

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. E.433/2001

BETWEEN	THE ATTORNEY GENERAL OF JAMAICA	APPLICANT
AND	BEATRICE McKENZIE	1st RESPONDENT
AND	PAMELA WRIGHT	2nd RESPONDENT
AND	BETSY JONES	3rd RESPONDENT
AND	DESMOND CARTY	4 th RESPONDENT
AND	HARTLEY LINDSAY	5 th RESPONDENT
AND	DALIA SINCLAIR	6 th RESPONDENT
AND	CARLTON CAMPBELL	7 th RESPONDENT
AND	ORRETT HARRISON	8 th RESPONDENT

Mr. M. Hylton Q.C. Solicitor General and Miss Stacey Ann Bennett
instructed by Director of State Proceedings.

— Mr. Crafton S. Miller, Miss Stephany Orr instructed by Crafton S. Miller &
Co. for first, second, third and fourth respondents.

Mr. A. Pearson for the sixth respondent.

Miss T. Maragh instructed by Mrs. J. Samuels-Brown for the eight
respondent.

Matter not proceeding against the fifth and sixth respondents.

IN CHAMBERS

Heard: 8th and 18th July, 2003

M. S. Cole-Smith, J. (Ag.)

This is a matter which is commenced by Originating Summons upon the application of THE ATTORNEY GENERAL OF JAMAICA which seeks the determination of the court on the following questions and the following reliefs namely:

1. A declaration as to whether the respondents were entitled to earn and accumulate vacation leave and to be paid salary in lieu of vacation leave in relation to the period during which they were on interdiction.
2. A declaration as to whether public officers are entitled to earn and accumulate vacation leave and to be paid salary in lieu of vacation leave in relation to the period during which they are on interdiction.

The applicant relies on the affidavit of Patricia Richardson, Deputy Financial Secretary in the Ministry of Finance and Planning.

The Solicitor General submits that the respondents who are all Customs Officers are public officers. Their terms of employment are governed by the Staff Orders for the Public Service and the Public Service Regulations 1961.

Section 5.19 of the Staff Order provides:

“Officers will not be allowed to earn vacation leave during periods of sick leave and vacation leave exceeding fourteen days respectively”.

Section 32(4) of Public Service Regulations 1961 provides:

“Where disciplinary proceedings against an officer under interdiction from duty result in his exculpation, he shall be entitled to the full amount of the salary which he would have received had he not been interdicted...”

The Solicitor General equates interdiction and vacation leave as they involve the employee being away from work with his employers consent. An interdiction is a recommended and compulsory absence while vacation leave is a requested and voluntary absence.

Mr. Anthony Pearson on behalf of Dahlia Sinclair the sixth respondent submits that the issue must not be determined on the basis of whether the respondents were at work and as a consequence entitled to earn vacation leave but rather whether they were holders of an office job.

This is a marked contrast to the Solicitor General’s submission, which concentrated on the relevant sections of the Public Service Regulations 1961 and the relevant section of the Staff Orders. If Mr. Pearson’s submission were to be accepted then the absurd situation would result. The public officer who is interdicted while restored to his full pay while

exonerated would get an additional period of absence from work for which he would be paid. Such a double vacation would be inconsistent with the Public Service Regulations 1961 and Staff Orders.

Mr. Crafton Miller for the first, second, third and fourth respondents adopted Mr. Pearson's submissions and his principal addition was to stress the distinction between an officer on interdiction and an officer on vacation. Miss T. Maragh holding for Mrs. J. Samuels-Brown for the eight respondent adopted the submissions of Mr. Pearson and Mr. Miller.

The important fact however, to be addressed is whether a public officer who is re-instated is entitled to have all the rights of vacation attributed to him as if he was at work.

This would defeat the purpose of an interdiction, which is to provide the public officer with a portion of his salary paid to him so as to enable him to attend the various criminal and procedural proceedings before re-instatement or ultimate dismissal. This is the intelligible way to interpret the relevant Regulations and Staff Orders.

To my mind the submissions of the Solicitor General are well founded. The primary duty of the court is to construe the relevant Public Service Regulations and the Staff Orders.

Eligibility is the key word in understanding these rules and regulations and it is significant that when the rules speak to interdiction there is no mention of vacation leave attendant thereto. So construed the regulations make sense and do not result in the unworkable and absurd results which would result from the construction proposed by counsel for the respondents.

The Originating Summons posed two questions and the answers are in favour of the applicant.

The declaration sought is granted in the following terms:

“That the respondents as public officers were not entitled to earn and accumulate vacation leave and to be paid salary in lieu of vacation leave in relation to the period during which they were on interdiction.”

Because of the public importance of the issues involved the order is that each party should bear its own costs.