

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

San Fernando

Claim No: CV 2017-01815

In The Matter Of the Judicial Review Act 2000

And

In The Matter of the Failure and/or Refusal Of The
Public Service Commission to Investigate the Claimant's
Claim That His Medical Certificates Were Unlawfully
Refused By Personnel at the Prison Service, They Being Its
Agents, Servants and/or Partner in Functions

And

In The Matter Of the Failure and/or Refusal Of The
Public Service Commission to Give Reasons for Its Decision
To Declare the Claimant to Have Abandoned His Job after It Being
In Receipt of His Medical Certificates and Fit Certificate

And

In The Matter of the Decision of the Public Service Commission
Declaring That on 11th April 2011 the Claimant Abandoned His Job

BETWEEN

Avinash Singh

Claimant

AND

The Public Service Commission

First Defendant

AND

The Commissioner of Prisons

Second Defendant

Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell

Delivered on May 7th 2019

Appearances

Mr Carl Mattis and Mr. James Philbert, Attorneys at Law for the Claimant

Ms. Ronelle Hinds, Ms. Kendra Mark and Ms. Kezia Redhead, Attorneys at Law for the Defendants

Judgement

A. Introduction

1. The Claimant's case is that he was away from work due to illness in 2012. However, he was informed by letter dated February 17, 2017, after years of tardy deliberations by the Public Service Commission, ["First Defendant or PSC"] that he had been declared to have resigned from his office in the Prison Service effective April 11, 2012.
2. The said decision was expressly made pursuant to **Regulation 49 of the Public Service Commission Regulations, Chap: 1:01**. The side note to the Regulation indicates that the subject matter is "abandonment". The Regulation itself provides that "*An officer who is absent from duty without leave for a period of one month may be declared by the Commission to have resigned his office and thereupon the office becomes vacant and the officer ceases to be an officer.*"
3. Essentially therefore, the making of a declaration based on this regulation meant that the PSC had determined that the Claimant was absent without leave and had abandoned his office. The Claimant was granted leave for Judicial Review of the decision of the PSC. The main basis of his challenge is that during his illness he had

arranged for medical reports to be delivered by a civilian, one Siddique Hosein, by way of the prison Service with a view to reaching the Second Defendant, the Commissioner of Prisons [“the Commissioner”]. Later after receiving a letter from the Prison claiming that he was recorded as absent without leave, he orally provided information to the Prison’s Personnel Department about his illness.

4. The Claimant having taken these steps did not view himself as absent without leave as he should have been considered for sick leave based on his having duly informed the Prison Service of his illness. Accordingly, when he later on received correspondence from the PSC on September 5, 2012 alleging that he was absent without leave he sought to disprove it by providing the medicals once more via the Prison Service. Receipt of same was refused and the decision of the Commissioner not to accept same is challenged. Hence, the Commissioner is joined as a Defendant in the matter.

B. Issues and applicable law

5. The issues to be determined relate to the relief claimed and whether the Claimant has made out a case for the declarations, administrative orders and damages sought against each of the Defendants. Most of the relief sought is against the PSC as follows:

“(1) An order of Certiorari to remove into the Honourable court the decision of the public service commission to declare that the Claimant has abandoned his job as a Prison Officer 1 .

(2) An order of Certiorari to remove into the Honourable court to quash the decision of the Public Service Commission to declare that the Claimant has abandoned his job as a Prison officer 1 .

(3) That the Public Service Commission and its agents , servants or partners in functions acted illegally or irrationally in departing from its policy to accept all medical certificates tendered in accounting for and explaining an officer’s absence from duty and to evaluate same accordingly .

(4) A declaration that the Public service Commission failed to investigate the Claimant's Claim that he delivered certain medical certificates, same covering his period of absence, together with a certificate of fit for duty at Prison's Personnel Department and the receiving officer was instructed to refuse same since they must have intended to retire him on the grounds that he had abandoned his job.

(5) A declaration that the Public service Commission by its failure to investigate the refusal of the Medical Certificates at the Prison's Personnel Department has deprived the Claimant of all protections afforded thereunder, and has thereby denied him protection of the law.

(6) A declaration that that the Public Service Commission's omission to investigate the Claimant's claim of non-acceptance of his medical certificates was illegal , and rendered the entire abandonment process to be null and void since it was procedurally improper and denied the Claimant 's legitimate expectation of fairness and due process .

(7) A declaration that the Public service Commission has breached the Principle of natural Justice and Procedural fairness and had acted in bad faith in refusing to accept the officer's tendered medical Certificates which covered his period of absence from duty, together with his fit certificate.

(8) A declaration that the Public Service Commission through it agent, servant and /or partner in function – the Commissioner of Prisons has acted in bad faith, unfairly and unreasonably and in breach of the principle of natural justice by omitting to inform and warn the Claimant of the dangerous consequences to him by the non-acceptance of his medical certificates, same being necessary to cover his period of absence .

(9) A declaration that the Commission of Prisons as agent , servant and /or partner in functions with the Public Service Commission was biased against the Claimant in being aware of the psychological harm experienced by the Claimant on seeing his brother as a prisoner at his place of work , knowing that

that he was entitled to free medical attention , and that same was part of his terms and condition , failed to render Employees' Assistance Programme assistance to the said Claimant. That merely transferring him to the Golden Groove Prison was insufficient.

(11) An order of mandamus compelling the Public Service Commission to reconsider its decision to declare that the Claimant has abandoned his job as a Prison Officer 1

(12) Costs

(13) Damages”

6. As against the Commissioner the following is sought :

“(10) A declaration that since the Public Service Commission expressed its intention in 2012 to declare the Claimant to have abandoned his job and the actual decision to so declare in 2017, more than two (2) years of effective time has since elapsed and its harsh and cruel to now imposed that decision in 2017.

(12) Costs

(13) Damages”

7. The issues in summary are

- Whether the PSC breached principles of fairness and natural justice in declaring the Claimant to have resigned.
- Whether the Claimant was prejudiced by the Second Defendant's non-acceptance of his medical reports and the representations of the Second Defendant to the PSC concerning such non-acceptance.
- Whether the Claimant was prejudiced by the bias of the Second Defendant in failing to recommend him for an Employees Assistance Programme.

8. The need for adherence by public authorities, such as the Defendants in this case, to adhere to the principles of fairness was reiterated by the Privy Council in **Chief Justice of Trinidad and Tobago v the Law Association of Trinidad and Tobago [2018] UKPC 23 Privy Council Appeal No 0063 of 2018** at paragraph 38. Lady Hale explained that

“public authorities do have a duty to carry out their statutory functions fairly. The principles were summed up by Lord Mustill in *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, 560:

“(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.”

9. Guidance on the approach to be followed by the PSC when taking a decision whether to declare a person to have abandoned their position was provided in the Judgement

of the Court of Appeal in **Civil Appeal No. P170 of 2012 Favianna Gajadhar v PSC.**
Jamadar J.A. explained as follows:

“22. In our opinion the implicit procedure that regulation 49 contemplates is as follows. First, an assessment of the prima facie existence of the circumstance of absence from duty without leave for a period of at least one month. Then, a provisional decision by the Commission to consider invoking regulation 49 in relation to the allegedly offending officer. Next, the notification (informing) of the officer of the provisional decision and of the relevant circumstances, with sufficient particulars and information to permit a meaningful response, together with an invitation to reply and make representations within a reasonable time. Then, due consideration of the reply/representations made by the officer and if necessary (depending on the reply/representations and any other information and/or circumstances that may have arisen since the first notification was sent) further rounds of disclosure and invitations to provide representation – so as to satisfy the requirements of natural justice in the particular circumstances of each case. Then, the judicious exercise of the statutory discretion and power to either declare the officer to have resigned his/her office, or not to do so. Finally, the timely notification of the decision (with adequate reasons when required) to the office holder (which could – but need not, advise him/her of an entitlement to review the decision, outlining the opportunities to do so).

23. This process fulfils the current requirements of natural justice and of fundamental fairness in relation to a regulation such as regulation 49, which has the effect of ending an officer’s tenure and making that office vacant. In the language of the regulation, “thereupon the office becomes vacant and the officer ceases to be an officer”.

24. In this case the Public Service Commission adhered to all of these steps to acceptable standards of fairness,¹² but for one.¹³ Having received the response/representations of the appellant and in light of what was raised by

her, the respondent should have engaged a second round of “disclosure and invitation to respond” with the appellant so as to fulfill the natural justice/fairness requirements in these particular circumstances.”

10. In this case it is evident from the factors considered by the PSC, the chronology of considerations, and the steps in fulfillment of natural justice left untaken, that the guidance of the Court of Appeal in **Favianna Gajadhar** has not been followed by the PSC in declaring that the Claimant resigned from his position.
11. In particular I have noted that after the Claimant got his Attorneys to make written representations dated September 26, 2012 in response to the PSCs September 5, 2012 letter, the PSC received the following:
 - A December 31, 2012 communication in writing from the Commissioner
 - Under cover of letter dated April 15, 2014, medical reports missing from the Claimant’s September 26, 2012 representation.
12. As will be more fully illustrated in the chronology that follows, there ought to have been disclosure of the Commissioner’s correspondence and a further invitation to the Claimant to make representations at some point after April 2014 before finalizing the decision to declare the Claimant’s position to have been abandoned.
13. In light of the PSCs failure to adhere to natural justice a declaration to reflect the relief sought at (4) (5) and (6) of the Fixed Date Claim will be granted. However, the basis for the declaration sought at (10) that the length of time taken by the PSC to make a decision is harsh is unclear. There was delay by the Claimant in providing information to the PSC. Furthermore, no comparative data was submitted as to the usual length of time for the PSC to make a decision of this nature. The prejudice, if any, to the Claimant from the delay was not particularized in his Claim or his Affidavit evidence.
14. The Claimant in submissions cited a Journal Article entitled “**Administrative Silence and UK Public Law**” by **Gordon Anthony** (2008). Administrative Silence and UK Public Law. *Curentul Juridic, The Juridical Current, Le Courant Juridique*. 3-4. 39-59. This

article does not support the Claimant's contention that an order of certiorari is appropriate to quash the PSCs decision. Rather at pages 8-9 of the article the author cautions against the making of any type of mandatory order as a remedy for delay save for in circumstances where human rights are in issue. This approach is said to be due to the need for "*Judicial Deference Vis-a- Vis exercises of administrative discretion, particularly where the discretion involves clear questions of resource allocation....within a government department.The Courts should be reluctant to look too closely at the workings of a department, as this will be a matter for the relevant Minister.Even though the individual might be able to make out that there has been unreasonable delay on the facts, it may be that the courts would nevertheless forego*" the grant of a mandatory order "*in favour of a non-coercive declaration of the respective rights and obligations of the parties*"

15. Undue delay not having been established in this case I see no reason why the decision should be quashed. Instead of granting the relief at (1) and (2) of the claim the PSC should be required to re-consider the decision after hearing from the Claimant. In addition the PSC will be directed to conclude its deliberations with urgency so that there is no further delay.
16. An order of mandamus will be made compelling the respondent to re-open its inquiry and give the Claimant an opportunity to make further representations in response to additional information received by the PSC from the Commissioner after the Claimants representation was received.
17. As will be seen in the chronology that follows there is also merit the declaration sought at (9) of the Fixed Date Claim, that the Commissioner was biased against the Claimant. I have decided that the said declaration should be granted in part.
18. The bias alleged as having been shown by the Commissioner was apparent from the ill-informed comments made by the Commissioner to the PSC about the Claimant in the December 31, 2012 correspondence. The Claimant has failed however to present

any basis for a finding that the Commissioner's bias caused him not to recommend EAP for the Claimant.

19. On the other hand, to the extent that the Commissioner's comments were expressly intended to influence the PSC to treat the Claimant as having abandoned his job, the Claimant's job security has been adversely affected based on the Commissioner's bias. There is no justification for an award of damages. In **Alfred McAlpine Construction v Panatown Ltd [2000] 3 WLR 946** at pages 973 and 1011-1012, the House of Lords affirmed the general principle that damages may only be recovered for a loss which the Claimant has suffered. The Claimant will, by this Judgement, be given the opportunity to make representations to the PSC that can counteract the impact of the biased representations received from the Commissioner.

C. Factors considered by the Defendants and chronology in the Decision making process

20. There is no dispute as to some of the evidence in the Affidavits of the parties. Significantly though, the evidence of the parties differs in that the Defendants testify as to information leading to the Claimant being declared to have resigned that was apparently not made available to the Claimant prior to these Judicial Review proceedings.

21. Specifically, the Affidavit filed by Deputy Director of Personnel Administration, Coomarie Goolabsingh on February 26, 2016 on behalf of the first Defendant reveals at paragraph 8 that her office was informed about the Claimants alleged illness in a memorandum received from the Second Defendant on December 31, 2012. There is no mention of that memorandum in the Claimant's Affidavit as it was never disclosed to him.

22. Additionally, the evidence of the Claimant differs from the Defendant's evidence in that it includes the assertion at paragraph 14 of his Affidavit that sick leave recommended for him by District Medical Officer Dr. Ronald Budhooram was recorded in medical reports which were given to Siddique Hosein to drop at Golden Grove

Prison. This was done before any issue was ever raised with him as to absence without leave. This information about the Claimant's timely reporting of his illness and attempted delivery of sick leave certificates is neither addressed nor denied in the Defendant's Affidavits.

23. The Claimant says at paragraphs 7 to 13 of the Affidavit filed on January 2, 2018 that in April 2012 he suffered psychologically due to the trauma of having seen his police officer brother incarcerated in the Maximum Security Prison where he worked. He spoke with his superiors about how he felt and was sent to the Personnel Department. There he provided a statement about his brother's incarceration.

24. The Prison service took steps to alleviate the Claimant's trauma by transferring him to the Golden Grove Prison. However, this was still close to the place where his brother was held. He was subjected to harassment, pressure and ridicule and the situation "threw" him "into fright and depression" and resulted in his "being on sick leave" from April 11, 2012.

25. At that time, according to the Claimant, he arranged for Mr. Siddique Hosein to deliver his sick leave certificates to the prison. The proceedings herein were adjourned during case management on a number of occasions as Counsel for the Defendant undertook to seek information from the Prison visit records. The records should have indicated whether a Mr. Hosein visited during the relevant period. Clearly, it was recognized by all concerned that if the Defendants could confirm that timely sick leave was reported by the Claimant it would have been inappropriate to have treated him as having resigned. However, such efforts proved fruitless. Although the Defendants were unable to locate such records to disprove the Claimants contention, the litigation proceeded.

26. The Claimant's case is that the first communication he had from the Prison concerning his alleged absence without leave from April 11, 2012 was a letter dated June 29, 2012 from the Commissioner. The Affidavit of Mrs. Goolabsingh for the Defendants provides a copy of the said communication at "C.G.2" wherein the Commissioner

claims that efforts were made to contact the Claimant by telephone without success before the letter was sent. The June 29, 2012 letter advised the Claimant that if he failed to report within 14 days action would be taken to declare him as having abandoned his job. The letter further advised that once such action was commenced the Claimant would be required to submit any representations to the Director of Personnel Administration [“DPA”] should he desire to retain his office.

27. According to the Claimant’s Affidavit he did, on receipt of that letter, explain to the Personnel Department that he had sent the necessary Medical Certificates to the Golden Grove Prison through a civilian. This oral indication by the Claimant was to no avail as some time later he received a letter dated September 5, 2012 from the PSC which was actually mailed to him on September 13, 2012 [see paragraph (4) of “F.B. 1” attached to the Affidavit of Ferdinand Bibby for the Second Defendant].
28. This was the letter by which the PSC informed the Claimant that it proposed to declare that he had resigned and invited him to make representations within 14 days. There is no indication as to when it was received so as to determine when the 14 days ended. A response to the PSC’s letter was sent without delay on September 26, 2012 which was less than 14 days from the date the PSC’s letter was mailed.
29. The Claimant’s response was a letter from his then Attorney, appropriately addressed to the DPA at the PSC. The letter set out in full the explanation of illness as the reason for the Claimant’s absence and pointed out that after being on sick leave he had reported for duty. The letter failed to mention that the Claimant had tried to send medicals to the Prison with a civilian but indicated that medicals were attached with the letter. The Claimant delivered the letter himself. He should have taken it to the PSC but instead he took it to the Prison. A Prison Officer II accepted the letter from him but refused to take the medical reports.
30. The Commissioner of Prisons wrote to the DPA on December 31, 2012. This was apparently in response to a letter sent by the DPA to him on November 19, 2012. That letter has not been disclosed in these proceedings so it is not clear what

representations, if any, were sought thereby from the Commissioner of Prisons. The Commissioner's memorandum however, advocated that the Claimant's reasons for absenting himself were "immaterial and somewhat frivolous". It recommended that he be declared to have resigned effective April 11, 2012.

31. The Commissioner purported to set out "the facts in this matter" in his memorandum. Almost from the outset the letter contains a major contradiction. In the earlier June 29, 2012 letter sent to the Claimant the Commissioner had said attempts were made to contact the Claimant without success. In the December 31, 2012 Memorandum the Commissioner says at paragraph (2) that the Claimant was contacted on June 27, 2012 via telephone. A serious allegation is made that the Claimant was given an opportunity to report the following week but did not do so and failed to offer a reason.
32. This new version of events differs from the account given by the Claimant that it was the June 29th Memorandum that alerted him to the Commissioners concerns about his absence. He says he went in to the Personnel Department and explained that he had sent medical reports with a civilian, so based on his account there was neither a failure to report nor a failure to explain his absence.
33. By the time the Commissioner sent this December 31, 2012 Memorandum the Claimant had already submitted his own representations. There is no evidence before the Court that the Claimant was ever given the opportunity to be heard in relation to the Commissioners undisclosed allegations before he was declared to have resigned.
34. In the December 31, 2012 Memorandum the Commissioner informed the DPA that the Claimant had visited the Prison on September 26, 2017 with a letter and his sick leave certificates to account for his absence. The Commissioner accepted the letter and forwarded it to the DPA but refused to accept the medical reports attached to the letter.
35. This refusal was pursuant to a February 2009 Circular Memorandum from the DPA to all Permanent Secretaries. A copy of the Memorandum is attached as "F.B.2" to the

Second Defendant's Affidavit of Mr Ferdinand Bibby, Superintendent of Prisons. That Memorandum prohibited the acceptance of officers to resume duties once they submit medical certificates if over one month has passed of their absence without leave.

36. In my view there is nothing in the Memorandum that prohibits the simple receipt of the medical reports to pass on to the PSC. In any event this February 2009 Memorandum would not be applicable at all if the Claimant's plea that he had submitted the medical reports that would justify his absence through a civilian well before the one month deadline, is to be accepted as true.

37. However, he was neither informed of this 2009 Memorandum by the Defendants nor allowed an opportunity to present representations to the PSC refuting its applicability to his circumstances. Had he been allowed such an opportunity it may have been established to the satisfaction of the PSC that he had submitted the medicals on time through the civilian.

38. Paragraphs (6) and (7) of the Commissioners December 31, 2012 Memorandum comprise detailed views on the Claimant's medical condition without any indication of the basis for the Commissioner's medical expertise, if any, in this regard. No opportunity was given to the Claimant to have a medical professional make representations on his behalf to counter those of the Commissioner.

39. At Paragraph (8) of the Commissioner's Memorandum, he alleges that the Claimant never informed the Prison Administration of the discomfort he was experiencing due to his brother's incarceration. This version of events differs from the Claimant's as the Claimant's evidence is that he made a report about his psychological problems and the Prison addressed his concerns by transferring him to another location.

40. Paragraph (8) of the Commissioner's Memorandum also seems to be contradicted by his own statement at paragraph (7) of the memorandum. There he confirmed the Claimant's contention that he informed Prison Administration about his brother's

incarceration at the prison where he was assigned and he was then granted a transfer to work in another prison. The last line of the paragraph underscores that the Commissioner was aware that the issue of the brother's incarceration affected the Claimant. However, he volunteers a medical opinion without any foundation that the exposure "was quite minimal" seemingly so as to suggest that it would not have caused psychological distress to the Claimant.

41. On June 25, 2013 the DPA wrote to the Claimant's Attorney informing him that his letter dated September 26, 2012 was received but with no medicals attached. He was asked to forward the medicals to the PSC urgently. This communication satisfies me that the PSC was at that time prepared to consider the medicals despite the Commissioner's refusal to accept them. There was no response and the DPA sent a follow up request on March 21, 2014. On April 15, 2014 the Claimant's current advocate attorney wrote apologizing for the delay and enclosed the medical reports. There is no indication as to whether the PSC then reviewed the medical reports and either:

- found them inadequate to excuse the Claimant's absence or
- Found them adequate for this purpose but discounted them because they accepted the Commissioner's account that they were not submitted within the one month period.

42. As aforementioned it is at this stage in 2014 that in my view the PSC ought to have arranged a second round of disclosures to the Claimant and invited him to make further representations. This was required since as in the **Favianna Gajadhar** case the information received by the commission up to this point revealed "*diametrically opposed contentions on material facts that are likely determinative of the outcome of the decision under consideration*"

43. Instead of inviting further representations, there was a lull in activity in the matter until February 17, 2017. On that date the DPA wrote a Memorandum to the Commissioner and a letter to the Claimant advising that the Claimant had been declared to have resigned his office effective April 11, 2012. The letter stated that the

representations for the Claimant by letters dated September 26, 2012 and April 15, 2014 (which included the medical reports) were noted.

44. No mention was made in the DPA's correspondence of the December 31, 2012 Memoranda also received from the Commissioner with his representations. The letter did not give a reason for the decision to declare that the Claimant had abandoned his office. Although the medicals were received and noted by the PSC they also received the communication from the Commissioner making allegations against him of failing to explain his illness early enough or to report for duty.
45. There is merit to the Claimant's contention that the PSC failed to properly investigate whether he had delivered his medical certificates within the required period. This is so because a proper investigation guided by principles of fairness would have afforded the Claimant an opportunity to respond to the Commissioner's allegations.
46. Shortly after receiving this communication of the PSCs decision the Claimant filed the application for leave with regard to the instant Judicial Review proceedings. There were, as aforementioned, delays in concluding the proceedings herein as parties were taking steps that may have led to resolution without a further hearing. Eventually, by February 14, 2019 legal submissions were filed by the parties.

D. Findings

47. As can be seen from the chronology above some aspects of the process towards declaration that the Claimant had resigned were concealed from him until after he filed the instant Claim. It was only in the Affidavits of the Defendants that much of what was considered or not considered by the PSC was disclosed.
48. In particular the Claimant had no access to the Memoranda sent by the Commissioner which contained representations that were prejudicial to his case. The request made in the Fixed Date Claim for a declaration as to the Commissioners bias focused mainly on the failure to recommend him for EAP. After the Commissioners Memoranda were disclosed the Claimants Attorneys were better placed to fully address the unfairness of the process. As such the submissions filed on December 11, 2018 by counsel for

the Claimant addressed the unfairness of the process used by the PSC to declare the Claimant to have resigned, in greater detail than the Claim.

49. It was clear from the submissions of the Claimant that issues of unfairness identified therein have gone unanswered by the Defendants. There has been no indication or no sufficient explanation from the Defendants Affidavits or Submissions as to the following:

- a) What evidence did the PSC consider in declaring the Claimant to have resigned? - The PSCs letter informing the Claimant of this decision merely indicated that his representations were noted. No mention is made of either the Commissioners representations that may also have been considered or whether alleged late filing of medical reports was a deciding factor. Further, if the medical reports were considered as having been submitted on time there is no indication as to whether or on what basis they were considered insufficient to justify the Claimant's absence.
- b) Why did the PSC fail to disclose to the Claimant the Commissioner's representations? - The Defendant's submission is that it was neither required nor necessary to disclose this information. It is my finding however, that on the facts of this case fairness dictated that the Claimant be given access to these documents. It is only based on such disclosure that he would have been in a position to respond to the divergent issues of fact, medical opinions and bias expressed against him.
- c) Did the PSC fail to take into account inconsistencies and inherent lack of logic in the Commissioner's December 31, Memorandum? In particular, was note taken of the fact that it confirms the Commissioner's knowledge of the Claimant's reported issues regarding his brother? Did the PSC observe that it also includes a contradiction as to whether the Claimant was contacted by telephone prior to June 29, 2012? - There is no answer to these questions in the PSCs correspondence, Affidavits or submissions.
- d) Was there failure to adhere to procedural fairness in that the PSC, having given the Claimant an opportunity to make representation after the provisional decision was made in September 2012, not having allowed for

a second round of disclosure and representations after it received representations from the Commissioner in December 2012 and the medicals in 2014? In light of the foregoing did the PSC act unfairly by waiting a further two years before concluding its deliberations and then providing no reasons for its decision? – The Defendants in submissions admits that the process “took some time” but assert that this did not distract from the merit of the PSC’s decision. However, it is my finding as aforementioned that the PSCs decision making process was procedurally unfair. No reasons were given as to the merit of the decision. Accordingly, the justification as to alleged merit of the decision does not fully to address the issue of delay which would have further prejudiced the interests of the Claimant. There has however been a similar lack of evidence from the Claimant as to how the delay has affected him. In submissions his Attorneys have asserted that certain persons, including the then Commissioner, may no longer be available to make representations to the PSC. It is not clear how this would prevent the PSC from hearing the Claimant’s representations.

E. Decision

50. The PSC breached the principles of natural justice and fairness in the process it used to arrive at the challenged decision. This is so in that the PSC failed to “go a step further” in light of the divergent representations received from the Claimant and the Commissioner. A process of disclosures and further invitations for representations to be made was then required. Had this been done the Claimant may have been able to rebut the allegations made by the Commissioner against him as to failure to explain his absence or report for duties and the alleged late submission of his medicals. He may also have convinced the PSC that the medical opinions and other prejudicial views advanced by the Commissioner were baseless.

51. The Commissioner’s representations in the December 31, 2012 Memorandum were contradictory of his own prior statements in some respects and comprised baseless

opinions in others. In my view this amounted to apparent bias on the part of the Second Defendant and it is unclear how this in turn influenced the PSCs decision.

52. In light of the foregoing IT IS HEREBY ORDERED:

- i. A Declaration that the Second Defendant was biased against the Claimant in making representation to the First Defendant that he be declared to have resigned from his office.
- ii. A Declaration that the procedure adopted by the First Defendant prior to its decision of the 17th February, 2017 did not fulfill all of its natural justice obligations to the Claimant in the circumstances of this case.
- iii. The First Defendant's decision to declare the Claimant as having resigned from his office is set-aside.
- iv. An order of mandamus is granted compelling the First Defendant to re-open its inquiry and reconsider the Claimant's representations in light of this the new information received after September 26, 2012 so as and to ensure that natural justice and fundamental fairness are afforded the Claimant in the process.
- v. This matter is remitted to the PSC to be given urgent attention and reviewed as a priority.
- vi. The Defendants are to pay the costs of the Claimant in an amount to be assessed if not agreed.

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by: Christie Borely JRC 1