

THE EASTERN CARIBBEAN SUPREME COURT
ANGUILLA CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. AXAHCV2013/0103

BETWEEN:

NEVILLE HAMILTON

Claimant

and

[1] THE SUPERINTENDENT OF PRISONS

[2] THE ATTORNEY GENERAL OF ANGUILLA

Defendants

Appearances:

Mrs. Joyce Kentish Egan and Mr. Kerith Kentish for the Claimant

Mr. Ivor Greene and Ms. Mary Clare Haskins for the Defendants

2014: February 3rd

RULING

- [1] **MATHURIN J.:** This matter being one of interpretation, the court directed that it would proceed in accordance with Part 26.2 (n) of CPR2000 and that it would be dealt with on the written representations of the parties instead of an oral hearing. Mr. Kerith Kentish filed submissions for the claimant and Ms. Haskins did so for the defendants.
- [2] By way of Fixed Date Claim filed on the 1st November 2013, the claimant (Mr. Hamilton) sought various reliefs or Certiorari, Declarations, Mandamus and damages from the Court for what he alleges were the ultra vires acts of the Superintendent of Prisons and the Governor causing him to be dismissed from his job as Deputy Superintendent of Prisons. Mr. Hamilton was charged on the

16th of July 2012 for allegedly committing nine offences pursuant to the Code of Discipline for Prison Officers under the Prison Regulations R.S.A c P75-1 (the Code). Mr. Hamilton pleaded not guilty to the charges and he recollects hearings taking place from around August 2012 to the end of that year.

[3] Mr. Hamilton states that after hearing the evidence on all of the charges, the Superintendent dismissed Charge No. 8 and referred all the other charges to the Governor purportedly in accordance with s 7(2) of the Code. It is his submission that the Superintendent acted ultra vires by referring those charges to the Governor and he places reliance on the interpretation of section 7 of the Prison Regulations which states as follows;

"7. (1) *The Superintendent may dismiss any charge after hearing the evidence.*

(2) *The Superintendent may, after hearing the evidence, refer any charge to the Governor and, unless he dismisses it, shall so refer a charge under section 1(2) or any provision of section 2 of this Code, other than the following sections-*

2(a)(i),(iii),(b),(c),(d),(h)(ii),(l)(i),(m) or (n). (hereafter s 2(a)(i) et al)

(3) *Where the Superintendent refers a charge to the Governor, he shall inform the accused Officer.*

(4) *Where the Superintendent does not refer a charge to the Governor, he shall unless he dismisses it, either-*

(a) *caution the accused Officer; or*

(b) *make one of the following disciplinary awards-*

(i) *admonition,*

(ii) *reprimand, or*

(iii) *severe reprimand."*

[4] Mr. Hamilton states that Charges no.'s 1,2,5,6,7 and 9 were wrongly referred to the Governor and he wishes to have that decision of the Superintendent, as well as the decision of the Governor to proceed with those charges, which culminated in his dismissal, quashed by this court.

[5] The charges in question were all pursuant to s (2)(d)(i) which states a Prison Officer to whom this Code applies, commits an offence against discipline if guilty of Neglect of duty, that is to say, if a Prison Officer neglects, or without good and sufficient cause fails, promptly and diligently to do anything which it is his duty as a Prison Officer to do. The charges related on the charge sheets pursuant to that section were as follows;

Charge 1 - neglect of duty in failing to establish an inventory of keys and regular checks of keys in use

Charge 2 - failing to arrange repairs to cell window mesh despite regular reminders

Charge 5 - lack of managerial oversight of the Segregation Unit

Charge 6 - failing to manage the E List Procedures

Charge 7 - failing to investigate incidents

Charge 9 - failing to produce and implement a security policy covering a construction site.

[6] Mr. Hamilton states that in accordance with section 7 of the Prison Regulations above, these charges ought not to have been referred to the Governor but rather should have been dealt with by the Superintendent in accordance with the disciplinary powers granted to him in s 7(4) referred to above in paragraph 3.

[7] Ms. Haskins submitting for the Attorney General and the Superintendent of Prisons submits that s7 stipulates that there are certain charges that must be referred to the Governor if the Superintendent does not dismiss them after hearing the evidence. She states that this is an absolute duty on the part of the Superintendent. Ms. Haskins also submits that there are other charges whereby the Superintendent has the power to impose a disciplinary award and these include the sections referred to in s 7(2) of the Code. She adds that if the Superintendent believes that the disciplinary powers that he has are appropriate then he can take one of the actions outlined in s 7(4) of the

Code. However, it is submitted that where the circumstances of the case warrant referral to the Governor, the Code gives the Superintendent the power under s 7(2) to refer any charges to the Governor **including charges** that may arise under s (2)(a)(i) et al;

Discussion

- [8] It would have been immeasurably helpful had Ms. Haskins cited some authority or legal principle for the submissions in the face of what seems to be clear and ambiguous exclusion by the statute of certain charges being referred to the Governor i.e charges created under s 2(a)(i) et al. I am not persuaded that the Superintendent has an absolute duty to refer matters to the Governor if he does not dismiss them because s 7 (4) clearly enables him to either caution the accused Officer or make a disciplinary award. It is also pellucid in my view that the Superintendent has the discretion to make the referral to the Governor and that there is a regime in place when that is done which allows for an equal or more severe punishment of the offender. The circumstances which would merit referral would seem to be within the Superintendent's discretion. The only fetter on these referrals would seem to be the exclusion of s 2(a)(i) et al.
- [9] Ms. Haskins has regrettably made no effort to explain the meaning of "*other than the following sections*" in s 7(2) which are the words which, in my view, create the exclusion of those certain sections from referral to the Governor. There is a presumption that Parliament does nothing in vain and that the Court must endeavor to give significance to every word of an enactment. I am persuaded by Mr. Kentish that these sections are meant to be excluded from the general referral provisions not only because of the wording of the section but also because of the genre of offences created by those sections. I am also guided by the principle *generalia specialibus non derogant*, general provisions do not override specific ones.
- [10] The offences created by the sections in question include acting in a disorderly manner or any manner prejudicial to discipline or likely to discredit the police service while on or off duty; using obscene, abusive or insulting language while on duty to any member of the prison service; insubordinate acts or words to a superior officer; failing to carry out written or oral orders; neglect of duty; using obscene, insulting or abusive language to a prisoner; acting in a manner calculated to provoke a prisoner; absence without leave or being late for duty and damage or loss of clothing or other articles supplied. In my view, these are clearly minor offences in nature and clearly should

be left to the Prison Superintendent to superintend and manage as part of his function as opposed to being referred to the Governor, which necessitates additional inquiry and expense.

- [11] In canvassing the offences which do not fall within the sections in question, I note the relative seriousness and gravity in comparison. These include assault of fellow officers; being unfit for duty through drinking intoxicating liquor; making or signing false, misleading or inaccurate statements; destroying or mutilating official documents; failing to account for or return any money or property; breaches of confidence; improper relations with prisoners; trafficking or corruption, amongst others. These offences in my view are all undermining of the Prison service and clearly merit different treatment to those mentioned in the relevant sections in question.
- [12] Another point for consideration is the discrepancy in the disciplinary awards capable of being handed out by the Superintendent and the Governor. The most severe punishment that the Superintendent can dispense is severe reprimand whereas the Governor can dismiss or require an officer to resign at most. It is unthinkable that the punishment for the offences created in s 2(a)(i) et al could be as grave as the other offences not excluded by s 7.(2).

Conclusion

- [13] In the circumstances, I agree with the submission of Mr. Kentish that the Superintendent acted ultra vires his powers in referring a charge created under s 2(d) of the Prison Regulations to the Governor contrary to s 7(2) of the Prison Regulations. I also agree that the dismissal of Mr. Hamilton by the Governor purportedly under his powers under s 12(1)(a) of the Prison Regulations was ultra vires the powers of the Governor and contrary to s 2(d) of the Prison Regulations.
- [14] In the absence of any information upon which I can make a determination about any of the remedies sought except that of the Writ of Certiorari against the decisions of the Superintendent and the Governor, I will therefore adjourn those matters to Chambers on the 3rd February 2014 for directions.

In conclusion, the Order of the court is as follows,

- (a) That the decision by the Superintendent of Prisons to refer charges under section 2(d) of the Code of Discipline for Prison Officers to the Governor is quashed and

declared null and void on the ground that such referral was ultra vires and contrary to section 7(2) of the aforesaid Code.

- (b) That the decision by the Governor to dismiss the Claimant pursuant to section 12(1)(a) of the Code of Discipline for Prison Officers is quashed and declared null and void on ground that the referral to the Governor for determination of the charge was ultra vires section 7(2) of the Code.
- (c) That all other remedies sought as well as damages and costs are adjourned to Chambers on the 3rd February 2014 for directions.



Cheryl Mathurin

High Court Judge