

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-04371

BETWEEN

**IN THE MATTER OF THE SECTIONS 87, 89, 89 AND 90 OF THE PUBLIC SERVICE COMMISSION
REGULATIONS CHAP 1:01 AND IN THE MATTER OF SECTIONS 26, 27 AND 44 OF THE
EDUCATION ACT CHAP 39:01 AND IN THE MATTER OF THE TEACHING SERVICE
REGULATIONS 2000-CODE OF CONDUCT TO THE EDUCATION
ACT CHAP 39:01**

AND

**IN THE MATTER OF JUDICIAL REVIEW PROCEEDINGS OF ANDY PAUL PURSUANT TO
PART 56 OF THE CIVIL PROCEEDINGS RULES 1998 AS AMENDED
AND THE JUDICIAL REVIEW ACT, 2000**

BETWEEN

ANDY PAUL

Claimant/Applicant

AND

**DIRECTOR OF PERSONNEL ADMINISTRATION,
TEACHING SERVICE COMMISSION**

Defendant/Respondent

Before the Honourable Mme. Justice Jacqueline Wilson QC

Date of Delivery: April 27, 2020

APPEARANCES:

Mr. Mudassar Karamath and Ms. Maria Charrie Attorneys at law for the Claimant

Ms. Linda Khan, Ms. Ryanka Ragbir and Ms. Michelle Benjamin Attorneys at law for the Defendants

JUDGMENT

INTRODUCTION

1. On 15 January 2020 I gave an oral judgment quashing the defendant's decisions to suspend the claimant and to prefer disciplinary charges against him. The written reasons are now provided.
2. The claimant is the principal of the Mayaro Government Primary School. The defendant is responsible for the appointment, promotion, transfer and exercise of disciplinary control over persons in the teaching service.
3. On 1 February 2017 there was an incident involving two students on the school's playfield that resulted in injury to one of them. Investigations were conducted to determine what had transpired and whether further action was required. Allegations of misconduct were subsequently made against the claimant and an investigating officer was appointed to investigate them. The claimant was suspended pending the outcome of the investigation and upon its conclusion three disciplinary charges were laid against him. A disciplinary tribunal has been convened to hear the charges but its hearings have been deferred until these proceedings are determined.
4. The proceedings were brought by the claimant on numerous grounds which, in summary, allege that the defendant's decision to lay the disciplinary charges is unlawful and unreasonable as the charges do not disclose an act of misconduct and are not supported by evidence.
5. The defendant alleges that in arriving at the decision to prefer the charges it followed all of the required procedures and that its decisions are valid and lawful. The defendant argues further that the claimant's challenge to its decisions is premature and that the claimant should await the outcome of the disciplinary proceedings.
6. The questions arising on the claim are:

- i. Whether the claim is premature and should await the outcome of the disciplinary proceedings; and
 - ii. Whether the defendant's decisions are flawed on the ground of unreasonableness, illegality or unfairness.
7. The events that gave rise to the disciplinary charges and the legislative provisions that underpin them must be closely examined.

THE EVIDENCE

8. The affidavit evidence sets out the relevant history. The claimant filed four affidavits in support of the claim. In addition to the claimant, the deponents were Mrs. Jean Rajkumar-Lalla, class teacher, Mr. Richard Roopnarine, Head of Department and Mr. Mohan Sadal, Vice Principal. The defendant filed four affidavits in response, two of which were filed pursuant to directions of the court for the disclosure of documents. The deponents were Ms. Coomarie Goolabsingh, Acting Director of Personnel Administration, Mrs. Zabeedah Hosein-Abid, School Supervisor III, and Mr. Martel Waldron, Executive Director, Human Resources Management, Teaching Service Commission.
9. The material facts are that at around 2.00 pm on Wednesday 1 February 2017, Mrs. Lalla was in the vice principal's office when she was approached by two of her students, TK and KF.¹ TK was crying and his right arm was injured. Mrs. Lalla placed an ice pack on his arm and made efforts to contact his parents, but without success. She informed the claimant of TK's injury and took him to the Mayaro District Health Facility for treatment, accompanied by another teacher, Mr. Randy Mahabir. The teachers waited at the Health Facility until TK's mother arrived, when Mrs. Lalla informed her that TK was injured and that an investigation would be carried out to find out what had transpired. When she returned to the school, Mrs. Lalla updated the claimant on developments at the Health Facility.

¹ Anonymised on account of their youth

10. Mrs. Lalla contacted KF's father and requested him to come to the school. She also questioned her students about what had happened on the playfield and three students who had witnessed the incident gave details. She referred them to the principal's office. TK's father arrived at the school to collect his belongings and Mrs. Lalla referred him to the principal's office as well.
11. TK's father left for the Health Facility and returned to the school shortly after 3.00 pm, by which time KF's father had arrived. Before their arrival, the vice principal, Mr. Sadal, had spoken to KF and the three students who witnessed the incident. There were slight differences in their respective accounts but, in essence, the students reported that during a game of "Take Down" KF took TK to the ground, twisted his arm and kicked him.
12. Mr. Sadal met with both parents that afternoon. At the time, the school day was ended and the students who witnessed the incident had left for the day. Mr. Sadal advised the parents to return the following day when further investigations would be carried out and a meeting was scheduled for 9.00 am on 2 February 2017. Before leaving, both KF and his father apologised to TK's father. Mr. Sadal also expressed his concern and regret over the incident.
13. On 2 February 2017, Mrs. Lalla and Mr. Randy Mahabir submitted reports of the incident to the claimant. Mr. Sadal submitted a report on 3 February 2017. The meeting that was scheduled for 9.00 am on 2 February was postponed as TK was due to undergo surgery that day.
14. On 2 February 2017, Mr. Roopnarine Mahabir and Mr. Ian Puntai, School Supervisors I, visited the school and met with the claimant concerning the incident. Mr. Mahabir prepared a report of his visit to the Permanent Secretary, Ministry of Education, the details of which are discussed below. A police sergeant also visited the school that day and met with the claimant and the vice principal.
15. On 3 February 2017 three supervisors visited the school - Mr. Roopnarine Mahabir, Ms. Ann Marie Givarro-Perez, Acting School Supervisor II and Mr. Edwin Ramsaran,

School Supervisor III. The supervisors questioned the claimant and other staff members about the incident and interviewed the three student witnesses. Two officers of the Child Protection Unit also visited the school on 3 February 2017. They returned on Monday, 6 February 2017, when the claimant provided them with a report.

16. On 6 February 2017, School Supervisor III, Mr. Edwin Ramsaran, made a further visit to the school. He took possession of the school's log-book and issued a new one to the claimant. He also met with the parents of KF and TK. Members of the school staff were present at the meeting, including the claimant, Mrs. Lalla and Mr. Richard Roopnarine, Head of Department, who had warned students about the dangers of playing "Take Down" approximately two weeks before the incident. When the meeting was ended, the claimant issued a notice of suspension to KF's mother suspending KF for seven days with effect from 6 February 2017.
17. On 2 February 2017, the claimant and School Supervisor I, Mr. Roopnarine Mahabir, prepared reports to the Permanent Secretary. On 3 February 2017, Acting School Supervisor II, Ms. Givarro-Perez, prepared a report to the Director of School Supervision. On 6 February 2017, School Supervisor III, Mr. Edwin Ramsaran, prepared a report to the Permanent Secretary. It is useful to examine the reports in some detail as they help to explain how the incident was addressed by the claimant and the supervisors and the recommendations that were made for moving forward.
18. The claimant prepared two reports to the Permanent Secretary on 2 February 2017. Both reports were further addressed, u.f.s., to the Chief Education Officer, the Director of School Supervision and the School Supervisor I, II and III. In his first report, the claimant gives a brief statement of the incident while the second report provides a more detailed account and makes the following recommendations:

"RECOMMENDATIONS:

1. Parents of TK and KF to meet with the Principal of the Mayaro Government Primary School.

2. Increase supervision of pupils at lunch time and recess periods.
 3. Reinforce school policy on pupils being on the playfield during recess time and general school rules on health and safety of pupils.
 4. Upgrade of security cameras on compound.
 5. Repair of perimeter fence to limited (sic) pupils' access to the play field.
 6. Invitation to both parents to a meeting to be held at the Principal's Office on Thursday February 02, 2017, for 9.00 am".
19. Mr. Mahabir's report to the Permanent Secretary gives a brief statement of the incident and states the action that was taken by the claimant and by him. He ends his report with the following recommendations:

"RECOMMENDATIONS

1. Increase supervision of pupils at lunch time and recess periods.
 2. Reinforce school policy on pupils being on playfield during recess time and general school rules on health and safety of pupils.
 3. School to monitor and report incident of bullying in a timely matter (sic) to the relevant authorities."
20. Ms. Givarro-Perez' report to the Director of School Supervision states that on 2 February 2017 she received word of the incident and of a media report concerning it from the Ministry's Communication Unit. She immediately telephoned the claimant and required him to submit a report "forthwith." Upon receiving the claimant's report she considered that "it lacked substance" and returned it to the claimant with a direction "to add details to same and resubmit immediately." She received the claimant's second report at 1.39 pm on 2 February 2017.

21. When she visited the school on 3 February 2017, Ms. Givarro-Perez made an entry in the log-book requiring the claimant to submit a comprehensive report supported by “witness statements, teacher reports (sic) and all other information that should be necessary in the matter.”
22. Mr. Ramsaran’s report to the Permanent Secretary states that he and Mr. Roopnarine Mahabir conducted investigations into allegations of assault caused by bullying and interviewed the claimant, the vice principal and teachers. He states that interviews were conducted with the three students who witnessed the incident and with the parents and/or guardians of the students concerned. He lists the documents that he obtained in his investigations and concludes the report with the following recommendations:

“RECOMMENDATIONS

- Increased supervision during lunch and recess periods by members of staff.
 - KF should be suspended for the maximum one week and extended suspension recommended. Parent and student requested to attend the Learning Enhancement Centre, Rio Claro.
 - Both sets of parents meet with officials of the Ministry of Education on Monday 6th February 2017 to discuss the matter in an attempt to bring closure.”
23. By letter dated 7 February 2017 Mr. Ramsaran wrote to the Permanent Secretary concerning the incident. His letter was considerably more unfavourable to the claimant than his report the day before. He made detailed allegations of impropriety against the claimant and recommended that he should be investigated for misconduct and cease to report for duty pending investigations. The key points made in the letter were that:

- The claimant failed to report the incident in a timely manner to his Line Supervisor and to provide details for the information of the Ministry of Education. His failure can be considered prejudicial to the efficient conduct of the Service tending to bring the Service into disrepute.
- The claimant failed to comply with Circular Memorandum No. 22 (April, 2016) and to suspend KF for committing extreme violence on TK in spite of two opportunities that were available on Wednesday 1st February 2017 and Thursday 2nd February 2017 when his father visited the school.
- The instruction to suspend KF and apply for extended suspension was entered in the school's log book on Friday 3rd February 2017 by the line supervisor. The claimant suspended him on Monday 6th February 2017 but failed to apply for extended suspension as instructed.
- By his failure to follow the instructions of the line supervisor and request extended suspension to allow KF to receive necessary intervention by the Student Support Services Division of the Ministry of Education before re-entry into the school system, the claimant failed to act in the best interest of the student.
- By his actions or omissions, the claimant failed to comply with his duties and responsibilities of a principal under section 27(a) and (c) of the Education Act. Specifically, he failed in his duty to provide supervision of the physical safety of pupils on the playfield during the recess period on Wednesday 1st February 2017.

24. Mr. Ramsaran's letter triggered the disciplinary process against the claimant. Having received the letter, the Permanent Secretary wrote to the Director of Personnel Administration recommending that the claimant cease to report for duty pending investigations into the allegations that were reported by Mr. Ramsaran. On 31 March 2017, the claimant was served with a letter of suspension. On 8 May 2017, he received

notice of the allegations that were made against him and that an investigating officer had been appointed to investigate them. On 16 May 2017, he received a letter by the investigating officer inviting his response to the allegations within seven days. The claimant responded by denying the allegations.

25. By letter dated 10 October 2017 from the Director of Personnel Administration, the claimant was informed that three disciplinary charges were laid against him alleging that, contrary to Regulation 77(1)(d) of the Education (Teaching Service) (Amendment) Regulations, he had engaged in conduct that was prejudicial to the efficient conduct of the teaching service by virtue of the following particulars:

- “(i) That you Andy Paul, Principal, Mayaro Government Primary School, Ministry of Education, on 1st February 2017, exhibited conduct prejudicial to the efficient conduct of the service when at around 2.00 pm, you did not properly supervise on the playing field of the said school, at which said time an incident took place between KF and TK, which led to TK suffering a broken arm;

- (ii) That you Andy Paul, Principal, Mayaro Government Primary School, Ministry of Education, on 1st February 2017, exhibited conduct prejudicial to the efficient conduct of the service when you failed to report to the Line Supervisor that an incident took place between KF and TK, and that as a result of the said fight TK suffered a broken arm;

- (i) That you Andy Paul, Principal, Mayaro Government Primary School, Ministry of Education, on 1st February 2017, exhibited conduct prejudicial to the efficient conduct of the service when you failed to issue a Notice of Suspension to the parent of KF on 3 February 2017 after being instructed to do so by the Line Supervisor.”

26. By the same letter, the claimant was invited to make representations within fourteen days. It was also proposed to interdict him at a reduced salary, but the proposal was not acted upon after the claimant's Attorneys became involved in the matter.

THE LEGAL FRAMEWORK

27. As indicated earlier, the defendant's functions include the exercise of disciplinary control over members of the teaching service. The disciplinary procedures are prescribed in the Public Service Commission Regulations, the relevant provisions of which are summarised below.
28. The Commission's powers of suspension may be engaged where the Commission receives a complaint of misconduct against an officer and forms the opinion that it is in the public interest that the officer cease to report for duty. The Commission may direct the officer to cease to report for duty until further notice² and an officer who is so directed shall continue to draw his full salary until further notice is given.³
29. Where the Permanent Secretary receives an allegation of misconduct against an officer, the Permanent Secretary must (i) report the matter to the Director of Personnel Administration for the information of the Commission; (ii) warn the officer in writing of the allegation; (iii) appoint an investigating officer to investigate the allegation; and (iv) refer the matter to the investigating officer.⁴ The investigating officer must give the officer being investigated an opportunity to provide an explanation to the allegation within seven days.⁵ The investigating officer must provide a report on investigations to the Commission⁶ and the Commission must consider the report and any explanation given by the officer before deciding whether to lay a disciplinary charge.⁷

² Regulation 88(1)

³ Regulation 88(2)

⁴ Regulation 90(1)

⁵ Regulation 90(3)

⁶ Regulation 90(5)

⁷ Regulation 90(6)

30. Where the Commission decides to lay a disciplinary charge, it must inform the officer in writing of the charge “together with such particulars as will leave the officer under no misapprehension as to the precise nature of the allegations on which the charge is based.”⁸ The officer must be given an opportunity to state in writing whether he admits or denies the charge and to provide any explanation he may wish.⁹
31. The Commission may appoint a disciplinary tribunal to hear the charge and to report on its findings.¹⁰ The hearing before the tribunal may be described as adversarial. The officer charged may be represented by an Attorney-at-law or other representative and may cross-examine the witnesses called against him.¹¹ Before the case against the officer is presented, or at any stage of the proceedings, the officer or his representative may make submissions that the facts disclosed in the evidence do not support the charge.¹²
32. Misconduct is defined in regulation 77 of the Education (Teaching Service) (Amendment) Regulations as follows:
- “77. (1) A teacher who without reasonable excuse does an act which—
- (a) amounts to failure to perform any required lawful duty in a proper manner;
 - (b) contravenes any of the Regulations;
 - (c) contravenes any law relating to the performance of the duties of his office;
 - (d) is otherwise prejudicial to the efficient conduct of the Service or tends to bring the Service into disrepute, commits an act of misconduct.

⁸ Regulation 90(6)

⁹ Regulation 92(1)

¹⁰ Regulation 95, 96(1).

¹¹ Regulation 98(1)(d)

¹² Regulation 98(1)(c), 98(2)

(2) Without prejudice to the generality of subregulation (1), a teacher who—

- (a) is absent from office or official duties without leave or valid excuse, or is habitually irregular in the time of arrival or departure from the place of employment;
- (b) wilfully disobeys or disregards any lawful order made or given by any person having authority to make or give such order;
- (c) is unfit for duty through drunkenness or the illicit use of drugs;
- (d) is inefficient or incompetent through causes which are within his control;
- (e) commits any immoral, obscene or disorderly conduct in office;
- (f) performs the required duties in a negligent manner;
- (g) exercises authority unreasonably, or abuses that authority in the course of performing required duties;
- (h) uses, without the authority of the Principal or in his absence the Vice-Principal, any property or facilities provided for the purposes of the Service, for a purpose not connected with his official duties;
- (i) has a criminal charge proved against him; or
- (j) participates in the meetings of any political organisation while on duty or while on official business

commits an act of misconduct.”

33. The responsibilities of a school principal are stated in section 27 of the Education Act (the Act) which reads:

“27. Subject to this Act and the Regulations, Principals of schools shall be responsible for the day to day management of their school including—

- (a) the supervision of the physical safety of pupils;
- (b) the suitable application of the syllabus in conformity with the needs of the pupils of the school, and the administration of the school’s programme;
- (c) allocation and supervision of the duties and responsibilities of members of their staff;
- (d) the discipline of the school;
- (e) teaching;
- (f) the proper use of school equipment and stock;
- (g) the keeping of proper records;
- (h) the making of financial reports through the Manager and the Supervisor to the Minister containing a statement of accounts in the form approved as well as such information as is required by the Minister;
- (i) the furnishing of such returns as may be prescribed or required at any time by the Minister or their respective Boards;
- (j) ensuring the observance of the provisions of the Act and any Regulations made thereunder in their respective schools;

(k) co-operation with parents and with approved authorities in the execution of authorised schemes.”

34. A principal’s powers of suspension are specified in sections 43 to 46 of the Act which provide that:

43. “In this Part, “suspend” means the temporary removal of a pupil from a particular school.

44. (1) The principal of any public school may suspend from attendance any pupil who for gross misconduct may be considered injurious or dangerous to other pupils or whose attendance at school is likely for any serious cause to have detrimental effect upon the other pupils, so, however, that no such suspension shall be for a period exceeding one week.

(2) Where any pupil is suspended from attendance under subsection (1) the principal of the school shall immediately notify the parent of the pupil and the Minister of the suspension and the reasons therefor and the Minister may, after receipt of the notification—

(a) order the extension of the term of suspension in order to enable proper inquiries to be made;

(b) after due investigation, order the reinstatement of the pupil on a date to be fixed by him;

(c) order the removal of the pupil to another school including a special school;

(d) order the expulsion of the pupil.

(3) Any order made by the Minister under subsection (2) shall be final.

45. Where a child of compulsory school age is suspended or expelled from a private school, the principal of that school shall immediately notify the Minister.
 46. The principal of any public school may suspend from attendance any pupil who may be likely to communicate any contagious disease and in every such case the principal shall forthwith report to the parents of the pupil and to the Supervisor of the school the action taken by him and the reasons therefor.”
35. “Guidelines for Effecting Suspension” are provided in Appendix II to the National School Code of Conduct published by the Ministry. Under the Guidelines, before suspending a student a principal must (a) investigate the incident in question; (b) obtain written statements; and (c) have good reason to believe that the allegations are true and that an offence has been committed. Notice of a suspension must be given to the parents of the suspended student and to the Minister using a prescribed form. The principal must also submit a preliminary report of the incident to the Minister at the time that notice of suspension is given. A full report must be submitted within three days of the incident and must include a summary the incident, the findings of the investigation and witness statements.
36. Where an extended period suspension is sought, the principal must make the request on the same form on which notice of suspension is given. The School Supervisor III may “advocate” for an extended suspension. Where the Minister decides to extend the suspension, the principal must notify the parent/ student of the Minister’s decision and a team is assembled to conduct further investigations, comprising the School Supervisor III as chair, a guidance officer II and a school representative. The team must be provided with the student’s school records and relevant reports on the incident and must meet with the suspended student and his/her parents. The chairman submits the team’s recommendations to the Minister for a decision.

37. Circular Memorandum No. 22 of 2016 also deals with matters of discipline. It is a directive issued by the Permanent Secretary to school supervisors and principals and requires a principal to impose the maximum period of suspension on a student who commits the following offences:
- i. Possession of illicit drugs, regardless of the quantity;
 - ii. Possession of arms and/or ammunition;
 - iii. Extreme violence to anyone;
 - iv. Any form of assault of any member of staff of any school;
 - v. Possession or consumption of alcohol on school premises.

THE CLAIMANT'S SUBMISSIONS

38. Counsel for the claimant submits that no disciplinary offence is established by the claimant's failure to supervise students as it is impractical for a principal to supervise every student during every recess break or to prevent every incident of fighting at a school. Counsel submits that, taken at its highest, the particulars of the first disciplinary charge may support a cause of action in negligence or breach of statutory duty against the state. Counsel relies on the observations made by Justice Rahim in CV 2010-03064 ***Michael Coban (A Minor by His Mother and Next Friend Carol Noel) v the Attorney General of Trinidad and Tobago***, a case brought in negligence for injuries sustained by a student at a Government school, where it was stated that:

“In short, a high degree of supervision is required when it comes to young children, that is, supervision that would not ordinarily occur such as that during recess and lunch periods. This is however not the same as suggesting that the school ought to have safeguarded the students from all possible injury, for this is a task which borders on the impossible and is a very different proposition in nature as even with adequate supervision injury can occur.”

39. Counsel submits that appropriate disciplinary measures were in place at the school, as evidenced by the Anti-Bullying Policy and the claimant's immediate action in

response to the incident. Counsel submits that the allegations of misconduct are not supported by the evidence and that the claimant's reports of 2 and 7 March 2017 confirm that there was no failure by him to report the incident or to issue a notice of suspension.

40. Counsel submits that the laying of disciplinary charges on the basis of allegations that are not supported by evidence is unfair and unjust. He relies on the decision of the Court of Appeal in ***Carmel Smith v Statutory Authorities Service Commission*** Civ. App. No. 213 of 2007 at paras. 21 – 23 where Justice of Appeal Beraux stated that:

“21. But even if the charge were found to have disclosed an offence, I consider that it is not sustainable and should never have been brought having regard to the evidence.

22. In my judgment, there must be some clear and identifiable policy or code of conduct which was in fact breached;...The hearsay evidence of Ms. Pierre Joseph that she was unofficially advised by someone whose name and rank she does not even reveal, cannot be sufficient. There ought to have been some independent corroboration of that policy and of the advice given....

23. ...There must be attained, a minimum evidential standard, in order to sustain a charge and permit it to go forward. Disciplinary charges, particularly allegations of this nature, cast a cloud over the career of the officer charged. Public officers should not be subjected to the oppression of disciplinary charges where the evidence is, at best, equivocal. No minimum standard has been reached in this case. In my judgment, the respondent's reliance on the unofficial advice given to Ms. Pierre Joseph was flawed and the decision to charge the appellant, based on such evidence was wrong.”

41. Counsel submits that no disciplinary charge may be brought against the claimant for his failure to seek an extended suspension. He submits that the discretion to suspend a student is vested in a principal and the discretion to extend the suspension is vested in the Minister. He submits that while a school supervisor may give lawful instructions or make appropriate recommendations to a principal, it is unlawful to dictate how a power that is vested in the principal ought to be exercised.

THE DEFENDANT'S SUBMISSIONS

42. Counsel for the defendant submits that the claimant's omissions are acts of misconduct for which disciplinary charges may be instituted; that the charges against him were laid in strict compliance with the requirements of the Public Service Commission Regulations; that the charges are supported by the report of the investigating officer and the claimant's response to the allegations; and that the charges are valid and lawful.
43. Counsel submits that the claimant has a duty to establish a system for the supervision of students during the lunch break and recess periods and that his breach of duty is manifested in the violence that was perpetrated against a student, requiring him to undergo surgery.
44. Counsel submits that on 3 and 6 February 2017 school supervisors directed the claimant to impose the maximum suspension on KF and to apply for an extended suspension, which the claimant failed to do. Counsel submits that school supervisors have authority to issue directions to the claimant and that the claimant committed an act of misconduct in disobeying the directions that were given.
45. Counsel submits further that the claimant's challenge to the disciplinary process is premature and should await the outcome of the disciplinary proceedings and any appeal therefrom. Counsel relies on the decision of the Privy Council in ***Sherman McNicholls v Judicial and Legal Services Commission*** [2010] UKPC 6 at para. 46 where Lord Clarke stated that:

“Experience shows that applications of this kind themselves cause substantial delay, especially when they lead to one or more appeals. Save perhaps in an exceptional case, the officer against whom a charge is made should not apply for judicial review but utilize the procedure set out in regulation 98, which sets out in detail the procedure which “shall apply” to the hearing by a disciplinary tribunal of a charge of misconduct. Regulation 98 contains detailed provisions which ensure that an officer so charged will be afforded a fair hearing.”

DISCUSSION

46. It should be stated at the outset that the merit of a disciplinary charge is not for a court to determine in judicial review proceedings. It is a matter for the disciplinary tribunal that is constituted to hear and adjudicate upon the charge on the basis of such evidence as may be led at the hearing. Therefore, whatever view this court may hold as to the merits of the charges that have been brought against the claimant, its role is limited to determining whether the charges as constituted are lawful, in that they fall properly within the scope of the legal provisions that underpin them and are supported by evidence.
47. Regulation 77(1) defines the scope of an act of misconduct, examples of which are given in subregulation (2). The examples given in subregulation (2) do not provide an exhaustive list of particulars that may be relied upon to support a disciplinary charge. Therefore the absence of any statement of particulars therein similar to those with which the claimant is charged is by no means prejudicial to the provenance of the charge.
48. The real question is whether the charges against the claimant fall within the scope of misconduct. The starting point is to consider whether a breach of the Act, the Regulations, the Code of Conduct or relevant policy guidelines is identified in the charges.

The First Disciplinary Charge

49. The first disciplinary charge reads:

That you Andy Paul, Principal, Mayaro Government Primary School, Ministry of Education, on 1st February 2017, exhibited conduct prejudicial to the efficient conduct of the service when at around 2.00pm, you did not properly supervise on the playing field of the said school, at which said time an incident took place between KF and TK, which led to TK suffering a broken arm.

50. The claimant's responsibility for the overall management of the school and for the supervision of the physical safety of its students is established by section 27 of the Act. The particulars of the first disciplinary charge suggest that the claimant bore personal responsibility for the supervision of students and that his failure to discharge it resulted in injury.
51. I do not construe section 27 of the Act as imposing a personal obligation on a principal to supervise students. Nor can it be said that the prevention of injury is guaranteed by adequate supervision. The measures that are in place at the school to care for the health and safety of its students are reflected in the Anti-Bullying Policy, the Discipline Matrix and the Behaviour for Learning Policy, all of which formed part of the documents that were made available to the defendant.
52. The School Rules prohibit playing games on the playfield outside of the lunch break or without the supervision of a teacher. The supervision of students on the playfield is mentioned in two documents that were obtained by the School Supervisor III in his investigations (i) a memorandum dated 10 January 2017 from the claimant to staff members and (ii) minutes of a staff meeting held on 19 January 2017.
53. Paragraph 6 of the memorandum of 10 January 2017 states that:

"Volunteers are needed to assist in the lunch time supervision of students. We do appreciate your assistance in this regard."

The minutes of the meeting of 19 January 2017 contain a summary of the discussions that were held at the meeting, the details of which are not relevant for present purposes, except for a single statement that reads:

“Volunteers for lunch time supervision from next week.”

54. In his letter of 7 February 2017 to the Permanent Secretary, the School Supervisor III states that the claimant made unsuccessful efforts for the supervision of students on the playfield during the lunch break. The supervisor’s complaint presupposes that the claimant was required to fill the gap. There is no complaint that the rules and policies that were in place to promote the physical safety of students and appropriate standards of discipline were inadequate, or that they were being flouted on a regular basis, or that there was a general failure by the claimant to implement them. To the extent that the first disciplinary charge is premised upon a personal responsibility of the claimant to supervise students on the playfield, it presumes an obligation that has no foundation in law or in the Ministry’s policies and is, thereby, unlawful.

The Second Disciplinary Charge

55. The second disciplinary charge reads:

That you Andy Paul, Principal, Mayaro Government Primary School, Ministry of Education, on 1st February 2017, exhibited conduct prejudicial to the efficient conduct of the service when you failed to report to the Line Supervisor that an incident took place between KF and TK, and that as a result of the said fight TK suffered a broken arm.

56. The second disciplinary charge is premised upon the claimant’s failure to notify the supervisor of the incident on the date of its occurrence. It is alleged that the claimant’s failure to do so was prejudicial to the efficient conduct of the service.

57. The evidence shows that on 2 February 2017 the claimant submitted two reports of the incident to the Permanent Secretary. Both reports were also addressed to the Chief Education Officer, the Director of School Supervision and the School Supervisors III, II and I. The later of the two reports was further addressed to the Ministry's Communication Unit. The claimant met with two supervisors on 2 February 2017 to discuss the incident. The report by Mr. Roopnarine Mahabir, School Supervisor I, confirms that he was aware of all material developments. His recommendations to address the incident were essentially the same as those made by the claimant.
58. Under the Act, a principal's obligation to give an immediate report to a supervisor arises where the principal suspends a student for the purpose of preventing the spread of a contagious disease. Clearly, this requirement does not preclude a principal from reporting matters of importance to a supervisor and the claimant's reports show that, as a matter of practice, school supervisors are included on correspondence to senior officials of the Ministry.
59. While the defendant is best placed to determine the standard of conduct, a breach of which may be considered as prejudicial to the teaching service, there is nothing in the particulars of the second disciplinary charge to demonstrate that the claimant did not respond with appropriate urgency to the demands of the situation, or that he shirked his responsibilities as a principal, or that he did not adhere to the required standards.
60. The second disciplinary charge fails to establish an obligation on the claimant to report the incident to his supervisor on the day of its occurrence or to demonstrate that in submitting his reports the following day the claimant acted to the detriment of the teaching service.
61. In the circumstances, the second disciplinary, as constituted, cannot be said to meet the threshold for misconduct as defined in the Regulations.

The Third Disciplinary Charge

62. The third disciplinary charge reads:

That you Andy Paul, Principal, Mayaro Government Primary School, Ministry of Education, on 1st February 2017, exhibited conduct prejudicial to the efficient conduct of the service when you failed to issue a Notice of Suspension to the parent of KF on 3 February 2017 after being instructed to do so by the Line Supervisor.

63. I have proceeded on the basis that the third disciplinary charge alleges a failure by the claimant to follow an instruction given to him by his supervisor on 1 February 2017 to suspend KF on 3 February 2017.
64. Under section 44 of the Act the discretion to suspend a student resides with the principal. Suspension may be imposed as a result of the student's gross misconduct or the potentially detrimental effect of the student's continued attendance at school on other students. The period of suspension may not exceed one week and the principal must give immediate notice of it and of its reasons to the parent of the suspended student and to the Minister.
65. Under the Guidelines for Effecting Supervision a principal must investigate all reports of gross misconduct by a student and obtain written statements so that an informed decision could be made on whether the allegations are well founded and an offence against discipline is shown to exist.
66. Under the Guidelines a principal must submit a preliminary report to the Minister at the time that notice of suspension is given and a full report within three days of the incident. The full report must state the findings of the investigation and must be supported by witness statements. While the Guidelines do not have the force of law they are clearly intended to ensure that investigations into acts of serious misconduct by a student and decisions on suspension are carried out swiftly.
67. As discussed earlier, the evidence shows that on 2 and 3 February 2017 staff members with knowledge of the matter provided reports to claimant; that on 2 February 2017 the claimant met with two school supervisors concerning the incident; that on 3

February 2017 the claimant and three supervisors met with the students who had witnessed the incident when statements were given by them; that on 6 February 2017 the claimant, staff members and the School Supervisor III met with the parents of the students involved in the incident; and that upon the conclusion of the meeting the claimant issued the notice of suspension.

68. A directive that required the claimant to issue a notice of suspension before he had completed the investigations that were necessary or assessed their findings would have run afoul of the Guidelines and the claimant's obligation to exercise his powers of suspension fairly and reasonably. In equating misconduct with the failure to obey a directive that was inconsistent the proper exercise of the claimant's powers of suspension and the Ministry's own Guidelines, the third disciplinary charge is misconceived and unlawful.

THE PREMATURITY ARGUMENT

69. It is correct that as a matter of general principle, save in exceptional cases, a supervisory court must exercise restraint in intervening either at a preliminary stage or in the course of disciplinary proceedings. The disciplinary tribunal will have an opportunity to cure any failures that may be alleged to exist and its decisions may be challenged when the proceedings are concluded.
70. The question that arises is whether this is an exceptional case. It is clear that the Commission has proceeded on the basis that the allegations against the claimant are well-founded and are sufficiently serious to give rise to disciplinary charges. However, disciplinary charges must first meet the legal and evidential threshold to justify instituting them. That is what I understand by the admonition of Justice of Appeal Beraux in *Carmel Smith* when he stated that:

“There must be attained, a minimum evidential standard, in order to sustain a charge and permit it to go forward.....No minimum standard has been reached in this case. In my judgment, the respondent's reliance on the unofficial

advice.....was flawed and the decision to charge the appellant, based on such evidence was wrong.”

71. In my view, what makes this case exceptional is that the entire foundation on which the disciplinary charges are constructed is built in sand. None of the charges, as formulated, could reasonably be considered to fall within the scope of misconduct as defined in the Regulations. The claimant should not be compelled to submit to a hearing on the basis of such charges. In the circumstances, the justice of the case requires the court’s intervention.
72. In saying this, it is not intended to weaken accountability or to discourage disciplinary action in cases of genuine misconduct. However, the aim and purpose of the disciplinary process must be clearly understood. Although misconduct is defined in broad terms in the Regulations and is sufficiently flexible to capture a wide range of circumstances, its limits are also defined. If it were otherwise, every omission, however inconsequential, would be capable of falling within its scope.
73. Further, to regard the Public Service Commission Regulations as mere procedures to be followed is to downgrade their significance. They serve the important purpose of maintaining the integrity of the disciplinary process by providing mechanisms to ensure that allegations of misconduct are properly investigated and that independent and objective consideration is brought to bear on a decision to lay a disciplinary charge.
74. The Commission’s evidence is that in arriving at the decision to lay the charges it relied on the report of the investigating officer and advice from its Legal Counsel. However, the report and advice are tools to assist the Commission in its deliberations and are not a substitute for independent analysis. As the mere act of suspension may involve a loss of reputation, the disciplinary process should not lightly be invoked. The testimonial affidavit of Mr. Richard Roopnarine, Head of Department, may be taken as demonstrating that the claimant was a conscientious principal who had earned the respect of staff members.

75. On the whole, the evidence demonstrates that the disciplinary charges do not meet the legal or evidential threshold to justify instituting them. For the above reasons I granted the relief sought by the claimant and made an order quashing the defendant's decisions.

76. The defendant shall pay the claimant's costs as assessed by this court in the order dated 11 March 2020.

Jacqueline Wilson QC
Judge