

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. 554/2005

BETWEEN:

ERNEST FELIX

Claimant

AND

HOLIDAY TAXI COOPERATIVE SOCIETY LTD

Defendant

Appearances:

Mr. Horace Fraser for Claimant
Ms. Veronica Bernard for Defendant

.....
2006: March 9
June 26
.....

DECISION

MASON J

[1] This is an application by the Claimant for the following orders: -

- (i) An Order for Certiorari quashing the decision letter of the Defendant dated 15 March 2005 / decision of the Executive meeting that took place on 22 March 2005 and the oral decision on the latter date barring the

Claimant from carrying our taxi services, in particular, tours, at the Claimant's designated place of service, namely, La Place Carenage, in the district of Castries

- (ii) A Declaration that the decision to prevent the Claimant from earning his livelihood is unlawful
- (iii) A Declaration that the Holiday Taxi Co-operative Society Ltd acted in breach its Bye-laws at Clause 8 (i) and (ii), 9 (d), 23 (a) and 25 (a) respectively.
- (iv) A Declaration that the decision of the Holiday Taxi Co-operative Society Ltd was an abuse of power
- (v) A Declaration that the decision of the Holiday Taxi Co-operative is irrational
- (vi) Costs
- (vii) Damages pursuant to the Administrative of Justice (Improvement) Act 1998
- (viii) Such further or other relief as the Honourable Court deems just

(ix) Judicial Review

[2] The grounds of the application were:

1. **ILLEGALITY** - The Holiday Taxi Co-operative Society Ltd failed to understand correctly the law, namely, Bye-Laws that regulate its decision-making power and therefore failed to give effect of such Bye-Laws
2. **ULTRA VIRES** - The decision taken by the Holiday Taxi Co-operative Society Ltd was not taken under its Bye-Laws which contain precise circumstances in which a power or duty can be used, and the decision in question sought to be impugned was outside the four corners of the said Bye-Laws, or failure to perform the said duty in a proper way.
3. **PROCEDURAL IMPROPREITY** – The decision to prevent the Claimant from earning the requisite livelihood within the maximum or minimum earnings in the designated area, being La Place Carenage was procedurally improper, in that, the Holiday Taxi Co-operative Society Ltd departed from its own procedure or alternatively, failed to adhere to elementary principles of natural justice, such as knowing what charge it is that a person has to meet, so that such person could either deny, admit or contradict it.
4. **PROCEDURAL LEGITIMATE EXPECTATION** – The decision-maker (The

Taxi Cooperative Society) deprived the Claimant of some financial benefit or advantage which the Claimant in the past (for at least the last 4 years) had been permitted by the decision-maker to enjoy and which the Claimant can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it.

5. **RIGHT TO A FAIR HEARING:** The Claimant was not charged with any specific offence, therefore, the Claimant was in no position prior to the meeting that took place on 22 March 2005 and on the same day in question to know the:

- i. The Opposing case that he has to meet; and
- ii. The denial (by implication of the above) of a fair opportunity to answer the case that has to be met

6. **IRRATIONALITY/WEDNESBURY UNREASONABLENESS:** In all the circumstances, given the afore-going grounds, the decision of the Holiday Taxi Co-operative Society Ltd to prevent the Claimant from operating within the designated area being La Place Carenage was an abuse of power, in that it failed to follow natural justice and its Bye-Laws. Alternatively, the said Defendant acted for the same very reasons in a manner disproportionate to natural justice and its Bye-Laws hence, its decision following the meeting between the parties on 22nd March 2005 was irrational and Wednesbury unreasonable.

- [3] Since the year 2000 the Claimant has been a member of the Defendant Cooperative Society which is governed by its bye laws, its Code of Conduct and the Cooperative Societies Act 1999.
- [4] By Clause 4 of the Bye Laws, the Defendant's area of operation is island wide. These operations include a supply of taxi services to the hospitality industry and the general public and also the creation of employment for members within the St. Lucia taxi service.
- [5] The practice within the Defendant society is that all members of the Defendant are assigned to specific work areas by the Board of the Defendant on a day to day basis. No members are authorized to solicit their own work. All jobs are generated through the Defendant.
- [6] The standard practice for all members is that once a contract is awarded (whether by hotel or corporation) and a service is specifically requested, the Defendant assigns members to carry out that specific job.
- [7] By contract the Defendant was given the franchise to provide and carry out all taxi services at Le Sport Hotel.
- [8] The Claimant was assigned by the Defendant to La Place Carenage.
- [9] A complaint was made against the Claimant by the Defendant's spokesperson that the Claimant was personally soliciting work at Le Sport Hotel without the authority,

permission or approval of the Defendant and so the Defendant wrote the Claimant by letter dated 2nd March 2005 as follows:

2nd March, 2005

Mr. Ernest Felix

C/O La Place Carenage Taxi Service

Castries

Dear Mr. Felix,

A complain (sic) was made against you by the spokesman of the Hotel where on Sunday 27th February 2005, where a lady came to the taxi stand asking for you which she had no knowledge of who you were. She was asked by Simon, do you know Ernest her reply was no but, I book a taxi through the reception and they told me Ernest will be my taxi. Then a taxi dispatch to pick up the lady. On arrival at the lobby you were parked there loading the lady's luggage. The spokesman approached you and ask you whether you were working at Le Sport. There was no answer from you.

You are asked to appear in the office of Holiday Taxi Co-operative Society Ltd on Thursday 10th March 2005 at 10:00 a.m. to answer the said charges.

Please be on time.

Yours truly

Eluis St. Hilaire

Assistant Secretary

[10] This letter was signed by the Assistant Secretary of the Defendant.

[11] The Claimant responded on 4th March, 2005

Dear Board Members,

With reference to your letter dated 3rd March, 2005, I would be grateful to appear to answer the alleged charges. Regrettably, both my attorney and myself already have prior engagements for the said date of Thursday 10th March, 2005. However, we would be happy to meet with you on Monday 14th March, 2005. In the mean time I am formerly (sic) requesting a copy of the by-laws that govern Holiday Taxi Co-operative Society.

Kind Regards

Ernest Felix

[12] The Defendant on said date – 4th March 2005 – wrote to the Claimant informing him that due to prior commitments the Board could not meet with him on the date suggested but was prepared to meet on 11th March instead.

[13] On 9th March 2005 the Claimant again wrote to the Defendant asking for a possible date after 14th March 2005, and the parties agreed to a meeting on 22nd March 2005.

[14] Subsequent to the meeting which was recorded, the Defendant wrote to the Claimant in the following terms:

22nd March, 2005

Mr. Ernest Felix

C/O La Place Carenage Taxi Service

Castries

Dear Mr. Felix,

Please be reminded that as a member of Holiday Taxi Co-operative Society Ltd you are to abide by the rules and regulations of the byelaws co-operative.

However, please be informed that you will not be allowed to operate in any area that Holiday Taxi transact business, until you have answered to letter

dated 2nd March 2005 sent to you by the board. You can arrange a date and time at your convenience to meet the board.

Please be guided accordingly.

Yours truly

Lucien Joseph

President

[15] On 5th April, 2005 the Claimant's solicitors wrote to the Defendant stating that the Defendant in suspending the Claimant for not following the rules and regulations of the Society was itself in breach of the same rules: that the Defendant as mandated by the bye laws failed to indicate in writing what changes the Claimant was to answer. The Defendant, the letter continued, as a result showed a lack of understanding of the bye laws and respect for the rules of fairness and natural justice.

[16] The letter concluded:

"We say on behalf of Mr. Felix that the letter of 2nd March has no charge to answer to and awaits (sic) one in writing, if there is any. Further until a charge in writing is issued to Mr. Felix and he is given an opportunity to be heard to put in a Defiance (sic) to the same, as mandated by given bye laws, he is advised that he is not to be deprived from earning a living, until the rules of your Bye Laws and that of natural justice are observed".

- [17] There appears to have been no reply to that communication.
- [18] The Claimant on 4th August 2005 filed an application to the court for leave for judicial review on of the decision of the Board of the Defendant.
- [19] On 9th August 2005 the Defendant again wrote to the Claimant informing him of reports that he had been transacting business at Le Sport Hotel that he was in breach of "section 7 article 111 of the bye laws and that he was being "warned to cease this practice immediately. Failing to comply will result in disciplinary action taken against you". The Defendant on 18th August 2005 filed an Acknowledgement of Service to this application.
- [20] Before the Claimant's application for leave could be heard, the Defendant by letter dated 1st September, 2005 wrote to the Claimant advising him inter alia:
- "The Board wants to inform you that you are in direct competition with the cooperative therefore in accordance with Bye Law 6 (i) and 7 (iii) you, have automatically terminated your membership with the society".
- [21] "Let this serve as guidance".
- [22] That letter was signed by the Secretary of the Defendant.

Claimant's Case

[23] It is the Claimant's contention that the letter dated 22nd March, 2005 purporting to suspend him was in contravention of clause 8 of the bye laws, that prior to the meeting held on that said date, no specific charge had been levied against him and he was therefore in no position to rebut any obligations nor to answer any charge. As a result he was unable to know what was the case he had to answer and in any event he had had no reasonable time to prepare a defence.

[24] The Claimant submits that in addition the Defendant had failed to comply with the provisions of Bye laws 8(i) in that there was:

- 1) no formal hearing before the Board;
- 2) no evidence given that two thirds of the Board members had voted to suspend the Claimant and
- 3) the suspension exceeded three (3) months

[25] The Claimant further contends that the Defendant had compounded its mischief by sending the letter of 1st September 2005 terminating the membership of the Claimant while the application for leave to apply for judicial review was pending.

[26] The Claimant continues that the termination being subject to confirmation by the General Meeting of Members under clause 8(ii), that there is no evidence that there was any such meeting, held to endorse the decision of the Board, that even if the Board had met, the members also had to meet.

[27] Reference was made to clause 28 (c) of the Bye laws regarding procedure at Board Meetings and it was stated that the Defendant did not prove that any of the particular provisions had been adhered to with respect to the removal of the meeting of 27th March, namely:

- (i) the name of the President or person presiding
- (ii) the names of the members present and the date of the meeting
- (iii) a short statement of all the matters discussed and discussions made and a record made as to whether each decision was made unanimously or by majority and in the latter case the number of votes cast for and against the decision

[28] The Claimant sought to state that the President of the Defendant was not properly before the Court because there was no evidence of a resolution of the Board permitting him to do anything he was doing as in accordance with clause 30 (v). Even if there is a Board of Directors, the Defendant must show that it consisted of at least seven (7) members as required by clause 25 (a).

[29] Claimant states that it appeared as if the President was taking all of the decisions on his own, that it must be shown on the face of the document of 22nd March, 2005, that the decision was taken by the right body as is required by clause 28 (c).

[30] The Claimant reiterated the grounds of the application as have been previously set out.

Defendant's Case

[31] The Defendant in an Affidavit sworn by its President, at paragraph 24 denied that its letter of 22nd March, 2005 was a suspension, that the Claimant was never prevented from providing services at the place where he had been assigned that is La Place Carenage, that the letter being clear and unambiguous served only as a disciplinary measure in relation to the Claimant's private provision of services at Le Sport Hotel.

[32] The Defendant in its defence stated that despite the various communications to the Claimant from 2nd March 2005 culminating in the letter 22nd March, he continued to flagrantly disregard the Code of Conduct and Bye Laws and to provide the services complained of.

[33] The Defendant stated that a number of requests had been made to obtain an explanation from the Claimant who had repeatedly requested postponements of the meetings and having finally met the Board, refused to answer the charge.

[34] This left the Board with no alternative but to suspend the Claimant from operating in areas designated to the Defendant. (emphasis supplied)

[35] The Defendant admitted to terminating the membership of the Claimant. This the Defendant suggests was due to the Defendant continuing up to 31st August, 2005 to compete with other members of the society, that various incidents of this nature were catalogued by the Defendant to the Claimant.

[36] The Defendant submitted that all alternative remedies available should have been exhausted before resorting to judicial review where the alternative remedies are adequate to deal with the complaint. Further that section 187 of the Cooperative Societies Act provides an appropriate remedy to the Claimant but he never explored that remedy and he ought to have done so before filing his application. There is no evidence to suggest that a complaint to the Registrar would not have determined the issue or that the Registrar would not have attended to it with due haste.

Issues

[37] There are found to be resolved the following two (2) issues:

- 1) whether the grounds on which relief is being sought – illegality, ultra vires, procedural impropriety, procedural legitimate expectation, right to a fair hearing, irrationality – have been satisfied; and
- 2) judicial review being a remedy of last resort, whether alternative remedies ought to have been first exhausted.

[38] I should preface any findings by recording my gratitude to Counsel for the Defendant for her helpfulness in highlighting the learning with respect to these issues from Blackstones's Civil Procedure 2000/2001, paragraphs 74.5 to 74.25. It should be noted that most of these issues overlap.

[39] As stated by Lord Donaldson MR. for the Court of Appeal in R. V. Secretary of State for the Home Department, ex parte Oladehinde (1991) 1AC 254 at 280E. "It would be a

mistake to approach the judicial review jurisdiction as if it consisted of a series of entirely separate boxes into which the judges dipped as occasion demanded. It is rather a rich tapestry of many strands, which cross, recross and blend to produce justice.

Illegality and Ultra Vires

[40] Blackstone writes: "illegality arises where a decision maker - under who must understand correctly the law that regulates his or her decision making power and must give effect to it, fails to do so. Illegality also includes ultra vires acts and errors of law. An action or decision is said to be tainted with illegality if it was purportedly taken under legislation which contains precise limits on the circumstances in which power or duty can be used, and the action or decision in question either exceeds these limits or fails to perform the power or duty in a proper way".

[41] In our instant case, Clause 7 of the bye laws provides for these circumstances under which a person both qualifies for membership and becomes disqualified.

[42] By subparagraph (iii) it states "No person who is engaged in any trade or profession opposed to the interest of the Society shall be eligible to become or continue as a member.

[43] Clause 8 then provides for the method by which that membership can be suspended or terminated.

[44] It is necessary to quote clause 8 (i) in full:

“If any member violets these Bye-laws, or otherwise acts in any manner prejudicial or contrary to the best interest of The Society, the Board may be least two thirds (2/3) vote of Directors suspend him after hearing the member in his defense upon a charge communicated to him writing at least seven (7) days before and shall make a report thereon to the next general meeting which shall have the power to confirm or revoke such suspension. Such suspension shall not exceed a period of three (3) months as stipulated under Section 30 of the Co-operative Societies Act”.

[45] Counsel for the Defendant submits that the decision of the Board on 22nd March and communicated to the Claimant by letter of even date was arrived at after a series of communications to the Claimant imploring him to answer the charge/complaint made against him that he was soliciting privately at the Le Sport Hotel.

[46] Counsel states that a number of requests were made by the Defendant to obtain an explanation from the Claimant, the Claimant repeatedly requested postponements of the meetings and having finally met the board on 22nd March refused to answer the charge,

[47] Counsel contends that this left the Board with no alternative but to suspend the Claimant from operating in areas designated to the Defendant. (emphasis supplied)

[48] This admission would obviate therefore the need for any argument, whether the Claimant had indeed been suspended by the Board and this despite the denial of the President of the Defendant in paragraph 24 of his Affidavit, "That contrary to paragraph 9 of the Claimant's Affidavit he was never suspended. The letter of 22nd March 2005 is clear and unambiguous and speaks only of the Claimant's private solicitations at Le Sport Hotel.

[49] In spite of this admission I feel constrained to state the position of the court on the course of action taken by the Defendant.

[50] Despite the Defendant's views that the Claimant was acting in a manner inimical to the best interests of the society, it must be noted that before the Board can seek to suspend a member, the requirements/steps identified by the previously cited clause 8 (i) must first be met.

- 1) The charge must be communicated to the member at least seven (7) before the meeting
- 2) The charge must be in writing
- 3) The member must be heard in defence of the charge
- 4) Two thirds of the Directors of the Board must vote in favour of the suspension
- 5) A report must be made to the next general meeting
- 6) That general meeting will determine whether to confirm or revoke the suspension
- 7) The suspension can last only three (3) months

[[51] In addition to these requirements/steps, the bye laws under clause 28(c) specifically sets out the manner in which the minutes of any such Board meeting should be recorded.

[52] The record of the meeting of 22nd March 2005 is as follows:

Meeting held with Ernest Felix on 22nd March, 2005 schedule for 9:00 a.m.
started at 9:30 a.m.

Present were: Board Members

Mr. Ernest Felix

Letter which was sent to Mr. Felix dated 2nd March, 2005 was read by the manager. Then Mr. Felix was asked by the President Lucien Joseph to explain to the Board as to what transpired on that said day.

Mr. Felix said that on the letter it said a charge and if there is one he needs it in writing and he needs fourteen (14) days. The President reminded Mr. Felix that he had more than fourteen (14) days.

Mr. Felix refuse to cooperate at this time the Board asked him to leave the office.

[53] It is clear that the requirements of clause 28 (c) have not been complied with: the name of the President or person presiding is not stated, nor are the names of the members

present, nor is there any record of whether the decision recorded was a unanimous one or by the majority. If in the latter case, the number of votes cast for and against the decision should have been noted.

[54] Counsel for the Defendant suggested that there was a "series of communications to the Claimant imploring him to answer the charge against him, that a number of requests were made by the Defendant to obtain an explanation from the Claimant, that the Claimant repeatedly requested postponements".

[55] The evidence before the court reveals a total of two letters from the Claimant and three from the Defendant:

- (1) The Defendant to the Claimant on 2nd March 2005 informing of the complaint and requesting him to answer on 9th March
- (2) The Claimant to the Defendant on 4th March requesting a date of 14th March
- (3) The Defendant to the Claimant on 4th March suggesting 11th March
- (4) The Claimant to the Defendant on 9th March, suggesting 14th March or later
- (5) The Defendant to the Claimant on 15th March suggesting 22nd March

[56] These five letters could hardly be described as a "series of communications or the two from the Claimant as "repeatedly requested postponements".

[57] Counsel for the Defendant also charged that the Claimant having finally met the Board on 22nd March refused to answer the charge.

[58] From the record of the meeting as produced above, it is evident that there was a stalemate (the Defendant asking the Claimant to answer the charge and the Claimant asking for the charge to be reduced to writing and for him to be given fourteen (14) days to respond) which resulted in the Defendant dismissing the Claimant from the meeting.

[59] The Defendant suggested that the Claimant "refused to cooperate: It was however incumbent upon the Board to properly lay the charge in accordance with the rules of natural justice and to have allowed the Claimant the adjournment he was seeking.

[60] It was after all the Defendant who had in its letter of 4th March, used the words "answer the charge" after informing the Claimant that "a complaint" had been lodged against him.

[61] Then in flagrant breach of the bye laws, the Defendant by letter of even date suspends the Claimant. Because of the date of the letter, it is obvious that there was no subsequent general meeting held confirm or revoke the suspension. A general meeting would have had to be convened for this purpose in accordance with clause 22(i) and (j):

By clause 22 (i) it is provided:

- (i) A special General Meeting of members may be called by the Board of Directors upon their own initiative, and may be called by a written request..... The purpose of the meeting shall be set forth in the notice and only such business as is specified in the notice shall be dealt with at the meeting.
- (j) At least ten (10) days notice shall be given for attendance atspecial

.....meetings communicated to the members by the Secretary. In addition, the Secretary shall put a notice of the meeting in a conspicuous place in the office of the society and at marketing outlets where members are regularly pegged to provide service.

[62] It is evident therefore that this procedure had not been followed.

[63] It is well settled law that a body visited with certain powers must take care not to exceed or abuse its power. It must keep within the limits of the authority conferred upon it. It must act in good faith. And it must act reasonably.

[64] I therefore hold that the Defendant through the letter of 22nd March, 2005 exceeded its powers. That the decision suspend the Claimant was incompatible with the bye laws of the society. And that it acted outside the confines of the power which it held under the said bye laws.

Procedural Impropriety and Right to a Fair Hearing

[65] The law which informs this principle is that "procedural impropriety is concerned with the procedure by which a decision is reached and not the possible outcome. In order to prove procedural impropriety the applicant must show that the decision was reached in an unfair manner".

- [66] The right to a fair hearing embodies the idea of evenhandedness. It is well established that the essential elements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet: Ridge V Baldwin (1964) AC 40 per Lord Morris at 113-114.
- [67] The question for us then is whether on the facts and in the circumstances of this particular case, the mode of procedure adopted by the Board of Directors in exercise of its authority as to procedure under clause 8 sufficiently complied with the requirements of natural justice.
- [68] In the minutes of the meeting of 22nd March it is recorded thus: The Claimant said that on the letter it said a charge and if there is one he needs it in writing and he needs fourteen (14) days. The President reminded Mr. Felix that he had more than fourteen (14) days. Mr. Felix refused (sic) to cooperate at this time the board asked him to leave the office.
- [69] The general rule is that anyone who has to exercise a statutory discretion must not "shut his ears" to an application. What the authority must not do is refuse to listen at all".
- [70] Although as argued by Counsel for the Defendant the complaints/charges against the Claimant were sufficient to satisfy a charge that the behaviour of the Claimant was prejudicial to the objects of the society, he ought to have been given an opportunity to make representations by himself or by Counsel because no order should be made against

a person who has not been allowed to state his reasons for objection, good or bad relevant or irrelevant: per Lord Templeman in Re Evans (1994) 1WLR 1006 at 1013.

[71] It is my opinion that the behaviour of the Board of Directors of the Defendant fell far short of the requirements of natural justice.

[72] I should wish to adopt the words of Harman J in Byrne V Kinematograph Renters Society Ltd (1958) 1 WLR 762 at 784: "What then are the requirements of natural justice in a case of this kind? First I think that the person accused should know the nature of the accusations made, secondly that he should be given an opportunity to state his case and thirdly of course that the tribunal should act in good faith. I do not myself think that there really is anything more".

[73] Shooing the Claimant out of the room when he demands his fourteen days to present his case and immediately writing him a letter suspending him is not acting in good faith.

[74] And so "if the principles of natural justice are violated in respect of any decision,, it is indeed immaterial whether the same decision would have been arrived in the absence of the departure from essential principle of justice. The decision must be declared to be no decision': per Lord Wright in General Medical Council V Spackman (1943) AC 627 at 644 645.

[75] I so find.

Procedural Legitimate Expectation

[76] This arises in circumstances where a decision deprived the applicant of "some benefit or advantage which either:

- 1) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or
- 2) he has received assurance from the decision maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn:

[77] Per Lord Diplock in Council of Civil Service Unions V Minister for the Civil Service (1985) AC 374.

[78] It having been admitted that the Claimant has been since the year 2000 a member of the Defendant and thereby been entitled to enjoy the benefits of being able to ply his trade from within the security of the contracts entered into upon his behalf by the Defendant, it can safely be said that the Claimant could legitimately expect that no adverse decision would be taken against him without first according him the opportunity of making representations.

[79] "In all legitimate expectation cases, whether substantive or procedural, three practical issues arise. The first question is to what has theauthority whether by practice or by

promise, committed itself, the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment, the third is what should the court do: per Schiemann L J in R V (Bibi) Vs Newham London Borough Council (2001) 1 WLR 237.

[80] From the facts divulged in our instant case, the practice within the Defendant society is that once a contract is secured and a service is specifically requested, the Defendant assigns the members to carry out the specific jobs. In other words, severing of the contracts for the benefit of its members.

[81] The Defendant in unlawfully suspending the Claimant and informing him that he would not be "allowed to operate in any area that Holiday Taxi transact business" is severely curtailing the Claimant's rights within the society and depriving them of the expectation of earning a living.

[82] For in the word of Lord Fraser in Council of Civil Service Unions V Minister for the Civil Service (supra) – "Legitimate or reasonable expectation may arise either from an express promiseor from the existence of a regular practice which the Claimant can expect to continueeven where a person claiming some benefit or privilege had no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and if so the courts will protect his expectation by judicial review as a matter of public law".

[83] In the circumstances, I find for the Claimant on this ground.

Irrationality/Wednesbury Unreasonableness

[84] The court is entitled to investigate the action of the Defendant with a view to seeing whether they have taken into account matters which it ought not have taken into account, or conversely, have refused to take into account or neglected to take into account matters which they ought to take into account.

[85] Once that question is answered, it may be still possible to say that, even if the Defendants had kept within the four corners of the matters they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it.

[86] In such a case, I think the court can interfere. The power of the court to interfere in such a case is not as an appellate authority to override a decision of the Defendant, but as a judicial authority which is concerned, and concerned only, to see whether the Defendant have contravened its bye laws by acting in excess of the powers confided in them.

[87] Such were the words of Lord Greene M R in Associated Picture Houses Ltd V Wednesbury Corporation (1948) 1 KB 223 at 233 – 234 and adopted by this court as a determinant of whether the Claimant has a case against the Defendant, it having been previously decided that the Defendant did in fact act outside of its powers.

[88] In this instance, the court does find that the Defendant acted unreasonably in forwarding the letter of suspension to the Claimant.

Alternative and Judicial Review

- [89] The general principle is the judicial review is to be regarded as a last resort. The existence of an alternative remedy, especially an unused statutory right of appeal can be a strong reason to refuse permission at the beginning of the case or a reward at the end of it. The court will look at all the circumstances, including the nature of the issue and the suitability of the alternative remedy for invoking it.
- [90] It should be noted however that the existence of an alternative remedy does not automatically oust the jurisdiction of the court.
- [91] Judicial review is concerned not with the decision that is made by the decision making body but rather with the decision making process. It is not an appeal from a decision but a review of the manner in which the decision was made.
- [92] It is the argument of Counsel for the Defendant that judicial review being a remedy of last resort, the Claimant should first of all have brought a complaint regarding his suspension under clause 43 of the bye laws.
- [93] As was decided previously – under the application for leave to apply for judicial review - that although clause 43 relates to the question of disputes, it was not an option that the Claimant could pursue. That clause does not provide a remedy of redress for the Claimant in their particular circumstances.

[94] Clause 43 which mirrors part of Section 187 of the Cooperatives Societies Act 1999 provides:

- I Any dispute touching the business of The Society which may arise:
 - a. among members past members, and persons claiming through members, past members or deceased members, or
 - b. between the Society and its Committee or between the Committee and any officer of the Society; or
 - c. between the Society and any other Registered Society, such disputes shall be referred to the Registrar as provided for the Section 187 of the Act

- ii Where the Society is opposed to or in disagreement with a decision of the Registrar, an appeal may be made against such decision to *The Co-operative Societies Appeals Tribunal* as established under Section 188 of The Act.

[95] The Claimant for the purpose of our case does not fall into either of the categories identified by that clause.

[96] The Claimant's only redress would have been under clause 8 (91) which is itself fashioned under sections 28 to 31 of the Act. But as has already been decided, the modus adopted by the Defendant in suspending the Claimant was procedurally incorrect and outside the bounds of the powers of the Defendant.

- [97] With no other option available, the Claimant was left with no other choice but to ask the court to review the manner in which that decision had been made.
- [98] In addition the need for procedural fairness relates to the process by which the Defendant made up its mind and it would be speculative to consider what would have happened if the Registrar of Cooperatives had been given the opportunity to determine the issue between the parties.
- [99] I therefore reject the assertion made on behalf of the Defendant that a remedy was available to the Claimant under clause 43 of the Bye laws.
- [100] Counsel for the Defendant submits that in relation to the termination, the remedy provided by section 187 of the Cooperative Societies Act 1999 should have been exhausted, that the Claimant ought to have done so before filing this matter in the court. According to Counsel, there is no evidence to suggest that the Registrar would not have attended to this matter with due haste.
- [101] This in my opinion is a non sequitur.
- [102] One needs only to have regard to the chronology of events:
- [103] When the Claimant filed his application on 4th August 2005 for leave to apply for judicial review, the Defendant, on 14th August filed an Acknowledgement of Service signaling its

intention to contest the action, However, on 1st September, it terminated the Claimant's membership.

[104] Having already decided that the Defendant was procedurally incorrect to have suspended the Claimant, I am in agreement with Counsel for the Claimant that for this Defendant to terminate the Claimant's membership while the matter was sub judice, while the Claimant was awaiting the Court's determination of his application for leave, that the Defendant was in effect compounding its mischief.

[105] The Claimant for his part could not have lodged a complaint with the Registrar at this time.

[106] The Defendant therefore in disregarding this application and proceeding to terminate the Claimant's membership effectively preempted any attempt by the Claimant to question the Defendant's action.

[107] It is ironic therefore, to say the least, that the Defendant should argue that the Claimant should follow procedure when the Defendant itself was in contravention of its own procedure.

[108] This argument with its reason that the Claimant should have exhausted the available remedy is therefore dismissed.

Damages

[109] The Claimant is seeking to have the Defendant pay a sum in excess of \$46,000.00 which according to him represents the "sort of earnings" he would have made, had he continued to work in the designated area.

[110] The Claimant has, however, not produced any documents to support his claims.

[111] The Defendant on the other hand denies that the Claimant had been ever earned anything in excess of \$2,500.00 per month and has produced the record of earning of the Claimant for a specified period..

[112] In addition from the affidavit of the President of the Defendant: "During the period under review Pointe Seraphine was under repair and on average one cruise ship per week was directed to La Place Carenage".

[113] He then details the earnings of the Claimant for that period to show an aggregate of \$3,278.05 as an example.

[114] He continues "In any event, the cruise season ended in the month of May at La Place Carenage as ships re-docked at Pointe Seraphine from May 2005. Further March and April are low season months at La Place Carenage".

[115] Appended also to his affidavit was a letter addressed to the St. Lucia Cooperative Bank dated 8th October 2004 which attests to the average income of the Claimant during approximately \$2,500.00 monthly. This was not challenged or denied.

[116] In light of the foregoing, the court is prepared to accept the figure of \$2,500 as the basis for its calculation.

[117] The Claimant would have been expected to mitigate his losses and it appears as if he did continue to work.

[118] In the circumstances I consider the sum of \$1,000.00 per month to be a reasonable award and I so order.

Conclusion

[119] By virtue of the Orders which the Claimant is seeking I am of the opinion that he is not eager to abandon his membership of the Defendant Society.

[120] In accordance with Part 56 of the Civil Procedure Rules and more particularly Rule 56.4 the Court hereby orders:

- 1) a Declaration that the Defendant Society acted in breach of its powers under the bye laws and more particularly, clauses 8, 9, 23, 25 and 28
- 2) an Order of Certorari quashing the decision of the Board of Directors of 22nd March 2005

- 3) an Order that the subject matter of this action be remitted to the Board of Directors of the Defendant for consideration and determination in accordance with clause 8 of the bye laws of the Defendant Society
- 4) Damages in the sum of \$10,000.00
- 5) Costs to the Claimant to be assessed.

Sandra Mason Q. C.

HIGH COURT JUDGE