

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2009-02981

BETWEEN

PHILLIP QUASHIE

CLAIMANT

AND

THE CHIEF FIRE OFFICER

PROPOSED DEFENDANT

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

**Appearances:**

For the Claimant: In person

For the Defendant: Ms. Monica Smith

**Date of Delivery:** 24<sup>th</sup> October, 2012

**DECISION**

## BACKGROUND

- [1] The Claimant is a Fire Sub-Station Officer and was enlisted in the Trinidad and Tobago Fire Service on the 15<sup>th</sup> September, 1984.
- [2] By an Application without Notice filed on the 17<sup>th</sup> August, 2009, the Claimant is seeking Leave to apply for Judicial Review of the Proposed Defendant's decision to reclassify his extended sick leave and for making deductions from his salary without his consent and prior notice in writing.

### ○ THE APPLICATION

- [3] The Claimant is seeking the following reliefs:
- i. A Declaration that the decision of the Chief Fire Officer ("CFO") whereby he failed to reclassify the Claimant's extended sick leave as full-pay was unreasonable and/or procedurally irregular and/or contrary to the rules of Natural Justice;
  - ii. A Declaration that **REG. 90** of the **FIRE SERVICE (TERMS AND CONDITIONS OF EMPLOYMENT) REGULATIONS**<sup>1</sup> ("the **REGULATIONS**") is such as to create in the Claimant a legitimate expectation that the extended sick leave resulting from injury, during the course of his employment, would attract full pay;

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<sup>1</sup> Fire Service Act, Chap. 35:50

- iii. A Declaration that the decision of the CFO to reclassify the Claimant's sick leave as full pay violated and frustrated the said expectation of the Claimant;
- iv. A Declaration that **REG. 28** of the **REGULATIONS** is such as to create in the Claimant a legitimate expectation that there would be no deductions from his salary without his consent and prior notification to him in writing;
- v. A Declaration that the decision of the CFO whereby he made deductions from the Claimant's salary without his prior consent and notification to him in writing constituted a violation and frustration of his aforesaid legitimate expectation;
- vi. An Order of Certiorari removing into the Court and quashing the aforementioned decisions of the CFO;
- vii. An Order of Discovery of all relevant documents in the possession, custody or power of the CFO, his servants or agents; and
- viii. An Order prohibiting the CFO from making any further deduction from the Claimant's salary without his consent and prior notification to him in writing.

[4] The grounds of the Application are as follows:

- i. On the 2<sup>nd</sup> December, 1999, while in the course of his employment at the Rio Claro Fire Station, the Claimant sustained an injury to his back as he was attempting to move a pump with the assistance of two other officers.

- ii. The Claimant along with other Officers reported the accident and noted the injury he sustained.
- iii. During the period 1999-2005, the injury adversely affected the Claimant in the performance of his duties which led to him being placed on light duties. He subsequently proceeded on sick leave.
- iv. In 2002, the Claimant was attached to the Chaguanas Fire Station engaged as an extra heavy driver. The physically damaging nature of such duties aggravated his injury and as a result he ceased duties in or about 2005.
- v. During 2002-2005, the Claimant's injury worsened and he was on sick leave from the 5<sup>th</sup> July, 2005 until the 26<sup>th</sup> September, 2006. Whilst on leave, he went to the United States of America where he received treatment for the injury.
- vi. The Claimant resumed duties on the 27<sup>th</sup> September, 2006 but relapsed in 2007 and was consequently placed on light duty in 2008. He continues to be on such duty.
- vii. The terms and conditions of employment of officers of the Fire Service are governed by the **REGULATIONS**. By **REG. 81**, an officer is entitled to fourteen (14) days' sick leave with full pay. Sick leave in excess thereof is known as extended sick leave.
- viii. Therefore, the Claimant's sick leave from July 2005-September 2006 was in fact extended sick leave. Under the **REGULATIONS**, the CFO is empowered to classify sick leave for the purpose of pay; such leave may be classified as full-pay, half-pay or no-pay.

- ix. **REG. 90** provides that an officer who is injured in the course of his employment is entitled to leave on full-pay. **REG. 28** provides that no deduction is to be made from an officer's salary without prior notification to him in writing and with his consent.
- x. Whilst the Claimant was on the said sick leave, he was paid in full for the period of 5<sup>th</sup> July, 2005 to 31<sup>st</sup> December, 2005. However, in 2009 this payment was deemed to be an overpayment and as a result two (2) deductions, amounting to \$19,841.28, were made from his salary in the months of April 2009 and May 2009 in breach of **REG. 28**.
- xi. Subsequently, the CFO, by letter dated the 15<sup>th</sup> June, 2009, informed the Claimant, *inter alia*, that he was overpaid in the sum of \$19,483.52 and that this sum was deducted from his salary with effect from August 2009.
- xii. In 2008, the CFO classified the Claimant's sick leave from the 5<sup>th</sup> July, 2005 to the 26<sup>th</sup> September, 2006 as extended sick leave without pay. The Claimant made a written application to the CFO on the 7<sup>th</sup> February, 2008 for a review and reclassification of the said leave.
- xiii. The CFO replied by letter dated the 7<sup>th</sup> June, 2008, informing the Claimant that the said leave remained as extended sick leave without pay and gave no reasons for arriving at this decision.
- xiv. **REG. 90** created in the Claimant a legitimate expectation that sick leave resulting from injury in the course of his employment would attract full-pay. The decision of the CFO

failing to reclassify the Claimant's sick leave as full-pay violated and frustrated his said expectation.

- xv. Further, **REG. 28** created a legitimate expectation that there would be no deduction from his pay without his consent and prior notification in writing. The said deductions therefore constituted a violation and frustration of the said expectation.
- xvi. The decisions of the CFO whereby he failed to reclassify the Claimant's extended sick leave as full-pay and made deductions from the Claimant's salary without his consent and prior written notification to him, were unreasonable, procedurally irregular and contrary to the rules of Natural Justice.

[5] The Claimant's Attorney-at-law by letter, dated the 29<sup>th</sup> June, 2009, requested the CFO to retract his decisions on or before the 20<sup>th</sup> July, 2009, failing which the Claimant would apply for Judicial Review. The CFO failed and/or refused to do so and the Claimant has instituted these proceedings.

○ THE PROPOSED DEFENDANT'S AFFIDAVIT

[6] The Proposed Defendant filed the Affidavit of John Edwards, Acting Director of Human Resources, Fire Services of Trinidad and Tobago, on the 19<sup>th</sup> April, 2010.

[7] He deposed that during 5<sup>th</sup> July, 2005 to 26<sup>th</sup> September, 2006, the Claimant submitted several applications for sick leave. This leave

was classified in accordance with the Guidelines for the Administration of Devolved Functions of the Chief Personnel Officer, as follows:

- i. 5<sup>th</sup> July, 2005 – 22<sup>nd</sup> July, 2005: Full pay
- ii. 23<sup>rd</sup> July, 2005 – 15<sup>th</sup> August, 2005: Half-pay
- iii. 16<sup>th</sup> August, 2005 – 26<sup>th</sup> September, 2005: Without pay

[8] Thereafter, the Claimant requested a reclassification of the extended sick leave without pay as 'injury leave'. However, under the **REGULATIONS**, the CFO can only approve injury leave up to one hundred and twenty (120) days. Any further grant of injury leave is conditional upon an examination of the officer by a medical board. The Claimant was examined by the Medical Board and deemed fit for service.

[9] Consequently, the classification of the Claimant's sick leave during the period 23<sup>rd</sup> July, 2005 to 26<sup>th</sup> September, 2006 as extended sick leave on half pay and without pay incurred an overpayment of \$38,541.93 to the Claimant. In April 2009, \$19,058.41 of this sum was recovered from the Claimant's Arrears of Salary and Allowances for the period 2005-2007, leaving the amount of \$19,483.52 still outstanding.

[10] The CFO wrote to the Claimant on the 15<sup>th</sup> June, 2009 notifying him of the two (2) options for the recovery of the balance of the overpayment. The first option was the total recovery of the sum of

\$19,483.52 from his pending arrears of Qualifying Examination Allowance. The second option was the deduction of \$1,500.00 per month for twelve (12) months and \$1,483.52 for one (1) month with effect from the 1<sup>st</sup> August, 2009.

[11] The Claimant responded by letter dated the 27<sup>th</sup> July, 2009 objecting to the deduction of \$1,500.00 per month from his salary but did not comment on the remaining option for recovery of the balance.

[12] Subsequently, the Claimant verbally informed personnel of the Accounts Department that the recovery of the balance of the overpayment should be made from his pending Arrears of Qualifying Examination Allowance.

[13] The Claimant's Arrears of Qualifying Examination Allowance was quantified in October, 2009 and audited in November, 2009. The sum of \$19,483.52 was deducted from the Claimant's arrears.

### **ISSUE**

[14] The issue for determination by the Court is whether the Claimant should be granted leave for Judicial Review based on the actions of the CFO.



## ANALYSIS

- [15] It is pertinent at the outset to address the Proposed Defendant's submission that the time which elapsed between the Claimant's injury, his visit to the doctor's office and the time he entered it in the Station Diary broke the causal link in the chain of events. Consequently, the Proposed Defendant argued that there is no evidence of a connection between the Claimant's injury and the accident that allegedly occurred during the course of his employment.
- [16] In this regard, the Court considered the evidence of the Claimant, the corroborating Diary entries of Officers Mohanlal Roopnarine, Ralph Mark, Krishendath Bharath and the Report by the Acting Fire Station Officer Ali. I concluded that the elapsion of time highlighted by the Proposed Defendant is not sufficient to dispel the Claimant's assertion that the injury he sustained occurred during the course of his employment.
- [17] Accordingly, the injury sustained by the Claimant did indeed occur on the 2<sup>nd</sup> December, 1999 while in the course of his duty at the Rio Claro Fire Station.
- [18] Having come to this conclusion, the remaining issues will now be dealt with in turn.

○ UNREASONABLENESS

[19] The Claimant contended that the actions of the CFO were unreasonable in:

- i. classifying his extended sick leave as leave without pay;
- ii. refusing his application for review without furnishing reasons; and,
- iii. making deductions from his salary without his consent and without prior notice in writing.

[20] Further, he contended that the conduct of the CFO outlined above was in contravention of the **JUDICIAL REVIEW ACT, CHAP. 7:08** which requires the CFO to act fairly and observe the **REGULATIONS** and the rules of Natural Justice in the discharge of his duties.

[21] The Claimant argued that in breach of the rules of Natural Justice, his fundamental right to the protection of the law as guaranteed by **SECTION 4(b)<sup>2</sup>** of the **CONSTITUTION OF TRINIDAD AND TOBAGO** was also infringed by the Proposed Defendant's actions. In support of this, he relied on the cases of **Associated Picture House v Wednesbury Corporation<sup>3</sup>** and **Rees v Crane<sup>4</sup>**. In the latter

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<sup>2</sup> It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, colour, religion or sex the following fundamental human rights and freedoms, namely ...

(b) the right of the individual to equality before the law and the protection of the law.

<sup>3</sup> [1948] 1 KB 233

<sup>4</sup> P.C.A. No. 13/1993

case, the Privy Council observed that the protection of the law includes the right to Natural Justice.

[22] The Proposed Defendant did not address this issue in its submissions.

[23] The Courts have long declared that those exercising ‘public powers’ must act within the confines of what is reasonable. The assertion of a claim to examine the reasonableness of what had been done by a public authority has led to differences of opinion as to the circumstances in which the courts could intervene.

[24] The Court of Appeal’s decision in Associated Picture House v Wednesbury Corporation discussed, generally, the review of executive discretion. In an *extempore* judgment, Lord Diplock underlined the crucial feature that the court is not concerned with what it regards as the appropriate decision, but rather with whether sensible decision-makers, properly directed in law and properly applying their minds to the matter, could have regarded the conclusion under review as a permissible one.

[25] While Lord Green’s criterion of “*a conclusion so unreasonable that no reasonable authority could ever have come it to*” has been frequently cited as the main ground for review. Further, Cooke P. in Webster v Auckland Harbour Board<sup>5</sup> stated that what is required before a

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<sup>5</sup> [1987] 2 NZLR 129

court can intervene on this ground is that the decision is one outside the limits of reason.

[26] The Claimant made an entry in the Station Diary with respect to the incident from which his injury arose on the 6<sup>th</sup> December, 1999, four (4) days after sustaining the said injury. He also wrote and submitted a report on the incident to the CFO on this said date. Thereafter, he visited the Police Medical Clinic on the 9<sup>th</sup> December, 1999 where he was medically examined. He was diagnosed as suffering from a lumbar strain by Dr. Low Chew Tong and given fourteen (14) days "light duties". A medical report was obtained from the doctor but the Claimant gave no indication as to whether that report was submitted in accordance with **REG. 81** of the **REGULATIONS**, which provides:

*"(1) The Chief Fire Officer shall grant to an officer up to fourteen working days sick leave on full pay where that officer submits a medical certificate issued by an approved medical practitioner..."*

*"(5) An officer who avails himself of leave under this regulation shall cause an immediate report to be made to the officer in charge of the Fire Station to which he is attached."*

[27] It is unclear from the evidence of the Claimant, the exact times that he applied for and was granted sick leave, as **REG. 81(1)** only allots fourteen (14) days sick leave per year on full pay. The Claimant has

only submitted to the Court three (3) memorandums in the year of 2005 from the CFO extending his sick leave.

[28] An extension for sick leave is made to the CFO, according to **REG. 82(1)**<sup>6</sup>, who has the discretionary power to approve the extension up to a maximum of seventy (70) days. Again, the requested periods for extension are unclear since the Claimant asserts in his affidavit that he was on sick leave during 2000-2005 but only submits three (3) documents which covered a one (1) year period. In the absence of such evidence, the Court is left to assume that the Claimant did not follow the prescribed procedure in obtaining and extending his sick leave.

[29] The Court having accepted that the Claimant sustained his injury while in the course of his employment, **REG. 90 (1)** applies. This Regulation provides:

*“Where an officer is injured in the course of, or arising out of his employment as an officer, that officer shall be entitled to such leave on full pay as approved by the Chief Fire Officer as a result of the injury.”*

I note that the Claimant did not mention in his affidavit whether the doctor he visited advised that he be put on sick/injury leave as a result of the incident. The Claimant also does not indicate whether

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<sup>6</sup> An Officer may apply for an extension of sick leave to the Chief Fire Officer who may approve that extension up to seventy days, being the maximum number of days unused by the officer over the five-year period immediately preceding the application, on full pay.

he applied for any sick/injury leave immediately following and as a result of the injuries he sustained.

[30] Further, **REG. 82(3)**<sup>7</sup> provides that the CFO has the discretionary power to grant an extension of sick leave with full pay, half pay or without pay and without any obligation to provide reasons for his decision.

[31] With regard to the deductions from the Applicant's salary, **REG. 28 (1)** states:

*"... no money shall be deducted from an officer's salary without prior notice in writing to him of not less than one month."*

[32] The Proposed Defendant submitted that its letter dated the 15<sup>th</sup> June, 2009, informing the Claimant of the overpayment in his salary and the resulting deductions, served as the required one (1) month's notice. The Court upholds this submission. Further, there is nothing in the Regulations which states that the consent of the Claimant is required before making such deductions.

[33] In the circumstances, the Court concludes that the CFO did not act unreasonably but acted within the confines of his powers as prescribed by the **REGULATIONS**.

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<sup>7</sup> Where a further period of extension of sick leave is required, the Chief Fire Officer may grant that extension on full pay, half pay or without pay subject to the officer being examined by a Medical Board at the time of the officer's application for that further extension or at more such intervals as determined by the Chief Fire Officer.

○ LEGITIMATE EXPECTATIONS

[34] The Claimant contended that **REG. 90**<sup>8</sup> created a legitimate expectation in him that the procedure for making deductions from his salary would be followed, *i.e.* he would be notified in writing and his approval sought before deductions were made. In support, he cited the cases of **South Bucks District Council v Flanagan**<sup>9</sup>, **Doughnath Rajkumar v Kenneth Lalla**<sup>10</sup> and **Civil Service Unions v Minister of the Civil Service**<sup>11</sup>, where Lord Fraser opined:

*“But even where a person claiming some benefit or privilege has no 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 Court will protect his expectation by Judicial Review as matter of Public Law. Legitimate or reasonable expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the Claimant can reasonably expect to continue.”*

[35] In response to this contention, the Proposed Defendant cited **REG. 28**, wherein **SUB-REG. (3)(b)** provides:

*“The Permanent Secretary may ...*

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<sup>8</sup> Leave for work-related injury

<sup>9</sup> [2002] 1 W.L.R. 2601

<sup>10</sup> PCA No. 1/2001

<sup>11</sup> [1985] 1 A.C. 374, 401

*(b) in accordance with the Financial Regulations deduct from the salary of an officer all overpayments of salary... “*

Further, the Proposed Defendant asserted that the letter of 15<sup>th</sup> June, 2009 informing the Claimant of the deductions satisfied the criteria laid down by the **REGULATIONS**.

[36] It is trite law that a legitimate expectation may give rise to procedural rights and corresponding obligations on the decision-maker. However, such rights do not prevent a particular exercise of discretionary power.

[37] The leading case on the extent to which a legitimate expectation may give rise to a substantive right in the exercise of a discretionary power is **R v North and East Devon Health Authority, ex parte Coughlan**<sup>12</sup>. The approach adopted by the Court of Appeal in this case was that where a promise had been made and relied on such to create a legitimate expectation of a substantive benefit, a decision which overrode the expectation might be so unfair that it amounts to an abuse of power.

[38] The Court upholds the submission of the Proposed Defendant that the letter of 15<sup>th</sup> June, 2009 served as the required notice to the Claimant regarding the overpayment and deductions. Further, there was no promise made and relied upon by the Claimant so as to

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<sup>12</sup> [2001] QB 213



create a legitimate expectation on this issue. Accordingly, there was no breach of his Natural Justice rights in this regard.

- DELAY

[39] The Defendant submitted that the Claimant has delayed in bringing this Application for leave for Judicial Review. The grounds for this Application arose on or about 23<sup>rd</sup> October, 2008 when the Claimant received a response from the CFO that denied his application for review and reclassification. However, the Claimant waited some eighteen (18) months before initiating these proceedings on the 17<sup>th</sup> August, 2009.

[40] **PART 56.5(1)** of the **CIVIL PROCEEDINGS RULES 1998** (“CPR”) provides:

*“The judge may refuse leave ... in any case in which he considers that there has been unreasonable delay before making the application.”*

The Claimant is also seeking an Order of Certiorari therefore **PART 56.5(2)** of the **CPR** is also applicable. It provides:

*“Where the application is for leave to make a claim for an order of certiorari the general rule is that the application must be made within three month of the proceedings to which it relates.”*

[41] In support of this contention, the Proposed Defendant relied on the case of Bahamas Telecommunications Co. Ltd. v Public Utilities Commission and System Resource Group Ltd.<sup>13</sup> The Privy Council in this case opined:

*“In exceptional cases, the court may permit an application for judicial review to be brought which is out of time ... [however] the delay for which no satisfactory explanation has been given, is in itself inexcusable.”*

[42] The Claimant has not addressed the issue of delay either in his Application for Leave or in his submissions.

[43] **SECTION 11(1)** of the **JUDICIAL REVIEW ACT** provides:

*“An application for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is a good reason for extending the period within which the application shall be made.*

[44] The Court is required by **PART 56.5(3)** of the **CPR** to have regard to the following upon an Application for Leave for Judicial Review:

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<sup>13</sup> PC, App. No. 19 of 2007, at paras. 24-25

*“When considering whether to refuse leave or grant relief because of delay the judge must consider whether the granting of leave or relief would likely to –*

- (a) cause substantial hardship to or substantially prejudice the rights of any person; or*
- (b) be detrimental to good administration.”*

Further guidance is provided by **SECTION 11(2)** of the **JUDICIAL REVIEW ACT** which states:

*“The Court may refuse to grant leave to apply for judicial review if it considers that there has been undue delay in making the application, and that the grant of relief would cause substantial hardship to, or substantially prejudice the rights of any person, or would be detrimental to good administration.”*

[45] The Court, having no input from the Claimant, accepts the Proposed Defendant’s submission that the date on which this matter accrued was on or about 23<sup>rd</sup> October, 2008 when the Claimant’s application for review was denied. Accordingly, the Claimant’s Application was made ten (10) months out of time.

[46] The Claimant has not proffered any reason to the Court for the delay in bringing his Application. Therefore, the Court, being guided by the decision in **Bahamas Telecommunications Co. Ltd. v Public Utilities Commission and System Resource Group Ltd.** cannot grant Leave.

CONCLUSION

[47] For the reasons stated above, I make the following orders:

- i. Leave to apply for Judicial Review is denied;
- ii. No orders as to costs.

JOAN CHARLES

JUDGE