

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008 – 02125

BETWEEN

AUGUSTINE PRIME

CLAIMANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

Before the Honourable Mr Justice R. Boodoosingh

Appearances:

Mr C. Parsad for the Claimant

Mrs L. Khan for the Defendant

Dated: 2 July 2012

REASONS

1. This claim is for breach of statutory duty and negligence by the failure of the Police Commissioner to comply with Regulations 183 (1) and 183 (2) of the **Police Service Regulations, Chap 15:01.**

2. The claimant was retired by the Public Service Commission on medical grounds effective June 2004.

3. Regulation 183 provides:

“(1) The computation and authorisation of gratuities and pensions of officers whose retirement from the Service is known to be impending shall be treated as urgent matters of high priority.

(2) The Commissioner shall ensure that particulars of service and pay of all officers whose retirement is known to be imminent are furnished accurately to the Comptroller of Accounts not less than three months before the date on which the officers concerned are due to retire, in order to enable the computation and checking of pensions, retiring allowances and gratuities to be completed by the Comptroller of Accounts and the Auditor General and submitted for authorisation before the date on which the officer’s retirement from the Service is due to take effect.”

4. The issue which arises is whether this Regulation constitutes an actionable right to challenge a failure to do so.

5. The claimant’s pension was begun some 5 months after his retirement. He said he was due his pension and gratuity benefits from June 2004. He received his first pension and

gratuity benefit on 16 December 2004. He says his file should have been sent for processing by March 2004.

6. Following a long and tortuous process, lengthened by the fact that the claimant was retired on medical grounds, the claimant's file was sent to the Pensions Section on or about 14 July 2004 to process his pension benefit.

7. In the evidence put before the court, it was noted that the Pensions Section is plagued with several administrative problems due to inadequate staff. The five - member staff is comprised of police officers who have other duties to perform and the processing is done manually. Files have to be moved from department to department. On average, 25 years of service has to be checked. The pensions section gets about 15 applications per week.

8. Where obligations are provided by law, there is a general onus resting on the Executive to provide adequate resources. When someone is due to retire, this brings to an end their being paid a salary. Pensions tend to be somewhat lower than salary benefits. Retired persons no doubt depend on receiving their pensions as they did their salaries. They also look forward to receiving their gratuity benefits.

9. The Regulations, therefore, contemplate high priority will be given to the computation exercises so that retired persons will not be unduly inconvenienced.

10. However, it does not follow that failure to follow the regulation would necessarily lead to an actionable right.

11. Would Parliament have intended that a breach such as this would entitle a claimant to a remedy?

12. To succeed in a claim for damages for breach of statutory duty the claimant must establish:

- a breach of statutory obligation which, on the proper construction of the statute, was intended to be a ground of civil liability to a class of persons of whom he is one;
- an injury or damages of a kind against which the statute was designed to give protection; and
- that the breach of statutory obligation caused, or materially contributed to that injury or damage.

See *Halsbury's Laws of England, 4th Edition Reissue, Volume 45 (2), paragraph 395.*

13. In **R v Deputy Governor of Parkhurst Prison ex p. Hague [1992] 1 AC 58**, the House of Lords held that “the question of whether an enactment conferred private law rights of action on individuals in respect of its breaches depended on the intention of the legislature, and the fact that a particular provision was intended to protect certain individuals was not of itself sufficient to confer such rights ...”

14. As in **ex parte Hague**, the defendant submitted that from the provisions of the Police Service Act, which is the enabling statute for Regulation 183, there is absolutely no intention by Parliament that a breach of the Regulation 183 should give rise to any actionable right for damages. Further, the defendant submitted that breach of Regulation 183 which is subsidiary legislation and not statute, does not constitute a breach of statutory duty.

15. The claimant bore the burden to show that a statutory duty was imposed and the regulation conferred a right of action. This requirement was set out in subsidiary legislation only. In my view, the regulation must be seen as intending to ensure efficiency in the performance of an administrative function that has a social benefit. It is part of a process to facilitate the day to day workings of an administrative system.

16. In **X (Minors) v Bedfordshire County Council [1995] 3 All ER 353**, it was stated at page 365 :

“The cases where a private right of action for breach of statutory duty have been held to arise are all cases in which the statutory duty has been very limited and specific as opposed to general administrative functions imposed on public bodies and involving the exercise of administrative discretions.”

17. While the regulation may give rise to an expectation that a retiree’s benefits will be processed expeditiously, I do not think it this would lead to a claim for breach of statutory duty as necessarily following.

18. Such an imposition will be unduly burdensome and open a flood of complaints ultimately leading to the unworkability of the Regulations. This regulation is a signal that adequate resources should be applied. It does not mean that a breach will ordinarily lead to a claim. Where the breach is particularly egregious, such as where the delay is unreasonable, it may give rise to a claim in negligence or in public law.

19. The second issue was whether the defendant was negligent in failing to have the claimant’s processing done in a timely manner.

20. There is evidence of the long and winding process to get to the end of the road when a retirement is near. I accept that where a person is retiring outside the normal course that additional steps may be required to be taken. Here, the claimant was retired on

medical grounds. He had been on leave at certain periods. There would have been periods of sick leave which had to be checked against his entitlements. There are different types of leave, paid and unpaid, provided for members of the police service. Checks have to be made to ensure the retiree does not owe taxes or other sums to Inland Revenue. The calculation has to be done carefully and meticulously. Dollars and cents of public funds are involved. An accurate entitlement has to be worked out.

21. Given the evidence presented, I cannot say that the claimant has established on a balance of probabilities that there was a breach of any duty of care. There was delay. But it cannot be said that such delay was unreasonable in all the circumstances. As was noted in submissions, the claimant was not entitled to an infallible system, but one that was fair. I also did not find on the evidence that there was any deliberate delay in this case. The officers work under constraints, and from the evidence given and the cross-examination, they did seem to be doing what they could on behalf of a fellow officer.

22. I also did not accept that the losses sustained by the claimant were caused by the delays in the payment of his benefits, which as noted, was in the range of 5 to 6 months.

23. The claim is therefore dismissed.

24. On the issue of costs, the claimant felt aggrieved by the delay. The Regulations do provide for a time table which was not complied with. That has been conceded. The claimant had to wait 5 months to receive his benefits. I do not think in those circumstances that the claimant should be made to pay the costs of this claim. I would order that each party should bear their own costs.

25. I would appeal, however, to the Commissioner of Police and the appropriate authorities that they should take steps to ensure that pensions and benefits are paid in a shorter time than this case demonstrated. When persons work for the duration of their working lives, they must not be made to wait for long periods for their just due to be paid. Adequate resources must be applied to the tasks involved and the procedures simplified as needed. This is not too much to ask for our dedicated public officers who, after working all their lives, and who now have to deal with the consequences of retirement with all of its stresses and strains, also have to wait longer than expected for the payment of their benefits and pensions.

Ronnie Boodoosingh

Judge