Claimant served the Royal Antigua and Barbuda Police Force, faithfully, and without fault, until sometime in April/May, 2007, when an Investigation was commenced, on the orders of the Commissioner of Police, into allegations against the Claimant made by the Deputy Commissioner of Police. Those allegations, per se, have no bearing on this case, save for the tangential part they played in providing the backdrop for the events which birthed the circumstances from which the current Claim arose.

[3] The Investigation into those allegations was being conducted by Sgt. No. 311 Cecil David. Sgt. David was a superior Officer to the Claimant, Constable Jackson, who had maintained the rank of Police Constable throughout his ten-year tenure in the Royal Antigua and Barbuda Police Force.

[4] The Royal Antigua and Barbuda Police Force is a Disciplined Body, Members of which are required to obey established Rules, Regulations and Codes of Conduct. That Body is also hierarchical and non-democratic. This hierarchical undemocratic regime is reinforced by Statute and Regulations. Members of Disciplined Forces in Antigua and Barbuda are required to submit themselves in total to the hierarchy. There is no debate; no discretion to do, or not to do that which you are told, ordered or directed to do by an Officer superior in rank to you – save and except where those orders or directives are illegal. It is a rigidly disciplined culture; same as the Armed Forces, and necessarily so.

[5] This undemocratic and dictatorial regime in disciplinary forces is required, ironically, for the maintenance of the Peace, Order and Good Governance of a Democratic Society. Indeed, these undemocratic Institutions are vital for the maintenance of Democracy itself. Absent these Disciplined Forces from a Democratic Society, and, inexorably, anarchy and chaos reigns, ultimately subjugating the People of that Society to Dictatorial Rule. Likewise, remove this disciplinary regime from the Police Force and the institution will crumble.

[6] Thus it has been, that, throughout Modern History, perfectly democratic People have submitted themselves to the permitting and sustaining of undemocratic hierarchical – indeed, in some cases 'quasi-dictatorial'– institutions in their quest to ensure that the fertile soil of democracy remains both fertile and democratic.

[7] The Royal Antigua and Barbuda Police Force is one such permitted undemocratic hierarchical institution. The Constitution of the State of Antigua and Barbuda recognizes this by, inter alia, excluding Members of such Bodies, qua Members, from the protections of some of the 12 Fundamental Rights and Freedoms guaranteed by Chapter II, "Protection of Fundamental Rights and Freedoms of the Individual", of the Constitution. Section 21, sub-sections (1) and (2) state:-

> "21. (1) In this Chapter, unless the context otherwise requires-
> ………;
> "disciplined force" means-
>
> (a) …….;
>
> (b) the Police Force; or…."
>
> (c) ……..;
>
> …………..;
>
> (2) In relation to any person who is a member of a disciplined force raised under any law, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6, and 7 of this Constitution." (Sections 4, 6 and 7 of The Antigua and Barbuda Constitution deals, respectively, with Protection of Right to Life, Protection from slavery and forced labour and Protection from inhuman treatment.)"

[8] So that Members of Disciplined Forces in Antigua and Barbuda cannot, subject to the exceptions pointed out in the previous paragraph of this Judgment, be availed of Fundamental Rights Protection insofar as Disciplinary Laws, Regulations and Rules derogate from their Fundamental Rights with respect to their Membership of the Force. However, those Disciplinary Laws, Regulations and Rules must be applied and enforced reasonably, rationally and fairly, both procedurally and substantively. Any and all actions taken under those Disciplinary Laws, Regulations and Rules, to be exempted from the engagement of all the Constitutionally guaranteed Fundamental Rights, must be Lawful. The moment any such action is unlawful, the Member of the Force is covered with the plenitude of his Constitutional Protections, without exception. It need not be emphasized that those exemptions do not relate to non-disciplinary Laws, Regulations and Rules as they relate to Members of the Disciplinary Force.

THE FACTS

[9] Pursuant to the Orders of the Commissioner of Police to investigate the allegations made against the Claimant by the Deputy Commissioner of Police, Sgt. David, on the 7th May, 2010, approached Constable Jackson who was at the Police Headquarters, St. John's, Antigua. Constable Jackson was not on active Duty. He was off duty, insofar as a Police Officer can be "off duty". He had stopped by Headquarters for another unrelated reason. He was approached by his superior Officer, Sgt. David.

[10] What then happened resulted in Constable Jackson being charged with two Disciplinary Charges, namely, Discreditable Conduct and Insubordination. According to the Charge of Insubordination (Exhibit "C.J.1" to the Affidavit of the Claimant sworn and filed the 9th August, 2010), Sgt. David alleged that when he spoke to the Claimant about the Report made against him by Assistant Commissioner of Police Samuels, Constable Jackson said: "I can't talk to you now, talk to me when me ah work and do wah you have to do, me nah talk to you." The Charge of Discreditable Conduct, (Exhibit "C.J 2"), alleged that while Sgt. David was speaking to Constable Jackson about the said Report, Constable Jackson "… did walk away…"

[11] Constable Jackson was tried and convicted on those Charges by a Tribunal comprised of Assistant Superintendent of Police Mr. McClean Hunte, on 16th October, 2007. The Tribunal Reprimanded the Claimant on the conviction for Discreditable Conduct, and recommended to the Commissioner of Police the Claimant's dismissal from the Royal Antigua and Barbuda Police Force on the conviction for Insubordination. The Claimant was represented by Corporal No. 437 Rupert Cadette.

[12] The Transcript of that hearing was exhibited to the Claimant's first Affidavit and marked "C.J 2".

[13] The contents of "C.J2" have not been disputed by the Claimant or the Defendant, at this Trial, or at the hearing of the Appeal, or at all. The contents therefore stand as accepted facts. The Transcript shows that Corporal Cadette mounted a vigorous and wide ranging defense for the Claimant. All four of the Prosecution witnesses were cross-examined by Corporal Cadette.

[14] At the close of the Prosecution case Corporal Cadette made a No Case Submission. The Tribunal did not accept it. The Claimant then gave evidence in his own defense. At the close of the Defence case, Corporal Cadette addressed the Tribunal on the case.

[15] According to the Transcript, after giving, what I consider to be a fleeting and inorganic reference to the evidence, and to the submissions of both sides, the Tribunal found the Claimant Guilty on both Charges. No Reasons are given. The Decision is not a reasoned decision.

[16] Corporal Cadette apparently made a Plea in mitigation on behalf of the Claimant. The Transcript is quite sparse on this point – three lines -, but it does indicate that such a Plea was made.

[17] The Tribunal Reprimanded the Claimant on the Discreditable Conduct conviction, and on the conviction for Insubordination made a recommendation to the Commissioner of Police that the Claimant be dismissed from the Royal Antigua and Barbuda Police Force. However, the Tribunal does not give any reason at all as to how and why it came to the decision to recommend the Claimant's dismissal from the Royal Antigua and Barbuda Police Force. It provided no reasons for its decision of guilt, or that to recommend the dismissal from the Force of the Claimant.

[18] On the 25th October, 2007, acting pursuant to Section 14. of The Police (Disciplinary) Regulations, CAP. 330, the Claimant lodged an appeal against Conviction and Sentence with the Police Service Commission, the Defendant in this case.

[19] The Grounds of Appeal (Exhibit "C.J 3"), were:

> "(1) The sentence was and is excessive;
>
> (2) Open bias on the part of the reporting officer;
>
> (3) Weak uncorroborated evidence insufficient to prove beyond a reasonable doubt the charges;
>
> (4) The conviction on the charge o (sic) discreditable conduct is unsafe and unsatisfactory and cannot be supported by the evidence."

[20] For some reason not addressed in any of the evidence before me, the hearing of the Claimant's Appeal did not take place until September, 2009, nearly two years after the Claimant had been convicted, filed his Appeal and subsequently dismissed from the Force. If there are any inferences to be drawn from that fact, they will become clear when I examine the actions of the Commissioner of Police, and those of the Police Service Commission, in this matter.

[21] By this time the Commissioner had, on the 7th November, 2007, "affirmed the decision" of the Tribunal and had dismissed the Claimant from the Royal Antigua and Barbuda Police Force with retrospective effect from the 1st November, 2007. The letter of Dismissal was exhibited to the Claimant's first Affidavit and marked "C.J 4". I set out that letter in its entirety:

> "No. 53 Constable Clifford Jackson
> Willikies Police Station
> St. Phillip
> Antigua   7th November 2007
>
> Dear Constable Jackson,
>
> It is noted that two (2) Disciplinary Charges of "Discreditable Conduct" and "Insubordination" on 7th March, 2007, which were preferred against you, were heard and determined on Tuesday 16th October, 2007 by Assistant Superintendent of Police, McLean Hunte, before whom you pleaded not guilty and upon the findings of guilt, you were reprimanded on the charge of Discreditable Conduct *and your dismissal from the Police Service was recommended on the charge of Insubordination*. (Italics added)
>
> Having reviewed the evidence which were presented at the trial by the prosecution, and the reasons provided by the Trial Officer for his decision, *this serves to officially inform you that the said decision has been affirmed by me.* (Italics added)
>
> *Consequently*, (Emphasis added) by virtue of the Powers vested in me under Section 105 (5) of the Antigua and Barbuda Constitution Order, 1981, your membership in the Royal Police Force of Antigua and Barbuda has been terminated with effect from 1st November, 2007.
>
> You are hereby ordered to hand over forthwith, all items of uniforms and equipment which were duly issued to you as a Police Officer, to the Quarter Mistress, Stores at Police Headquarters.

It is noted that a Notice of Appeal, dated 25th October, 2007, against the sentence, have (sic) been filed on your behalf by Corporal Rupert Cadette. (Italics added)

Please be guided accordingly.

[Signed]
Delano Christopher, QPM
Commissioner of Police

cc: The Permanent Secretary – Ministry of Justice & Public Safety
The Chairman – Police Service Commission (Emphasis added)
The Accountant General – Treasury Dept.
ACP Whyte Supt. Wilkins
Quarter Mistress AS – Accounts
P.F."

[22] Learned Counsel for the Claimant, Miss Samantha Marshall, posited the delay in the hearing of the Claimant's Appeal as an element contributing to the unreasonableness and/or irrationality of the Decision of the Commissioner to dismiss the Claimant, and the Decision of the Police Service Commission to affirm that Decision, all of which Decisions are under review in this case, notwithstanding the contrary submission of Learned Counsel for the Defendant, Dr. Dorsett.

[23] Dr. Dorsett argues that because the Commissioner of Police is not a named Defendant, and because Assistant Superintendent Hunte is not a Defendant in this case, this Court cannot examine their decisions. It is only the decision of the Defendant, Police Service Commission which this Court may examine.

[24] I respectfully disagree with Dr. Dorsett.

[25] The Commission's decision is an affirmation of the Commissioner of Police's Decision which is itself an affirmation of A.S.P. Hunte's Decision.

[26] It would make a mockery of Justice, indeed it would provide an impenetrable barrier to the efficacy of the Judicial Review Jurisdiction of the High Court of Justice if the Courts were barred from examining decisions which underpin a decision simply because the last decision in the line was that of a named Defendant while the underpinning decisions are those of persons who are not made parties to the Claim.

[27] This is particularly so when, as in this case, the overlaying decision is an affirmation of the intermediate decision, which is itself an affirmation of the initial decision.

[28] In any event, The Defendant in this case, acting through competent Counsel, has, in my opinion, sufficiently dealt with the issues of Law – in relation to the named Defendant – which impact the decisions of the Hunte Tribunal and of the Commissioner of Police. There would be nothing further which they could add to what the Defendant has addressed with respect to both the legal issues and the Law in this case. The issues are identical at all three stages of the matter. The applicable Legal Principles are the same. There is nothing unique about any of them.

[29] By way of illustration of the absurdity which would prevail if Dr. Dorsett's submission is sound, let us examine the following scenario.

[30] What if appellate tribunal C affirms the decision of intermediate tribunal B, which has affirmed the decision of first instance tribunal A, and appellate tribunal C acted perfectly with respect to Fairness and all the other Judicial Review rights, but the decision affirmed by that tribunal came from the lower tribunals each of which had manifestly breached all the Rules of Fairness and Natural Justice?

[31] Neither inferior tribunal is made a party to the Claim to which only the superior appellate tribunal is a party. Must the Court ignore the underpinning decisions simply because those tribunals are not parties to the Claim? Indeed, *can* the Court ignore the underpinning decisions, even where the lower tribunals are not parties to the Claim?

[32] (a). I am of the opinion that the Court is obliged to examine the underpinning decisions because, if they are in error, that error in each or any of them makes the Defendant appellate tribunal's decision itself *wrong* in Law, notwithstanding its absolute faithfulness to the requirements of Fairness and the Rules of Natural Justice. It is true that Justice is blind. It is not true that Justice cannot see injustice. It cannot be the Law that if there are two manifestly wrong decisions, they can escape the scrutiny of Judicial Review simply because they are shielded by a super-ordinate decision which is itself cloaked in righteousness. Justice abhors absurdity. If the court examines the Commission's decision and found it wrong in law, that would expose the Commissioner's decision to the scrutiny of the court. And likewise the Tribunal's decision.

(b) **R. v. Medical Appeal Tribunal (Midland Region), Ex parte Carrarini**, [1966] 1 W.L.R. page 883, Applied. In that case the applicant had a review of a medical condition done by the medical board [Equivalent to The Hunte Tribunal in the sequence of this case]. He was not satisfied with their decision. He appealed to the medical appeal tribunal [the Police Commissioner in this case] which ruled against the applicant and refused to grant him an adjournment to enable him to produce a medical report to counter that gotten by the medical appeal tribunal. He then appealed the refusal to adjourn to the Commissioner [The Police Service Commission in this case]. The Deputy Commissioner ruled against the applicant. The applicant then brought judicial review proceedings, naming the Medical Appeal Tribunal [The Commissioner in our case] as the sole Defendant. At page 886, letter… to letter g, Lord Parker C.J. states the following:

> "...it seems to this court an impossible position when an applicant has chosen his line of appeal and has appealed, to go behind the decision of the appeal tribunal, namely the commissioner, [In this case, the Police Service Commission] and embark upon an investigation of whether certiorari would would (sic) lie against the medical appeal tribunal [The Commissioner of Police]. Thanks, however, to the co-operation of Mr. Bridge, this court gave leave to the applicant to amend his motion to apply in the first instance for an order of certiorari to quash the decision of the deputy commissioner [The Police Service Commission] and ancillary thereto, if he succeeded, to quash the decision of the medical appeal tribunal [The Commissioner of Police] … Accordingly, the question before this court is whether the applicant has satisfied the court on the face of the decision of the deputy commissioner [the Police Service Commission] it had been shown that he erred in law."

[33] It is thus that I reject Dr. Dorsett's submission.

[34] The Police Service Commission heard the Claimant's Appeal on 15th September, 2009. Nearly two years after the Appeal was filed, and the Claimant was dismissed by the Commissioner as previously stated. In the interim, the Chairman of the Police Service Commission was copied with the Commissioner of Police's letter to the Claimant dated 7th November, 2007, dismissing the Claimant from the Royal Antigua and Barbuda Police Force.

[35] The Police Service Commission rendered its Decision in the Appeal on the 18th day of September, 2009. That Decision which is exhibited to the Affidavit of Stephans Winters and marked "S.W.-2", is as follows:

> "The Police Service Commission in the Appeal Hearing of Commissioner of Police vs. No. 53 Constable Clifford Jackson held on the 18th September, 2009, arrived at the following conclusion after hearing the submissions from both the Defendant's Counsel and the Prosecution.
>
> The evidence submitted to the Police Service Commission *by its investigators* (Italics added), and the evidence from the transcript of the trial, left no doubt of the defendant's guilt of Insubordination and Discreditable Conduct. The Commission believes that the incident was an extremely serious incident and that a clear message needs to be sent to the members of the Police Force as to their conduct and behavior. The seriousness of the offence left no other choice but for the Police Service Commission to *affirm the decision of the Dismissal by the Commissioner of Police.*" [Italics added]

[36] The Claimant lodged an Appeal with the Public Service Board of Appeal on the 14th December, 2009, of the Police Service Commission's Decision. To date there has been no response by that Board.

[37] Perhaps it is because the Board is of the view that the Claimant has no right of appeal to that Body by virtue of the prohibition contained in Regulation 15 (b) of the Police (Discipline) Regulations, CAP. 330 of the Laws of Antigua and Barbuda, which states that-

> "15. Review. (1) The Board may review any decision to which these regulations apply at the instance of a member of the force in respect of whom a decision is made:

Provided that-

(a)……………;

(b) decisions of the Commission made by that Commission on appeal from or confirming decisions of the Commissioner of Police or any Officer or member of the Police Force to whom powers are delegated under the Constitution shall not be subject to review by the Board."

[38] Perhaps it is because the Board is guided by Regulations 14 (1) and (3) of the said Regulations which state:

"14. Right of Appeal. (1) An accused person against whom a decision is made either by the Commissioner of Police or a member of the Police Force to whom authority is delegated to hear the charge may appeal against such decision to the Commission within fifteen days of the date on which such decision is communicated to him.

(2) …;

(3) A decision made by the Commission under this regulation shall be final."

[39] On either view the Board would be correct in Law.

THE CLAIMANT'S CLAIM

[40] The Grounds of Appeal of the Tribunal's Decision have already been set out above. The Claimant claims in the Fixed Date Claim filed on the 28th September, 2010, the following Reliefs:

1. "An Order of Certiorari to remove into this Honourable Court and quash the decision of the Commissioner of Police dated the 7th day of November, 2007 and subsequently confirmed by the First Named Respondent, the Police Service Commission, on the 18th day of September, 2009 thereby dismissing the Claimant from the Royal Police Force of Antigua and Barbuda for "insubordination".

2. "A declaration that the decisions of the Commissioner of Police and the Police Service Commission were excessive in the circumstances and unprecedented and that the Claimant be reinstated forthwith."

3. "That the Claimant be compensated for his loss of wages during the period of the 7th day of November, 2007 to the date of reinstatement."

4. "That the Claimant be awarded general damages for wrongful dismissal from the Royal Police Force of Antigua and Barbuda."

5. "That the Claimant be awarded interest on the awards pursuant to section 27 of the Eastern Caribbean Supreme Court Act Cap 143 of the Laws of Antigua & Barbuda, 1992, at the rate of 5% per annum from the 7th day of November, 2007 to the date of Judgment."

6. "Any other further relief that this Honourable Court may deem fit in the circumstances."

7. "The cost of these proceedings."

[41] The Claimant filed two Affidavits in support of his Claim. One on the 9th August, 2010 and the other on the 22nd October 2010. The former had attached to it eight (8) Exhibits numbered "C.J 1" to "C.J 8" respectively.

[42] The Respondent filed one Affidavit of its Chairman, Mr. Stephans Winter, on the 26th November 2010. That Affidavit had attached to it two Exhibits numbered "S.W 1" and "S.W.2".

[43] Submissions were filed by the Defendant on 16th February, 2011, and by the Claimant on the 16th December, 2011.

[44] At the Hearing of this case Learned Counsel for the Claimant, Miss Samantha Marshall, informed the Court that "We have agreed to accept the Affidavits filed by both parties as Evidence in Chief and there will be no cross-examination." Learned Counsel for the Defendant, Dr. David Dorsett, agreed and stated that "… there will be no need for cross-examination".

[45] The Facts underpinning those Charges are no longer in issue as the Claimant, acting through his then Representative, Corporal Rupert Cadette, at the Appeal before the Police Service

Commission, stated that "... he knew there were grounds for a conviction but he was against sentence." (Exhibit S.W 1-2 containing the Transcript of the Appeal Hearing, attached to the Affidavit of the Chairman of the Defendant, Mr. Stephans Winter, sworn and filed on the 26th November, 2010.) This Court must however determine whether those accepted facts can, in Law, found a reasonable, rational and fair finding of guilt. Corporal Cadette's "concession" cannot form the basis for this Court to decline to engage its duty to ensure that Justice is done. Neither can that concession convert that which is wrong in Law to that which is right in Law. That determination is the exclusive province of the Court.

[46] Further, Miss Samantha Marshall, Learned Counsel for the Claimant, reiterated at the Hearing of this matter that the sole issue before this Court was to determine whether the Decision of the Commissioner of Police to implement the Recommendation of the Tribunal which convicted the Claimant, that the Claimant be terminated from his Membership in the Royal Antigua and Barbuda Police Force, was Reasonable and Rational, and whether the Police Service Commission's Decision on Appeal to uphold the Commissioner's Dismissal of the Claimant was itself Reasonable and Rational. I repeat what was said in paragraph [45] above.

[47] In his Submission the Claimant articulated the Issues as follows:

> "9.1 Whether the decision of the Commissioner of Police and subsequently confirmed by the Police Service Commission was reasonable and/or excessive in the circumstances, in particular if there was procedural fairness, natural justice.
>
> ....;
>
> 10.5 The Claimant humbly submits that after the hearing of the disciplinary matter he was not afforded a reasonable opportunity of being heard as to why he should not be dismissed from the force. Neither the Commissioner of Police nor the Commission of Inquiry (sic) afforded the Claimant such and opportunity.
>
> 10.6 Hence, the Claimant was not given an opportunity at a fair hearing which if he had so received from the Police Service Commission would have resulted in the Claimant being reinstated.
>
> 10.7 Further, given the Claimant's charges for which he was found guilty and accordingly dismissed from the Police Force did the Claimant not have a legitimate expectation that he would

> have been given a punishment which would have been more in keeping with other members of the Royal police (sic) Force who were found guilty of the same charge given. Hence the Commission in person or through its agent has not exercised its discretion fairly and consistently."

[48] It is necessary to now examine the contents of Exhibit "C.J 9", exhibited to the Claimant's Further Affidavit sworn and filed 22nd October, 2010. This Exhibit is a List of Police Officers who were charged with the disciplinary offence of, inter alia, Insubordination, from as far back as January, 2006 up to September, 2008. The contents of this List have not been challenged by the Defendant, and are accordingly proven facts in this case.

[49] The List shows the following:

a) That between 14th January, 2006, and 16th December, 2008, seven (7) Police Officers, not including the Claimant, were charged with Insubordination;
b) That two (2) Officers had the charge of Insubordination dismissed;
c) That five (5) Officers were found guilty on the charge of Insubordination, and;
d) That those five (5) who were so found guilty were all punished with fines ranging from EC $ 75.00 to EC $ 200.00. Of these one (1) was fined EC$ 200.00; two (2) were fined EC $ 150.00; one (1) was fined E.C $ 100.00 and the other was fined E.C $ 75.00.
e) Of the seven charged with Insubordination, five (5) were tried in October, 2008, one (1) was tried in November, 2008, and the other was tried in September, 2008.

[50] The Claimant was tried, convicted and sentenced (including the recommendation of dismissal made to the Commissioner) by the Hunte Tribunal in October, 2007.

THE HUNTE TRIBUNAL

Jurisdiction

[51] The Jurisdiction of the Hunte Tribunal is derived from Section 105 (6) of the Constitution of Antigua and Barbuda. This section reads as follows:

> "105. (6) The Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under subsection (5) of this section, *other than the power to remove from or reduce in rank, to any other member of the Police Force."* (Italics added).

[52] Subsection (5) of Section 105 reads as follows:

> "(5) The power to appoint persons to hold or act in offices in the Police Force *below the rank of Sergeant* (including the power to confirm appointments) and, subject to section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such person from office shall vest in the Commissioner of Police." (Italics added)

[53] Looking at the whole of the evidence before me in the round, I find it to be a fact that the Commissioner of Police did delegate his "…power to exercise disciplinary control over…" Constable Jackson, a "… person[s] holding …such office[s]…" in the Police Force, which office was "…below the rank of Sergeant…", to Assistant Superintendent of Police Mr. McClean Hunte. This was accepted as such by the Claimant throughout all the proceedings, before the Hunte Tribunal; the Police Service Commission and before this Court.

The Tribunal's Findings of Fact

[54] The Claimant has never disputed the findings of fact of the Tribunal. What was contended by the Claimant was that the facts, as found, could not support the conviction of Discreditable Conduct, and was so "...Weak and uncorroborated..." as to be "... insufficient to prove beyond a reasonable doubt the charges."

[55] For reasons which are trite Law, I would normally decline to interfere with the Tribunal's factual findings. However, there is on the evidence before the Hunte Tribunal, a basis to call into question its convictions on both the Discreditable Conduct charge and the Insubordination charge, and to view them as irrational, as each … was one which "no sensible person who had applied his mind to the question to be decided could have arrived at." (HMB Holdings, cited in the Defendant's Submissions at paragraphs [21], and [22], page 7.)

[56] It is thus:

a) The evidence before the Hunte Tribunal in support of the Discreditable Conduct charge came from its four witnesses.

b) That evidence was that while Sgt. David was speaking to the Claimant about the investigation which Sgt. David was conducting, the Claimant "...walked away…"

c) Evidence of Sgt. David at page 1 of the Transcript, exhibit C.J.2", line 14 of his evidence; "He then began to walk away from me", and line 17; "I spoke to him then he began walking away from me. He got into his private vehicle and drove away."

d) Evidence of Matumba Nanton at page 3 of the Transcript, exhibit "C.J.2", line 12 of his evidence; "The accused then turn to exit the building and then the Sergeant then said "Constable Jackson I am talking to you," and he replied," Me no want fu talk to you, do wha you haffu do, me nah kay," in a loud tone of voice and went through the door and left in his vehicle.";

e) Evidence of Corporal Colin Hope at page 4/5 of the Transcript, exhibit "C.J.2", line 10 at Seq. of his evidence; "Whilst there someone who was parked in the yard wanted to leave and the accused vehicle was blocking the vehicle. *Assistant Commissioner Christian then called out to the accused and asked him to remove the vehicle so that the person could leave.* [Italics added] As the accused walked through the front door, I heard him saying, **"Me nah want talk to you."** [Emphasis in the original] Sgt. David kept calling the accused three (3) times repeatedly. The accused then got into his vehicle and drove out the station yard."

f) The Claimant in his evidence states that the Assistant Commissioner of Police, who was standing outside with Corporal Hope, "...called out to me and said, 'Come and remove your vehicle now, you are blocking someone from coming out."

g) This evidence of both Corporal Hope and the Claimant is uncontroverted.

[57] The premise of the conviction of the Claimant on the Discreditable Conduct charge was that he "...walked away from…" Sgt. David while Sgt. David was speaking to him. However, the prosecution's own witness, Corporal Hope, gives evidence which completely explains and justifies that "walking away". The Claimant walked away from Sgt. David because the Assistant

Commissioner of Police Mr. Christian directed him to do so. He directed the accused to remove his vehicle which was blocking another vehicle. The Claimant would necessarily have to leave the Guard Room, and Sgt. David, in order to comply with the directive of the Assistant Commissioner. Thus the Claimant was compelled to walk away from Sgt. David and to do as he was ordered by the Assistant Commissioner of Police. To do otherwise would have been to disobey the orders of the Assistant Commissioner of Police, an Officer senior in rank to Sgt. David. In these circumstances, I am of the opinion that the Claimant's walking away from Sgt. David was not only justifiable, it was mandatory. He simply had no choice but to do as he was told by the Assistant Commissioner.

[58] (a) The premise upon which the conviction for Disorderly Conduct was based was non-existent. The Claimant was obeying the directive of the Assistant Commissioner of Police. The conviction was therefore unreasonable and irrational. It was unfair. It was wrong in Law. It was so plainly wrong that the only legitimate conclusion which I can arrive at is that no sensible person who had applied his mind to the question of the Claimant's guilt on that evidence could have arrived at that decision. [HMB Holdings applied]

(b) Additionally, the Hunte Tribunal gave no Reasons for its factual findings upon which it based its conviction of the Claimant on this charge. The evidence of Corporal Hope is nowhere addressed. The evidence of the accused with respect to being called by the Assistant Commissioner is nowhere addressed. In fact, none of the evidence of the four witnesses and the accused was examined with any reasoning, or at all. Conflicts, where they existed, were ignored. Explanatory evidence – as alluded to above – was ignored. The Tribunal gave no reasons as to how it viewed any of the evidence. It just gave its conclusion of guilt. One is strained to resist the conclusion that the conclusion arrived at was arrived at *vacuously*. That its Decision is an error in Law. But there is more.

(c) The Tribunal clearly took into consideration matters which it ought not to have done in assessing the case against the accused. At page 11 of the Transcript under the heading "The Verdict" this is stated: "The Chairman said that based on the evidence given by the Prosecution, Witnesses (sic) especially the evidence of No.311 Sgt. David and Const. 505 Nanton (no hint of reason is given as to why their evidence is in any way 'especial') *and the attitude of the accused at*

Willikies Police Station when the investigator No.2 Acting Senior Sergeant Francis approached him to inform him of the reports of which she was investigating, did walked (sic) away from her." [Emphasis added]

(d) Acting Senior Sergeant Francis gave evidence about matters which occurred on Tuesday, April 24th 2007, at Willikies Police Station. The charges which the Claimant were being tried on took place at the Police Headquarters on 7th March, 2007. The Claimant was never charged with any offence with respect to April 24th, 2007. I am at a loss to begin to understand the relevance of that evidence. It cannot be said to be "similar fact evidence" given the Assistant Commissioner's directive to the accused on 7th March.

(e) What occurred on April 24th at Willikies Police Station has no bearing on the charges the Claimant faced with respect to the 7th March incident. It cannot be an "especial" reason upon which to found the accused's guilt on Discreditable Conduct or Insubordination which allegedly occurred on 7th March, 2007, at Police Headquarters. It cannot be any reason, or any part of any reason at all upon which to base the guilty verdict.

(f) It is in my view both irrelevant and prejudicial, and its admission was an error in Law. Reliance on that evidence, even in part, to found a guilty verdict, contaminates that verdict. It renders the verdict irrational in the MB Holdings sense.

(g) This evidence, as forming a part of the basis of the convictions, renders the convictions wholly unreasonable, irrational and unfair. He is found guilty of conduct which took place at the Police Headquarters on 7th March, 2007, partly based on allegations of a witness as to his "...attitude… at Willikies Police Station…[when it is alleged that]… he did walked (sic) away..." from the witness who informed him that she was investigating reports; this on April 24th 2007,

(h) Given that the Tribunal did not give a reasoned decision, or Reasons for its decision, I cannot be satisfied that the Willikies allegation did not play a major part in the Tribunal's decision. What is clear from the Decision is that the Willikies incident was part of the "evidence" upon which the Tribunal based its guilty verdicts. This I find to be irrational, unreasonable and unfair. Thus, the Tribunal erred in Law.

(i) I am of the opinion that what the Tribunal said under the heading "The Verdict" are not Reasons, and are certainly not satisfactory Reasons, sufficient to meet the threshold required by Law. That threshold is set out later in this Judgment.

(j) In addition to what is set out in subparagraph (b) above, "The Verdict" states:

> "Also taking into consideration the cross examination by the accused defense, (sic) and also his no case submission and the response to that no case submission by the Prosecutor, he found that the Prosecution has proven its case beyond reasonable grounds and that the accused was found guilty on both charges."

(k) That is the entirety of the "Reasons" given. There is no reasoning contained in "The Verdict". There is no assessment of any of the evidence or any of the witnesses. The Court does not know what reasoning was engaged in arriving at the decision to convict the accused. One is required to engage in guesswork and speculation if one is to attempt to discern some reasoning, and reason, for "The Verdict". That is exactly what the Law abhors. Hence the requirement for there to be given reasons for a tribunal's decision, of which more will be said below.

The Conviction for Insubordination

[59] The above is applied equally to this conviction. The basis for the conviction of the Claimant on the Insubordination charge was that when approached by Sgt. David, who told the Claimant he was investigating a Disciplinary Report against him, the Claimant replied, according to the witnesses, as follows:

a) Sgt. David, at page 1 of exhibit "C.J.2", "I approached the accused and I told him that I was designated by the Commissioner of Police to investigate the said report made against him by A/C Samuels for disobedience of Orders. The accused became very aggressive and loud and said, "**Me nah want fu talk to you now, talk to me when me a work."** [Emphasis in the original] He then began to walk away from me. I said to the accused, I am going to report you for Insubordination, he then replied, **"Do wha you want fu do, me nah warn talk to you."** [Emphasis in the original] He said so in a very loud tone of voice. He was about three feet away from me when I spoke to him then he began walking away from me. He then got in his private vehicle and drove away."

b) Constable Matumba Nanton, at page 2 of exhibit "C.J.2" says: "…Sgt. David came to the guard desk dressed in uniform. He waited until the accused came off the telephone and told him that he was designated by the Commissioner of Police to carry out investigations into a Disciplinary Report made against him by Assistant Commissioner Samuels. **He cautioned him** [Emphasis added] and the accused replied, **"I have nothing to say to you. I do not want to talk to you, talk to me when I am working."** [Emphasis in the original] The accused then turn (sic) to exit the building and the Sergeant then said, "Constable Jackson I am talking to you," and he replied, **"Me no want fu talk to you, do wha you haffu do, me nah kay,"** [Emphasis in the original] in a loud tone of voice and went through the door and left in his vehicle."

c) Corporal Collin Hope, at pages 4 and 5 of exhibit "C.J. 2" says: "I was standing at the front of the building in the station yard in the company of Superintendent Christian (sic) having a conversation. Whilst there I saw the accused drove (sic) into the yard and parked and went to the guard desk. Shortly after, I saw No. 311 Sgt. David also went (sic) to the guard desk from some area into the building. From where I was it appeared as though there was a conversation between the accused and the Sergeant. **The accused appeared to be gesturing. I did not hear anything between both parties.** [Emphasis added] Whilst there someone who was parked in the yard wanted to leave and the accused (sic) vehicle was blocking the vehicle. **Assistant Commissioner Christian then called out to the accused and asked him to remove his vehicle so that the person could leave**. [Emphasis added] As the accused walked through the front door, I heard him saying, **"Me nah want talk to you."** Sgt. Davis kept calling the accused three (3) times repeatedly. The accused then got into his vehicle and drove out the station yard. **The accused tone of voice when the Sergeant was speaking to him was not too loud and he was also gesticulating with his hands in the air"**.

[60] The charge of Insubordination is premised on the words used only. The charge states that the Claimant "...did reply in an insubordinate manner **by words** [Emphasis added] saying, **"I can't talk to you now, talk to me when me ah work and do wah you have to do, me nah talk to you."** It

is obvious that that charge was drafted to amalgamate the two sets of words used by the Claimant; those at the guard desk, comprising the words up to the word 'and', and those at the door, comprising the words after the word 'and'.

[61] What are the circumstances in which the Claimant is alleged to have uttered the offending words?

i). The Claimant was being investigated for a Disciplinary Report made against him by the Assistant Commissioner of Police.

ii). That investigation was being conducted, at the direction of the Commissioner of Police, by Sgt. David.

iii). Sgt. David approached the Claimant. He told him he was investigating that report. **Sgt. David cautioned the accused**. [Evidence of Constable Matumba Nanton] The Claimant then refused to speak to the investigating officer.

iv). Is a Police Officer who is cautioned by an investigator who is investigating a Disciplinary allegation against him obliged to answer the investigator? Can the Police Office refuse to answer any questions – indeed, refuse to talk to the investigator at all once he has been cautioned? Some may say that it is "only" a Disciplinary investigation. The penalty for a conviction on a Disciplinary charge potentially carries the ultimate penalty in the Force: Dismissal from the Force, with all its consequential negatives. We saw that result in this case.

v). These disciplinary charges are not "Civil" charges. They are akin to Criminal charges. They are quasi-criminal in nature. Black's Law Dictionary, Ninth Edition, at page 428, defines "quasi-crime" as: "An offence not subject to criminal prosecution but for which penalties or forfeitures can be imposed." The disciplinary offences with which the accused was charged certainly fit within this definition.

vi). That this is recognized by the Police to be the case is evidenced by the fact that on 7th March Sgt. David cautioned the Claimant before he began to address the allegations. [Matumba Nanton] Further, in her evidence as to the events at Willikies Police Station on the 30th April, 2007, Acting Senior Sergeant Cecilia Francis said, referring to the Claimant, "I told him I was designated by the Commissioner of Police to make inquiries into two (2) disciplinary Reports of Discreditable Conduct and Insubordination made against him by

Sgt. David on 07.03.07. **I cautioned him and he made no reply."** [page 6 of exhibit "C.J 2"] [Emphasis added]

vii). It cannot be that a Police Officer who is alleged to have committed a disciplinary offence is compelled to speak to the investigating officer about the allegations, particularly in the face of a Caution being administered by that officer. He must have the right to remain silent. He must have the protection from self-incrimination which has been the hallmark of Common Law Jurisprudence for centuries. So important is the Right to remain silent [properly; the Right not to be forced to incriminate yourself] when questioned by a person in Authority who is investigating any matter concerning you which may result in charges, whether Criminal, or Disciplinary in my view, being brought against you, that it has been uplifted to the level and quality of a Fundamental Right. So in criminal matters; so also in Disciplinary matters - which I am of the opinion are, particularly as they relate to disciplined forces, akin to Quasi-Criminal matters - which carry penalites as severe as Dismissal from the Force.

viii). Perhaps Constable Jackson was intemperate in his choice of words on 7th March 2007, when he was approached by Sgt. David. His language was certainly inelegant. His manner may well have been boorish, although Corporal Hope did say in evidence that "The accused tone of voice when the Sergeant was speaking to him was not too loud and he was also gesticulating with his hands in the air". Nevertheless, the lack of Reasons, or sufficiency of Reasons, impels me to the inexorable conclusion that the Tribunal did not attempt to reconcile this evidence with that of the other witnesses from the Police Headquarters. In fact, I am irresistibly drawn to the conclusion that the Tribunal did not apply a Judicial mind – did not act judiciously with respect – to any of the evidence, as it was obliged by Law to do, because the Tribunal has given no Reasons for its verdicts. This evidence, like all the rest of the evidence given to the Tribunal, was left to blissfully fend for itself in the Reason-free and reason-less wilderness of the Tribunal's Decision.

ix). In summary, it is clear to me on the Record that the accused was exercising his Right to remain silent in the face of a Caution being administered to him by a Senior Police Officer, a person in authority, who was investigating a report made against the accused into an alleged disciplinary offence. It is my opinion that, however unbecoming his manner of exercising that Right may have been, I think that was his Right. If I am correct in that opinion, how then can the exercise of his Right not to incriminate himself, in however

boorish a manner, however intemperate his choice of words, however acrobatic his gesticulations – and he was not charged with 'assault' - constitute the Disciplinary offence of Insubordination? This finding of Guilt on the Insubordination Charge, on that evidence, and in those circumstances, I find, as a matter of Law, to be unfair, unreasonable and irrational. And, again, the Tribunal gave no, or no sufficient Reasons which, by itself, is sufficient in Law for its Decision to be quashed.

x). Neither conviction was arrived at reasonably, rationally or fairly. No, or no sufficient Reasons were given to explain the findings of guilt. They are wrong in Law. I shall address the full impact of the lack of Reasons, or the insufficiency of Reasons, and the unreasoned decisions on the convictions and sentences, below.

The Sentences

[62] The Tribunal reprimanded the Claimant on the conviction of Discreditable Conduct. This, the Tribunal would be lawfully entitled to do by virtue of the delegation, but for my findings above. It follows, axiomatically, that the sentence of Reprimand would fail to survive the aforesaid findings. I shall however address the totality of the sentences handed down from the point of view of the lack of Reasons.

[63] The Tribunal recommended "Dismissal from the Royal Police Force of Antigua and Barbuda…" on the conviction for Insubordination. The Tribunal erred in Law. It had no power to make such a recommendation.

[64] Section 105 (6) of the Constitution *expressly prohibits* the delegation of "...the power to remove from office or reduce in rank..." If the Delegate is expressly prohibited by Statute – here, the Constitution – from exercising a power, it must follow as a matter of Law that the Delegate, absent some express statutory power to make such a recommendation, cannot recommend that which he is not himself empowered to do. That would be an impermissible encroachment, a blatant trespass and an offensive impingement on the powers given exclusively to the Commissioner by the Constitution. Powers which the Law requires him to exercise, in his own discretion, without the aforesaid non-statutory interference by way of an unsolicited and gratuitous 'recommendation'.

[65] The Commissioner himself must exercise the power to remove or reduce in rank, free of the influence of any recommendation from the Tribunal, unless it was permitted by the Constitution, the source of his power. In other words, the Commissioner is not permitted to take into consideration the views of another – here, the Tribunal – in exercising his powers under Section 105 (5), because the Constitution does not expressly, or by implication, so provide. Were that not the case, and was it intended by the framers of the Constitution that the delegate could recommend that which he was expressly excluded from doing, Section 105 (6) would have been the perfect place to vest that power in a delegate. It is not so expressed in Section 105 (6), or any other Section of the Constitution for that matter, and it cannot be implied therein without doing unmentionable violence to the proviso in subsection (6). There is also no non-Constitutional Statutory basis for the making of a recommendation to the Commissioner in respect of the exercise of the Commissioner's Section 105 (5) powers to dismiss and reduce in rank.

[66] Finally, in respect of the Tribunal's "sentences" inflicted upon the Claimant. Even if in Law it was empowered to make the recommendation which it did, the Tribunal did not give any Reasons for its decision to recommend to the Commissioner of Police the dismissal of the Claimant. So as to be clear, it is my view of the Law, and I so Hold, that Reasons are required to be given, not only for the Decisions of Guilt of a person charged, but also where the tribunal has a discretion to exercise as to what penalty, if any, to impose, like in this case the Tribunal did. In the case **of Gupta v. General Medical Council**[1], it was held that "...there was no general duty on the Professional Conduct Committee of the General Medical Council to give reasons for its decisions on matters of fact, particularly where its decision depended essentially on resolving questions of the credibility of witnesses;" Gupta is distinguishable from the case at Bar, and, as will be shown later on in this Judgment, the Law has evolved beyond Gupta. The Tribunal did not, and did not have to give specific reasons why it preferred the evidence of the Prosecution's witnesses over that of the Claimant. That is an area where this Court dare not tread. This Court can, however, say whether the findings of fact themselves can rationally, reasonably and lawfully, like Atlas did, hold the weight of the convictions upon their shoulders.

[1] [2001] UKPC 61

[67] What the Tribunal did not do was give Reasons for the sentences it purported to impose.

[68] Section 11 of the Police (Disciplinary) Regulations sets out the punishments which may be imposed on a conviction at the conclusion of a hearing by the Police Service Commission. These are the same punishments which the Commissioner of Police has at his disposal when he metes out punishment for disciplinary offences. These, save and except for the power to dismiss from the Force and the power to reduce in rank, are the Commissioner's delegable powers. There are seven such punishments ranging from "caution" to "dismissal from the Force". The Commission, the Commissioner of Police and, subject to the foregoing, his Delegate, are empowered to impose "one" of these punishments. They have to make a choice as to which one will be imposed. In so doing, they are exercising a discretion. It is making a decision as to which of the available punishments to impose. That decision must be reasonable. It must be rational. It must be reasoned. The exercise of this discretion is a matter of Law, and as such Gupta is inapplicable. Reasons must be given. The accused had a Statutory Right of Appeal. This in itself, as will be seen later, requires that Reasons be given - both on the findings of guilt and on sentencing.

[69] In De Smith's Judicial Review[2], the following statement of Law is to be found:

> "A failure by a public authority to give reasons, or adequate reasons, for a decision may be unlawful in two ways. First, it may be said that such a failure is *procedurally* unfair. Secondly, a failure to give adequate reasons may indicate that a decision is *irrational*."

[70] The Tribunal gave no reasons for its decision to recommend the dismissal of the Claimant, notwithstanding the fact that the uncontroverted evidence before me clearly shows that it was the settled practice to impose a fine on Officers convicted of Insubordination.

[71] There is therefore no basis upon which this Court can examine that Decision to determine whether it was fair, reasonable and rational.

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[2] 6th Edition, At paragraph 7-087, page 410

[72] Whether it was a reasonable Decision in all of the circumstances will forever remain shrouded in a veil of mystery because the Tribunal has not availed the Claimant, or this Court, of the reasons why he thought it fit to recommend the dismissal of the Claimant.

[73] That, in my view, constitutes procedural unfairness. The decision is unreasonable. It is unreasoned. These, in my view, make the Decision to make that recommendation irrational. No rationale has been provided by the Tribunal, by way of Reasons, upon which to base the draconian recommendation of Dismissal. None have been offered by the Commissioner as to why to "affirm" the decision of the Tribunal. The Commission fails in this respect also.

[74] This is particularly telling given (a) the fact that the Claimant had no prior convictions for Disciplinary Charges and (b) that his evidence on Affidavit showed – and this evidence was not contested at any stage by the Defendant – that, prior to his dismissal, and for at the very least the ten years in which he served as a Member of the Royal Antigua and Police Force, *no person was ever dismissed* from the Force for a conviction on a charge of Insubordination. In Wade's Administrative Law[3], the following is stated:

> "First, decisions that appear aberrant without reasons have to be explained, so that it may be judged whether the aberration is real or apparent…..Similarly, where the decision-maker departs from a previously adopted policy (even if not published) fairness will require that departure to be explained….Then, secondly, there are cases in which the interests concerned (for instance, personal liberty) are 'so highly regarded by law that fairness requires that reasons… be given as of right' " R. v. Higher Education Funding Council ex. P Institute of Dental Surgery [1994] 1 WLR 242 at 263, per Sedley J interpreting ex. P Doody….And, thirdly, it is always possible that the failure to give reasons for a decision may justify the inference that the decision was not taken for a good reason. R. v. Secretary of State for Trade and Industry ex. P Lonrho plc [1989] 1 WLR 525 at 540 ("if all the other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision' (Lord Keith)."

[75] In this case, based on the evidence, the decisions of guilt and the sentence of recommendation of dismissal appear "aberrant". They are irrational. They are unreasonable, same as they are unreasoned. The recommendation of dismissal is a clear departure from what must be taken, on the evidence before me, as previously adopted policy (although unpublished) of inflicting a Fine for

[3] Ninth Edition, at pages 523 and 524

convictions of Insubordination, and fairness requires that this departure be explained. This was not done at all.

[76] The recommended punishment of Dismissal, the affirmation of the decision to recommend dismissal by the Commissioner of Police, and the affirmation of the Commissioner of Police's said affirmation, are decisions which impact the accused's employment, his career, his livelihood and is therefore an interest which "...is so highly regarded by law that fairness requires that reasons… be given as of right."

[77] The failure of the Tribunal, the Commissioner of Police, and the Police Service Commission to give reasons for their decisions, in the light of the evidence which I find, overwhelmingly admit of different decisions to those of the aforementioned deciders, justify the inference that the decisions were not taken for good reason.

[78] At the Tribunal, Corporal Cadette made the submission with regards to the fact that never before had anyone been dismissed for Insubordination, and that the accused had no prior conviction for any Disciplinary offence, after the findings of Guilt, but before the decision on sentencing. We do not know what, if any weight the Tribunal gave to those submissions of undisputed fact – the Prosecutor at that Hearing did not, according to the Transcript, contest those facts - because the Tribunal did not give Reasons for its decision on sentencing.

[79] The Tribunal, like the Commissioner of Police and, like the Police Service Commission were, was required by Section 12 of The Police (Disciplinary) Regulations to have regard to the accused's record of police service as shown in his personal record. This record would have shown, according to the evidence before me, that the Claimant had no prior convictions for any Disciplinary offences.

[80] That accepted fact in evidence – that never before had any person been dismissed on a conviction for Insubordination – made it imperative that the Tribunal's decision to deviate from the historical punishment for convictions on charges of Insubordination– fines – and to inflict the ultimate punishment of dismissal upon the Claimant must have been supported by Reasons to avail the

Claimant, and any Tribunal hearing an appeal on matters of Law, or this Court in Judicial Review proceedings, of the basis for that decision.

[81] I turn again to De Smith's Judicial Review (supra) at paragraph 7-093, page 415:

> "In addition to helping to ensure the fairness of an initial hearing, a requirement of reasons is of particular importance where decisions are subject to a right of appeal on questions of law. A reasoned decision is necessary to enable the person prejudicially affected by the decision to know whether he has a ground of appeal, or alternatively, a ground of challenge by way of judicial review. Reasons will also assist the appellate court to scrutinise effectively the decision for relevant error, without necessarily usurping the function of the decision-maker by itself re-determining the questions of fact and discretion which Parliament entrusted to the decision-maker. Without reasons, it can be extremely difficult to detect errors.
>
> It is because of these very real benefits which result from the giving of reasons that a legal duty to give reasons has become an integral part of the model of administration that has dominated English administrative law since the publication of the Franks Report. If those entitled to be heard have no right to know how a tribunal resolved the issues in dispute at the hearing, they may well regard as an empty ritual their legally conferred opportunity to be heard and to influence the tribunal by producing witnesses and other evidence to establish the relevant facts, advancing arguments on the proper exercise of any discretion [like which penalty to impose, in this case, and why to impose the chosen penalty, a matter of law in the exercise of a discretion] and the resolution of any legal questions, and challenging their opponents' case. Unless the tribunal makes findings on disputes as to facts, explains the exercise of its discretion (by indicating the considerations that it has taken into account and relative weight assigned to them, for example) and gives its answers to any questions of law, there can be no assurance that the tribunal has discharged its obligation to correctly decide issues of law and base its decision upon material presented at the hearing, rather than on extraneous considerations."

[82] It is the Duty of the Courts to ensure that Procedural Fairness obtains at the hearing of any matter in which the rights, broadly speaking, of the individual are at risk. The loss of one's employment in the Royal Antigua and Barbuda Police Force by way of dismissal engages that Duty.

[83] The Law in administrative cases has evolved. Again, De Smith (supra) at paragraph 7-100, page 419:

> "Where [like in the case at Bar] statute or regulation provides a right of appeal from a decision, reasons may be required so as to enable the affected individual to exercise effectively that right. A

right to reasons in these circumstances may be explained either by reference to the rules of procedural fairness, or, more usually, by a necessary implication from the rules which provide for the appeal. Thus in one group of cases, tribunals when stating a case on an award of costs have been required to give reasons if their award departs from the normal practice, and more generally, reasons may also be required where the body is departing from a previous decision… The courts may even imply a right to reasons into a well-developed statutory framework which is silent on the question of an entitlement to reasons. The courts have recently demonstrated a greater willingness to intervene in such circumstances (provided always that they do not discern a statutory intention *to exclude* reasons) simply on the basis that procedural fairness requires that reasons be given."

[84] Section 14 (1) of the Police (Discipline) Regulations states that "An accused person against whom a decision is made either by the Commissioner of Police or a member of the Police Force to whom authority is delegated to hear the charge may appeal against such decision to the [Police Service] Commission within fifteen days of the date on which such decision is communicated to him."

[85] The Claimant therefore had a statutory right of appeal.

[86] There is nothing in The Police (Disciplinary) Regulations from which I can "discern a statutory intention to exclude reasons".

[87] De Smith (supra), at paragraph 7-091, page 413 states:

> "Indeed, so fast is the case law on the duty to give reasons developing, that it can now be added that fairness or procedural fairness usually will require a decision-maker to give reasons for its decision."

[88] Where the tribunal is exercising a draconian jurisdiction reasons become particularly important: **R v. Central Criminal Court Ex. p. Propend Finance Property Ltd**.[4], Dismissal, and the recommendation of dismissal of an individual convicted of Disciplinary charges do, in my judgment, constitute a "Draconian Jurisdiction". Further, when the landmark case of **R v. Civil Service Appeal Board, Ex. P. Cunningham**[5] is considered, it becomes apparent that it is grounded in Law that Natural Justice mandates that in the case where reasons will aid an individual who is aggrieved by a decision to maintain an action for Judicial Review on the grounds of illegality or

[4] [1996] 2Cr. App. R. 26
[5] [1991] 4 All E.R. 310

irrationality, reasons must be given to that individual. The requirements of Fairness and Natural Justice in the case at Bar, demands that reasons be given for the sentence of dismissal recommended by the Hunte Tribunal, affirmed by the Commissioner of Police, which affirmation was itself affirmed by the Commission which gave, no, or wholly inadequate reasons for so doing. I hold that, as a matter of Law, all three bodies were required to give Reasons for their Decisions.

The Police Commissioner's Decision

[89] In his letter of 7th November, 2007, the Commissioner of Police "...affirmed..." the decision of the Hunte Tribunal and purported to dismiss the Claimant from the Force pursuant to his Section 105 (5) powers under the Constitution.

[90] None of Sections 105 (5), 105 (7) of the Constitution of Antigua and Barbuda, or The Police (Disciplinary) Regulations gives the Commissioner of Police the power to affirm any decision of a Tribunal to whom he has delegated delegable powers. This "affirmation" was a nullity in Law.

[91] Subsection (6) of section 105 of the Constitution reserves exclusively unto the Commissioner of Police, in cases where he has delegated his subsection (5) powers, the power to "...remove from office or to reduce in rank..."

[92] In exercising this statutory power, the Commissioner is required to act reasonably. He is required to act in his own deliberate judgment, and not on the recommendation of any party, save where statute provides that he may take into consideration the views of others in the exercise of that power. No Statute in Antigua and Barbuda makes any such provision.

[93] It is my opinion, and I Hold it to be the Law, that to act reasonably requires the decision-maker to make a 'reasoned' decision, in the sense that he must address his mind to the relevant facts; he must examine the relevant circumstances; he must apply logical thought to the process and he must arrive at a decision based thereon. His judgment must be the child of logic, not the orphan of whim, and certainly cannot be an adopted child.

[94] The decision to "...remove and exercise disciplinary control over police officers…" cannot be a whimsical decision. The removal must be "…for reasonable cause…": (**Thomas v. A.G. of Trinidad and Tobago** [1982] A.C. 113, at 126 Letter H, per Lord Diplock). Reasonable cause must necessarily imply a reasoned decision, for to find a cause 'reasonable', the cause must be examined with the tools of logic and reason. It may not be the product of a 'Windmill Thrust', as would the mythical Don Quixote have it be.

[95] The reasonable decision must be explained. It must be justifiable. It must be for good and obvious cause. The decision must be both fair and sensible. It must be logically reasoned. It must be Just.

[96] The decision-maker therefore, on the authority of the De Smith statements of the Law previously cited, must give Reasons for his decision so as to show, in addition to those reasons already referred to, the process of analysis and the logic employed to arrive at his decision. How else is the affected party to know the true basis for the decision? How can he arrive, without Reasons being given, at an informed decision as to what permitted steps he should take if he is dissatisfied with the decision? How is an appellate tribunal, or the High Court in Judicial Review proceedings, to know what reasoning was applied to the facts of the case by the tribunal in arriving at that decision?

[97] Further, there is the issue of the Commissioner's letter of 7th November, 2007. It raises serious questions of Law.

[98] These questions are:

(a) What effect, if any, does the acknowledgement by the Commissioner of the Hunte dismissal recommendation have on the Commissioner's decision?
(b) What effect, if any, does the Commissioner's "affirmation" of "...the said decision..." have on the Commissioner's decision?
(c) What effect, if any, does the Commissioner's expressed knowledge of the Claimant's appeal to the Police Service Commission have on the Commissioner's decision?

(d) What effect, if any, does the copying of that decision letter of 7th November, 2007 by the Commissioner of Police, to the Chairman of The Police Service Commission, with full knowledge of the fact that the Claimant had filed an appeal before that very Commission challenging both the conviction and sentence, have on the Police Service Commission's subsequent Decision?

[99] By acknowledging that "...your dismissal from the Police Service was recommended on the charge of Insubordination", the Commissioner of Police, in the absence of Reasons given which establish the contrary to be the case, must, as a matter of Law, be taken to have taken into account that recommendation in arriving at his decision to dismiss the Claimant. This is an error in Law. It is Ultra Vires.

[100] The Commissioner of Police has no statutory authority to take into account those, or any other recommendations, or extraneous matters, in arriving at his decision with respect to the exercise of his exclusive powers under Section 105 (5) of the Constitution. His decision is tainted thereby.

[101] Further, even if the Commissioner was authorized to take that recommendation into account, having found earlier that the Hunte Tribunal had no Lawful authority to make such recommendation, the result would be the same. The Commissioner would have taken into account a matter which itself was without foundation in Law thereby vitiating his decision.

[102] The Commissioner's "affirmation" of "...the said decision..." of the Hunte Tribunal is an error in Law. The Commissioner has no statutory authority to affirm or set aside a decision of a tribunal to whom he has delegated delegable powers. That jurisdiction is a statutory jurisdiction which is given to the Police Service Commission by Section 14 of The Police (Disciplinary) Regulations. Therefore, insofar as the Commissioner of Police purported to "affirm" the decision of the Hunte Tribunal, that affirmation is a nullity in Law.

[103] On 7th November, 2007 when the Commissioner of Police wrote to the Claimant dismissing him from the Police Force, the Commissioner of Police was aware of the fact that the Claimant had

exercised his Statutory Right of Appeal to the Police Service Commission under Section 14 aforesaid.

[104] That appeal does not act as a Stay of either the Tribunal's Decision or, if proper, the Commissioner's exercise of his Section 105 (5) powers under the Constitution. The question is, however, what steps could the Commissioner have taken to preserve the integrity of the process, and to ensure Fairness for the Claimant? Dismissal from the Force in the face of an appeal as of right granted by Statute, where other less final steps can be taken pending the outcome of that appeal, in my view constitutes procedural unfairness. It is unreasonable. It is irrational. It is arbitrary. It defies logic. Especially where, as here, no Reasons were given by the Commissioner, for the exercise of this "Draconian Jurisdiction", which clearly deviates from the historical punishments administered to persons convicted of Insubordination. The Commissioner's exercise of his power of dismissal in these circumstances is vitiated by this procedural unfairness.

[105] The Commissioner of Police could have suspended the Claimant from the Force pending the outcome of the appeal. That would have achieved whatever disciplinary control the Commissioner deemed necessary in the circumstances. That would have been a reasonable, rational, considered and logical act in the circumstances. What if the Commission had then upheld the Claimant's appeal against sentence?

[106] And, the Commissioner of Police copied his 7th November, 2007 dismissal letter to the Chairman of The Police Service Commission. The Chairman of the very body to whom the Claimant had appealed the Tribunal's Decision.

[107] There is no evidence before me which suggests that the Chairman did not read that letter. There is no evidence to suggest that the other Members of the Police Service Commission did not read that letter.

[108] There is also no evidence before me to show what, if any, impact prior knowledge of the Commissioner's decision to dismiss the Claimant had on the Chairman and/or the Police Service Commission Members, and on their decision to affirm the Commissioner's Decision. What is more,

the appeal before the Commission was an appeal *challenging the Tribunal's decision to recommend dismissal! When the appeal was lodged the Claimant had not yet being dismissed.* The Commissioner purported to dismiss him *after* he lodged his appeal but *before* – *long before* – the appeal was heard.

[109] In fact, a close review of the Transcript of the Appeal Hearing discloses that there was minimal participation in the proceedings by the Chairman, and none by the other five members of the Commission who were present.

[110] One of the very few acts of participation in the Hearing by the Chairman was his making this statement to Corporal Cadette, counsel for the Claimant: "It is the Law that the trail (sic) officer can dismissed (sic) any officer on any matter." That is an incorrect, or at best, and to be generous to the maker of that statement, an incomplete statement of the Law.

[111] It is wholly incorrect if the Trial Officer is a delegate of the Commissioner's Powers, as was the case with the Hunte Tribunal. The Commissioner is expressly prohibited by the Constitution from delegating his Power to remove, or reduce the rank of officers on disciplinary convictions.

[112] It is only correct if the "officer" referred to in that statement is the Commissioner himself. It is contextually inconceivable, in reviewing the Transcript, to interpret the Chairman's statement to include the Commissioner of Police as one of "…the trail (sic) officer(s)…",

[113] I am lead to the inescapable conclusion, by way of inference, which inference I find as a fact, on the evidence before me, and on the lack of evidence to rebut that inference, that the Commission's Members were, at the very least, inappropriately aware of the contents of the Commissioner's letter, and were potentially influenced by the Commissioner's dismissal of the Claimant.

[114] This inference is reinforced by the Transcript evidence which shows the lack of participation in the Hearing of the Appeal by the Commission's Members, and the Chairman's cursory, minimalist and insignificant participation therein.

[115] The inadequacy of the Reasons given for their Decision also leads me to the conclusion that the Members did not give the issues before them any, or any adequate consideration before affirming the Commissioner's Decision. Obiter: Indeed, one can be hardly faulted if, while on the proverbial bus from Fitches Creek to Villa, one reads in the newspaper the sequence of events leading up from the Tribunal's Decision, to the Commission's affirmation of the Commissioner's affirmation, and exclaims, suddenly, loudly, uncontrollably and involuntarily, "Rubberstamp!" One will no doubt be forgiven his startling outburst, in the circumstances of the evidence in this case, taken as a whole, precisely because there are no Reasons provided from which anyone can glean the basis of these decisions.

[116] This leads me to the inexorable conclusion that the Commission did not take an objective approach to their duties and obligation to give the Claimant a fair hearing.

[117] Then there is the fact that the Decision on appeal before them was the Tribunal's Decision to recommend the Claimant's Dismissal from the Royal Antigua and Barbuda Police Force. When, two years later in September 2009, the Commission finally got around to hearing the Claimant's appeal that appealed decision was rendered otiose by the Commissioner's actions of 7th November, 2007. The appeal was apparently transformed into an appeal of the Commissioner's dismissal of the Claimant; the very subject matter of the 7th November, 2007 letter wrongly copied to the Commission.

[118] Finally, the Commission said the following in their "Decision":

> (exhibit "S.W-2") "The evidence submitted to the Police Service Commission **by its investigators** and the evidence from the transcript of the trial, left no doubt of the defendants' (sic) guilt of Insubordination and Discreditable Conduct." [Emphasis added]

[119] The Commission, on their own Record, took into account "evidence" which they ought not to have taken into account. That "...submitted to [them] by its investigators".

[120] The Police Service Commission sat as an appellate Tribunal pursuant to Section 14 of the Police (Disciplinary) Regulations. That is a Statutory Jurisdiction which may only be exercised in accordance with the powers given by Statute. Section 14 does not give the Commission the power to have "evidence submitted to [it] by its investigators…" In fact the Regulations do not provide for the Commission to have "investigators" at all. But that is beside the point. Clearly the Commission acted Ultra Vires its powers in having "...evidence submitted to [it] by its investigators..." Their Decision is impregnated by this Ultra Vires act. The spawn is therefore, in Law, still-born. It is null, void and of no effect. Ab initio. There is no severance available to cleanse the Commissioners of their wrong. That is exacerbated, from their point of view, by the lack of Reasons from which this Court may have culled a finding that "...its investigators..." "...submitted evidence..." which played little or no part in their Decision. Alas, I have no Reasons from the Commission before me to enable me to examine them to gauge the impact, if any, this "evidence" had on their Decision. I must assume that it did in fact have some part to play, absence evidence to the contrary, in the decision. Reasons can assist both sides. It is, apart from the legal requirement so to do, commonsensical to give Reasons. Doing so may reinforce, and explain, as it should, your Decision.

[121] I am satisfied, on the evidence before me, that all of the foregoing completely vitiate the Commission's Decision. It is null, void and of no effect. Applicable to all three decisions is the statement in Wade, at page 525 that: "… an important consideration underlying the extension of the duty to give reasons, referred to in many cases, is that in the absence of reasons the person affected may be unable to judge whether there has been a 'justiciable flaw in the [decision-making] process;" "*Footnote 36*: *ex. P Institute of Dental Surgery at 256 approved in ex. P Matson at 776 and ex. P Murray at 136. And in ex. P. Doody, Lord Mustill said (at 565) 'To mount an effective attack on the decision … [the person affected] has [in the absence of reasons] virtually no means of ascertaining whether … the decision-making process has gone astray'." …*To this I would add that reasons also provide the basis for the decision-maker "To mount an effective defense of the decision".

[122] The Defendant, in the Affidavit of its Chairman, sought to give, or to amplify, the reasons for their decision. The Chairman actually sought to 'justify' their decision in the Affidavit.

[123] This I hold to be without effect in Law because "… a void decision could not be validated by late reasons even if they show that the decision was justified. Consistently with this analysis the Court of Appeal [in England] has quashed a decision that an applicant was intentionally homeless notwithstanding that the bad reasons given when the decision was made were supplemented by good reasons given in the respondent's affidavit. 'It is not ordinarily open', the Court of Appeal said in another case, [**R. (S) v. Brent LBC** [2002] EWCA Civ. 693, para. 26 (Schiemann LJ)] 'to a decision-maker, who is required to give reasons, to respond to a challenge by giving different or better reasons.' The cases to the contrary must be considered doubtful." Wade at page 526 to 527.

[124] Wade continues at page 527: "The time has now surely come for a court to acknowledge that there is a general rule that reasons should be given for decisions, based on the principle of fairness which permeates administrative law, subject only to specific exceptions to be identified as cases arise." Wade, at page 522: "Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural Justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others. 'No single factor has inhibited the development of English [Caricom] administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions'."

[125] I adopt the above statements from Wade. The time has surely come when that "inhibiting factor" must be wrested from its comfortable perch of judicial inactivity, and cast away into the oblivion of irrelevance to our evolving Constitutional construct. Our Justice must be forged in the context of our Constitutional climate, which finds its genesis in our written Constitutions, all of which are premised on the core element of Fundamental Justice. Fundamental Justice, like Natural Justice which evolved in the context of an unwritten constitutional climate, demands fairness. Fairness demands that reasons be given by public authorities, and other decision-makers when making decisions.

[126] I hold that, as a matter of Law, there is a general rule that reasons should be given for decisions, based on the principle of fairness, which permeates our Constitutionally premised administrative law, subject only to specific exceptions to be identified as cases arise. I apply that principle of Law to my findings in this case.

Conclusion

[127] (i) The Decision of the Hunte Tribunal to recommend the Claimant's Dismissal from the Royal Antigua and Barbuda Police Force is bad in Law, null, void and of no effect, on the grounds that (a) it is Ultra Vires the delegated Powers of the Tribunal, (b) it was procedurally unfair, in that it is unreasonable and irrational, for the reasons stated above, and (c) it lacked the required and necessary Reasons. The convictions on the charges of Discreditable Conduct and Insubordination are bad in Law, for the reasons stated hereinbefore.

(ii) The Decision of the Commissioner of Police to affirm the decision of the Tribunal is bad in Law, null, void and of no effect, on the grounds, in addition to what have been stated above, that (a) the Commissioner took into account the recommendation of the Tribunal, which was itself bad in Law, when he ought not to have taken it, or any other person's opinion into account in the exercise of his discretionary power of dismissal, (b) it was procedurally unfair, in that it is unreasonable and irrational for the reasons stated above, and (c) it lacked the required and necessary Reasons.

(iii) The Police Service Commission's Decision to "...affirm the decision of the Dismissal by the Commissioner of Police" is bad in Law, null, void and of no effect, on the grounds that (a) it was tainted by the Commissioner's Letter of Dismissal to the Claimant dated 7th November, 2007, (b) the Commission took into account "evidence submitted to [it] by its investigators.." when they ought not have done so in arriving at their Decision, (c) the explanation given for their Decision is insufficient so as to ensure that the Claimant received procedural fairness, and in all the circumstances their Decision was unreasonable and irrational, and (d) the Commission failed to give any, or any sufficient Reasons for its decision to affirm the Commissioner of Police's affirmation of the Hunte Tribunal's convictions and sentences.

[128] By way of obiter, I am of the view that all three decisions, severally, and together, are *Contra Bonos Mores: offensive to the conscience and Justice!* They are, in a word*, unconscionable.*

[129] Having come to the conclusions which I have, it is left to be determined what remedies and reliefs I grant to the Claimant.

[130] What are the reliefs available to this Claimant?

[131] The Eastern Caribbean Supreme Court Act, CAP. 143 of the Laws of Antigua and Barbuda, state, at section 20, the following:

> "20. The High Court and the Court of Appeal respectively in the exercise of the jurisdiction vested in them by this Act shall in every cause or matter pending before the Court grant either absolutely or on such terms and conditions as the court think just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided."

[132] Part 56.13 (3) of the Civil Procedure Rules – 2000 states:

> "56.13…. (3) The judge may grant any relief that appears to be justified by the facts proved before the judge, whether or not such relief should have been sought by an application for an administrative order."

[133] The remedy sought by the Claimant is a Certiorari quashing order and consequential declarations. The reliefs sought are (i) reinstatement, (ii) compensation for his loss of wages during the period of the 7th November, 2007 to the date of reinstatement, (iii) General Damages for wrongful dismissal, (iv) Interest on the awards pursuant to section 27 of the Eastern Caribbean Supreme Court Act, CAP 143, (v) Any other further relief that this Honourable Court deems fit in the circumstances, and (vi) Costs.

[134] The Claimant asks for reinstatement. My findings render this otiose. If I had the jurisdiction to grant or not to grant reinstatement, I would not grant it. Too much time has passed since the Claimant

has been out of the Police Force. If the Claimant returns to the Police Force there will be too much potential for tension, and the like. This would not be good for either the Claimant or the Royal Antigua and Barbuda Police Force. It would not be in the Public Interest. It would be in the best interests of the Claimant and the Royal Antigua and Barbuda Police Force, and indeed in the Public Interest, if the Claimant was to tender his resignation from the Force.

[135] It is Fair and Just that the Claimant be paid all his wages and benefits from 1st November, 2007. Interest is to be paid to the Claimant on the net amount of his wages, after all statutory deductions, at the rate of 5% per annum for that period.

[136] The Claimant asked for an award of General Damages. I am of the opinion that an award of General Damages is justifiable, given the high-handed manner in which the Commissioner of Police purported to dismiss the Claimant, notwithstanding the known fact that he had lodged an appeal against the Tribunal decision. I also think the Police Service Commission acted in a manner which justifies an award. They did not establish, by way of the giving of reasons for their decision that they acted judiciously. They took nearly two years to hear the Claimant's appeal in September, 2009, notwithstanding that they, or at the very least the Chairman, knew that the Commissioner had purported to dismiss the Claimant from the Force in November, 2007, after the lodgment of his appeal with the Commission. In fact, it is an inescapable inference that they did not act fairly to the Claimant. They also acted in an high-handed manner. The Claimant was a Police Officer for ten years prior to his unlawful dismissal. He had, on the evidence before me, a spotless Record - he was without any conviction for any Disciplinary offence. He suffered the agonizing indignity of having to wait for two years before his appeal was heard. There was no reason offered in evidence for this inconceivable and unwarranted delay. It is true that Dr. Dorsett offered, from the Bar, the excuse that the Claimant had travelled to Canada after being dismissed, and therefore the appeal could not be heard. I do not accept that to represent one scintilla of what the real reason was for the inordinate delay. None of the Tribunal, the Commissioner of Police or the Police Service Commission treated the Claimant fairly. He has been out of the Force for five years because of their actions and, on the part of the Commission, their added intervening inaction. I am of the considered opinion that, on all of the evidence, the Claimant was treated contumeliously. Their decisions each defy logic, reason and rationale.

[137] The Claimant is entitled to be awarded Costs.

Declarations and Orders: Remedies and Reliefs

Ubi Jus Ibi Remedium: Where there is a Right, there is a Remedy.

[138] I Hereby Grant the following Declarations:

1. (a) A Declaration that the convictions of the Claimant by the Hunte Tribunal on the charges of Discreditable Conduct and Insubordination are bad In Law, and are null, void and of no effect;

   (b) A Declaration that the Hunte Tribunal Decision to recommend the Dismissal of the Claimant from the Antigua and Barbuda Police Force, is unlawful, Null, Void and is of no effect.

2. A Declaration that the Commissioner of Police's Decision to affirm the Hunte Tribunal's Decision to recommend to him, the Commissioner of Police, that the Claimant be dismissed from the Royal Antigua and Barbuda Police Force, is unlawful, Null, Void and of no effect.

3. A Declaration that the dismissal of the Claimant from the Royal Antigua and Barbuda Police Force by the Commissioner of Police on the 7th day of November, 2007, with effect from the 1st day of November, 2007, is unlawful, null, void and of no effect.

4. A Declaration that the Police Service Commission's Decision to affirm the Commissioner of Police's Decision to Dismiss the Claimant from the Royal Antigua and Barbuda Police Force is unlawful, Null, Void and of no effect.

[139] I Hereby make the following Orders:

1) The Decision of the Hunte Tribunal made the 16th October, 2007 convicting the Claimant of Insubordination and Discreditable Conduct and recommending that the Claimant be dismissed from the Royal Antigua and Barbuda Police Force on the former conviction, and reprimanding him on the latter conviction is HEREBY QUASHED.

2) The Decision of the Commissioner of Police dated 7th November, 2007, affirming the Decision of the Hunte Tribunal and dismissing the Claimant from the Royal Antigua and Barbuda Police Force is HEREBY QUASHED.

3) The Decision of the Police Service Commission dated 18th September, 2009 affirming the Dismissal of the Claimant by the Commissioner of Police is HEREBY QUASHED.

4) The Claimant shall be paid his full wages and benefits as of 1st November, 2007.

5) The Defendant shall pay the Claimant General Damages in the sum of E.C. $ 15,000.00.

6) The Claimant shall have his Costs to be assessed by this Court in accordance with CPR - 2000, Part 56.13 (5). The parties are to file the necessary documents in accordance with Part 65.12 within 7 days of the date of this Judgment.

[140] I wish to thank Learned Counsels Ms. Samantha Marshall and Dr. David Dorsett for their valuable and professional assistance given to the Court.

Consummatum Est

Thomas W.R. Astaphan
High Court Judge (Ag.)