THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2014-595

BETWEEN

CLINTON NOEL

Claimant

AND

COMMISSIONER OF POLICE

Defendant

Before the Honourable Mr. Justice Boodoosingh

Appearances:

Mr. N. Ramnanan for the Claimant
Mr. K. Hemans for the Defendant

Dated: 9 June 2015

JUDGMENT

1. The Claimant is a police officer. His claim arises from an incident at the Guapo Police Station on 11 February 2013, where he was assigned.

2. In the early morning, he reported for duty. He left the Police Station in his own vehicle. He was in possession of a firearm. He indicated he was going to the San Fernando General Hospital. This was to meet a Dr. Rajnarine concerning a medical report. This report was outstanding in an ongoing investigation.

3. He had been mandated by a senior police officer to obtain said report as soon as possible to complete an investigation. He says he had the permission of the officer in charge at the time, Corporal Dinoo. He states that Corporal Dinoo told him he would not authorise him to use the police vehicle, but that he could use his own vehicle.

4. On the way from the hospital, he says his vehicle skidded and there was a collision at the Mosquito Creek. The Claimant was injured.

5. The Claimant submitted an application for his leave to be classified as injury leave. This has implications for his payment of salary and other related matters as explained in his claim. Injury leave occurs when one is injured in the course of one's duties.

6. Corporal Dinoo gave a statement that he had not authorised the Claimant to leave the police station to go to the hospital. Another officer, Police Constable Hosein, told Corporal Dinoo that he did not know where the Claimant was going. The Senior Police Officer in charge of the Police Station, Sergeant Morgan, said that he had previously given instructions at a lecture on 2 February 2013, attended by the Claimant, that no firearm was to be issued without authorisation by "oneself" (sic: himself).

7. Sgt Morgan and Corporal Dinoo both advanced that the Claimant was not authorised to leave.

8. The claimant's leave was from February 2013 to November 2013. The Senior Superintendent of the Division recommended the leave be classified as injury leave. The Commissioner of Police instead decided to classify it as "sick leave." This had implications for payments and benefits as indicated earlier.

9. **Standing Order 50 (Pt. 36)** of the **Police Service Regulations** provides for a process in the event a police officer is injured on the job. It requires an investigation and submission of a report.

10. An investigation was conducted and a report submitted to the Commissioner. It is not in doubt that the Commissioner had the power to classify the leave.

11. The Claimant asserts the Commissioner was unreasonable and acted irrationally in classifying his period of absence as sick leave, based on what was before him and also what could have been before him if a more thorough investigation had taken place.

12. The Claimant also asserts that there was a breach of natural injustice and he was not given a fair opportunity to make representations specifically to what Corporal Dinoo and the Senior Police Officer had said about him.

13. The decision the Commissioner made was one within his authority to make. The question is, was it irrational or unreasonable in the Wednesbury sense.

14. The Commissioner placed an affidavit before the court. At paragraph 12, he asserted that he considered that even if the officer was performing a police function, he was not authorised by his senior officer to do so and if he is injured, the leave must be classified as sick leave and not injury leave.

15. The Police Commissioner was entitled to consider the statements and reports placed before him. He did so. He also had the Claimant's version in the form of a report. He did not hold a hearing. It is clear that he accepted the reports of officers Dinoo, Hosein (the sentry), and the Senior Police Officer in charge, Sgt Morgan.

16. Such a decision must be fair, as fairness is an indispensable component of the rules of natural justice. What constitutes fairness in any given case must be seen in light of the facts and context. In the case of **R v Secretary of State for the Home Department ex parte Doody** [1993] 3 All ER 92 at 106, Lord Mustill states the following:

> "*What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive the following. (1) Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of*

fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

17. This was a matter for classification of injury/sick leave. It is not likely to have been a decision the Commissioner would make every day. However, it must be seen in the nature of the decision. Unlike the cases of H.C.A. 558 of 2005 **Alvin Fortune v The Public Service Commission** and CV 2011-00694 **Justin Bailey v The Commissioner of Police** which the claimant cited, where the decision was the laying of a disciplinary charge and dismissal from training respectively, this was not an instance where in my view, a hearing would be necessary. There would be no need for cross examination and for putting contrary positions.

18. The Claimant says the Commissioner could have done more. He could have enquired of others in the police station. He could have taken a statement from the officer's wife who had said she received a call from the Guapo Police Station from an officer that her husband was injured in the course of duty. He could have had an enquiry made as to whether the Claimant had in fact visited the San

Fernando General Hospital. None of this would likely have made a difference in any event. The issue the Commissioner was required to consider was whether the claimant had been authorised by his senior officer to leave the police station and to do so with a firearm on the day in question.

19. Mr. Ramnanan has submitted that it was irrational to conclude that the Claimant had left the station without the authorisation of Cpl Dinoo, given that he had gone to the San Fernando General Hospital to enquire of the medical report. In other words someone would not leave the station without permission to go to perform police duty.

20. I disagree with that submission. An officer may have left to perform a particular police duty, but for other reasons as well.

21. Clearly, given the records and information submitted, the Commissioner's conclusion cannot be said to be unreasonable or irrational. He accepted the version of Corporal Dinoo and others. It was open to the Claimant to submit other statements as part of his report also.

22. A court is not entitled to find a decision to be unreasonable on the basis that it may have come to a different conclusion. The court has to consider what was considered by the decision maker when coming to said decision. Tucker LJ in the case of **Russell v Duke of Norfolk** [1949] 1 All ER 109 at 118, noted the following:

> "*There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the*

case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

23. The quality and depth of the investigation undertaken must also have been proportionate to the nature of the duty concerned, in this case, classification of leave. It would not conduce to good administration for matters such as the classification of leave to become embroiled in having oral hearings in the nature of a tribunal making decisions. It would add a bureaucratic regime to the already heavy responsibilities placed on the Commissioner.

24. In my view the investigation was fair in all the circumstances. The Commissioner had all the information before him including the Claimant's report.

25. I also do not find that the process adopted was in breach of natural justice. The process required reports to be submitted. Both the Claimant and the other officer's versions were considered. The Commissioner did not accept the recommendation of the senior superintendent. He was not obliged to. He was entitled to conclude whose version he accepted. This he did. The Court is not properly placed to substitute its assessment.

26. In my view this is not an appropriate case to remit to the Commissioner for any further evidence or determination.

27. The issue of whether the decision of the Defendant was illegal and ultra vires the Police Service Regulations and contrary to section 4(d) of the Constitution was not pursued.

28. The Claimant also sought reasons for the decision of the Commissioner. Reasons were not provided until the Commissioner's affidavit. The Claimant was entitled to ask for reasons and to be given them. In the circumstances, where the reasons if provided earlier may have avoided this claim, notwithstanding the result, I make no order as to costs.

29. Finally, an issue was raised concerning the position of an officer who is injured on the job but who may not have been specifically authorised to act by a senior officer. Examples include: where an off duty police officer sees a crime taking place or where he or she who stops to assist with an accident or to acts to prevent a breach of the peace or assists in apprehending a suspect.

30. In answer to that I will say that a police officer is a police officer at all times. He is obliged to act where he sees a crime taking place or where it is necessary to act. For example, a police officer who is off-duty is entitled to act to render assistance at an accident scene or where he sees an offence taking place even if he may not have been specifically authorised to act. No part of this judgment should be seen as whittling down, in any way, a police officer's duty to act in accordance with the law and the Standing Orders of the Police Service.

31. The instant case was one where the officer was proceeding to the San Fernando General Hospital on an enquiry regarding a medical report, leaving a police station where the Commissioner concluded based on the reports before him, that

he was not so authorised to proceed by his senior officer. It is markedly different from a case where a police officer sees a crime taking place or is otherwise required to act in an emergency or in protection of others or where he acts while on one duty but not specifically authorised to act on another duty. In such cases it would be plain that an injury obtained in such a context would be one sustained in the course of his duty and accordingly should ordinarily be classified as injury leave. I say this only to make clear that the instant case was not one of those situations and thus constitutes no fetter on a police officer's duty to act in accordance with the law and the Standing Orders of the Police Service.

32. The result is that the claim is dismissed. Each party will bear their own costs.

Ronnie Boodoosingh
Judge