

Indisposed NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 97 OF 2003

BEFORE: THE HONOURABLE MR. JUSTICE FORTE, P.
THE HONOURABLE MR. JUSTICE K. HARRISON, J.A.
THE HONOURABLE MRS. JUSTICE HARRIS, J.A. (Ag)

BETWEEN	EUGENNIE EBANKS	APPELLANT
AND	BETTING, GAMING & LOTTERIES COMMISSION	RESPONDENT

David Henry instructed by Mrs. Winsome Marsh for the Appellant

Dr. Lloyd Barnett and Dr. Adolph Edwards for the Respondent.

June 1 and 2 and December 20, 2005

FORTE, P:

Having read in draft the judgments of K. Harrison, J.A. and Harris, J.A., (Ag.) I entirely agree and have nothing further to add.

K. HARRISON, J.A:

Introduction

This is an appeal from an order of Smith, J made at a case management conference on the 12th November 2003. The learned judge was asked to rule on two questions raised as preliminary issues. The questions agreed on between the parties were:

1. Whether the defendant has any statutory powers to dismiss the claimant and;
2. Whether or not the claimant has the status of a "Public Officer" within the terms of the Public Service Regulations.

The learned judge in determining the matter in favour of the respondent found:

- (1) that the respondent having employed the appellant has the power to properly terminate her services and;
- (2) that the appellant is not a "Public Officer" within the terms of the Public Service Regulations.

The background facts

The appellant was employed to the Betting Gaming and Lotteries Commission ("the respondent") and was appointed Director of Administration on the 1st June, 1995. Her salary being in excess of \$7,500.00 per annum, the respondent had to seek the approval of the Minister of Finance before her appointment could become effective. Approval was given.

On the 19th February 2001, the appellant's employment was terminated with immediate effect by letter bearing that date. The appellant contends that the termination was illegal, wrongful and in breach of her contract of employment. She claims that the respondent has no power or authority pursuant to the Betting Gaming and Lotteries Act ("the Act") to dismiss an employee. She also contends that the procedures laid down in the Civil Service Regulations, for the discipline or dismissal of Public Officers, were not followed.

Overview of the relevant statutes

Under section 4(2) of the Act, the respondent is established as a body corporate to which the provisions of section 28 of the Interpretation Act applies.

By virtue of section 28 of the Interpretation Act, the Commission has power *inter alia*, to:

"(i) ...

(ii) enter into contracts in its corporate name, and to do so that, as regards third parties, the body shall be deemed to have the same power to make contracts as an individual has;

(iii) ...

(iv) ..."

It also has:

" (v) the right to regulate its own procedure and business; and

(vi) the right to employ such staff as may be found necessary for the performance of its functions;"

Section 4(3) of the Act provides also, that the respondent's constitution and operation shall be governed by the First Schedule of the Act. Paragraph 25(1) of this Schedule states:

"25. (1) Subject to the provisions of this paragraph, the Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a manager, a secretary and such other officers, servants and agents as it thinks necessary for the proper carrying out of its functions:

Provided that no salary exceeding seven thousand five hundred dollars *per annum* shall be assign to any post without the prior approval of the Minister."

Subsection (2) of paragraph 25 in the First Schedule provides for the appointment of anyone in the service of the Government to be seconded to the respondent.

The subsection reads:

"(2) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any officer in the service of the Government to any office with the Commission and any officer so appointed shall, while so employed, in relation to pension, gratuity or other allowance, and in relation to other rights as a public officer, be treated as continuing in the service of the Government."

Section 35 of the Interpretation Act states:

"35. Where by or under any Act a power to make any appointment is conferred, then, unless the contrary intention appears, the authority having power to make the appointment shall also have power to remove, suspend, reappoint or reinstate any person appointed in exercise of the power."

The grounds of appeal and submissions

There are two grounds of appeal with respect to the learned judge's findings in relation to the first question. The appellant complained in ground 1 that the learned judge erred in finding that section 35 of the Interpretation Act was applicable to the issues before her or included any rule or regulation which governed the Betting, Gaming and Lotteries Commission (BGLC).

In ground 2, it was contended that the learned judge erred in finding that section 35 of the Interpretation Act was the basis for any power in the BGLC to terminate the Claimant's services.

I have taken the liberty to summarize Mr. Henry's written submissions which he relied on orally as well, in relation to all the grounds of appeal that were filed.

With respect to the first question, Mr. Henry submitted that section 35 of the Interpretation Act was irrelevant to the issue before the learned judge for the following reasons:

- (a) The BGLC specifically incorporated the provisions of section 28 of the Interpretation Act as an express consequence of making the Commission a body corporate and does not make any reference to section 35.
- (b) There is no rule of statutory interpretation that where in a statute there is a provision empowering an entity to employ, also carries it, the right to dismiss.
- (c) The applicable rule of statutory interpretation is "*expression unius est exclusio alterius*" which provides that, in a statute, that which is specifically stated excludes that which is omitted from the specific statement.
- (d) Since the BGLC is a body corporate it is a *sine qua non* that such a body can only act through the officers it employs hence there is the need for section 28 of the Interpretation Act. Further, a body corporate does not as a necessity of incorporation require the power to dismiss an officer.
- (e) By the respondent's own pleading section 28 of the Interpretation Act was considered the only relevant provision.

Mr. Henry further submitted that section 35 of the interpretation Act does not refer to the word "employment" because it has no relevance to the powers of a statutory corporation. He said even if, which is denied, that if a power to employ includes by reference, the power to dismiss, there was no power to employ in the Commission itself, because salary being a fundamental term of the contract of employment, must be approved by the Minister of Finance. He submitted that since the BGLC was not the sole employer, it could not dismiss without consulting the Minister.

Finally, on this issue, Mr. Henry submitted that section 35 of the Interpretation Act does not confer the power to dismiss, because, it speaks only of the power to "*remove, suspend, re-appoint or re-instate any person appointed in exercise of the power*" (emphasis supplied).

Dr. Barnett submitted however, that the respondent having employed the appellant has the power to properly terminate her services. He argued that she was not a civil servant and did not fall under the Civil Service Regulations or Public Service Regulations, but was a party to a contract of employment with the respondent. In the circumstances, her employment was governed by the terms and conditions of her letter of appointment.

Dr. Barnett also submitted that it is an elementary rule of statutory interpretation that, in a statute, a provision empowering an entity to employ also carries with it a right to dismiss. This rule he said, is set out in section 35 of the Interpretation Act and acting pursuant to these provisions, the respondent who employed the appellant also had the power to terminate her services.

Dr. Barnett speaks of the right to "dismiss" but this word does not appear in section 35 of the Interpretation Act. It appears however, in the marginal note of the section which reads "power to appoint includes power to suspend or dismiss".

It is my view, that it is the duty of the court to interpret the language in which Parliament has thought fit to enact statutes. In particular, the Court must try to resolve verbal obscurities, ambiguities or grammatical difficulties and to explain the meaning of words and phrases. There are no obscurities, ambiguities or grammatical difficulties in this case. The problem lies however, in the

interpretation of the phrase "power to remove" when used in conjunction with the words "power to make the appointment" in section 35 of the Interpretation Act. The juxtaposition of these phrases together in the section does not, in my view, require that any special or particular meaning should be placed on any of them.

Looking at the section as a whole, together with the marginal note, it is further my view, that the marginal note could be used as an aid to construction. Support can be had for this proposition from the dicta of Lord Justice Upjohn in **Stephens v Cuckfield R.D.C.** [1960] 2 QB 373 when he states at 383:

"....the court whose duty it is to decide it must exercise its common sense upon the matter. While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the note in mind".

The use therefore of the marginal note, would add some clarity in the words used in the section in that the word "remove" could be interpreted to mean dismiss and further, that the word "appointment" may be construed to mean employment.

The respondent's power to appoint employees is clearly stated at paragraph 25 of the First Schedule of the Act. The paragraph states:

"Subject to the provisions of this paragraph, the Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a manager, a secretary and such other officers, servants and agents as it thinks necessary for the proper carrying out of its functions."

(Further emphasis supplied).

The words "appoint" and "employ" are used in the section, so once the appellant was appointed to the post she held, then, section 35 of the Interpretation Act would empower the respondent to remove the appellant from the post of Director of Administration.

The right to appoint or employ would only be limited to one restriction and that is in relation to salary in excess of \$7,500, which needs the approval of the Minister of Finance. The Minister would have no right or duty however, to veto or approve appointments to the staff of the respondent. In the same breath, he could not order the dismissal of a member of staff of the respondent.

It is reasonably clear to me, therefore, that the respondent having employed the appellant had the power to terminate her services. In the circumstances, I would not disturb the learned judge's ruling in respect of the first question.

I turn now to the grounds of appeal with respect to the second question. The appellant contends that:

1. The learned judge erred in finding that the definition of the "Public Service" demonstrated beyond doubt that the phrase is meant to cover persons employed in the "Civil Service" in the strict sense of the words and not to persons employed to a Statutory Body.
2. The learned judge erred in considering the definition of "Public Office" in section 125 of the Constitution by itself rather than in conjunction with the definition of "Public Officer" and "Public Service" in order to answer the question posed.
3. The learned judge erred in finding that the Claimant's employment is based on "an ordinary contract of service" without considering the important issues of what were the

terms of her contract of service and whether these terms called upon her to perform services on behalf of the Government of Jamaica in a civil capacity.

4. The learned judge erred in Law in relying on the case of ***R v Binger, Vaughan and Scientific Research Council Exparte Chris Bobo Squire*** (1984) 21 JLR 118, as authority for the view that the claimant was not appointed to a public office, and was subject to an ordinary contract of service, as the said case is distinguishable from the instant case, on material facts, (in particular the terms, scope and effect of the different statutory provisions) and the relevant law.

Mr. Henry submitted that the functions of the BGLC are varied. These include the regulating and controlling operations of betting and gaming in the Island; advising the Minister of Finance and to make recommendations under the Act; granting or refusing licences for bookmakers as well as investigating breaches of licences. He submitted these are clearly functions on behalf of the Government of Jamaica in a civil capacity, when one considers the definition of the Public Service.

Mr. Henry also submitted that the learned trial judge erred in considering section 125 of the Constitution in a vacuum and ought to have taken into account the work of the Commission, the payment of staff from the Consolidated Fund and the method of employment. He also submitted that the learned judge had erred in using the constitutional provision vesting the power to make appointments to the Public Service in the Governor General, to mean that every Public Officer had to be appointed by the Governor General himself.

Mr. Henry submitted that ***R v Binger, Vaughn & Scientific Research Council, Ex-parte Bobo Squire*** (supra) is distinguishable on its facts and the

application of the law. He argued that the claim before the Court in that case was for the prerogative order of certiorari. It was his view, that the issues in that case concerned the extent to which the principles of natural justice apply in cases of dismissals from employment and whether the remedy of an order of certiorari lies in those circumstances. He submitted these were not the issues in the instant case. He also submitted that in the Binger case, the Research Council did not have the necessary element of functioning as a public body since the functions were concerned with basically private research.

Mr. Henry finally submitted that the appellant's contract of employment is buttressed by statutory and procedural requirements and contains statutory restrictions as to the kind of contract which the BGLC may make with its servants, and it has absolutely no authority, express or implied, to dismiss them.

In response, Dr. Barnett submitted that the Public Service Regulations apply only to persons who are appointed by the Governor General on the advice of the Public Service Commission. He argued that the power to make appointments to public offices is provided for in section 125(1) of the Constitution of Jamaica ("the Constitution"). The section states:

"125. (1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor General acting on the advice of the Public Service Commission."

Dr. Barnett argued that the appellant who was appointed by the Commission cannot therefore demand that the procedures prescribed by the Public Service Regulations should be applied to her. He said that her

employment is based on an ordinary contract of employment and that she would be subject to its terms. He referred to and relied on the case of *R v Binger, Vaughan and Scientific Research Council, Exparte Chris Bobo Squire* (supra).

Dr. Barnett further submitted that in attempting to interpret the provisions of the Public Service Regulations and of the Act, it is necessary to examine the statutory provisions, not singly and in isolation, but as whole. On this basis, he argued, that paragraph 25(2) of the First Schedule to the Act, makes a clear and unmistakable distinction between two categories of employees: public officers who wish to gain employment with the Commission and still retain their public service entitlements and are being regarded as continuing in the service of Government by special arrangement; and those who do not and therefore cease to be public officers on entering the employment of the Commission.

Who is really a Public Officer? Section 1(1) of the Constitution gives the following definitions:

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“public office” means any office of emolument in the public service;

“the public service” means subject to the provisions of subsections (5) and (6) of this section, the service of the Crown in a civil capacity in respect of the Government of Jamaica (including service as a member of the Judicial Service Commission, the Public Service Commission or the Police Service Commission), and includes public service in respect of the former Colony of Jamaica.”

In the very old case of ***R v Dr. Burnell*** (1698), Carth 478, the criterion for determining a public officer was firmly established as follows:

"every man is a publick officer who hath any duty concerning the publick, and he is not less a publick officer where his authority is confined to narrow limits, because 'tis the duty of his office, and the nature of that duty, which makes him a publick officer and not the extent of his authority."

The case of ***I. R. Commissioners v Hambrook*** [1956] 2 QB 641 is also instructive. Lord Goddard CJ, in considering the nature of employment in the service of the Crown, explains the position with reference to the established civil servant thus at p 653:

"... an established Civil Servant, *whatever his grade*, is more properly described as an officer in the civil employment of Her Majesty ... "

At page 654 Lord Goddard further stated:

"an established civil servant is appointed to an office and is a public officer, remunerated by moneys provided by Parliament, so that his employment depends not on a contract with the Crown but on appointment by the Crown ... "

In the light of the above definitions of a "public officer", "public office" and "the public service" above, was the appellant at the material time appointed on the advice of the Public Service Commission and was she in receipt of emoluments while:

"in the service of the Crown in a civil capacity in respect of the government of Jamaica"?

The facts of the appellant's appointment must be considered in determining whether or not she is a Public servant. Her letter of appointment is

dated May 22, 1995 and is exhibited to the affidavit of the Executive Director of the BGLC sworn to on the 29th August 2003. It states inter alia:

"I am directed to offer you employment as Acting Director of Administration in the service of the Betting, Gaming and Lotteries Commission, with effect from June 1, 1995.

You are being employed in the first instance for a probationary period of six (6) months. If at the expiration of the probationary period your work is regarded as satisfactory, you will be appointed to fill the post.

Your appointment will be subject to the rules and regulations of the Commission and is terminable by two (2) months notice in writing on either side, or two (2) months pay in lieu of notice by the Commission.

You will be responsible to the General Manager for the due performance of your duties ..."

The letter then sets out the appellant's remuneration and benefits. Finally in the very last paragraph of this letter of appointment it states:

"Please signify your acceptance of the appointment based on the foregoing terms and conditions by signing the attached copies of this letter."

The appellant's signature appears on the document with the date 31st May 1995. In a letter dated June 2, 1995 the Honourable Minister of Finance was written to by the Chairperson of the BGLC seeking his approval for confirmation of the appellant's appointment, pursuant to the provisions of paragraph 25(1) of the First Schedule of the Act. This approval was necessary since her emoluments had exceeded \$7,500 annually.

It seems to me that having regards to the appellant's appointment to the BGLC, the grounds of appeal in relation to the second question could be easily disposed of and the appeal dismissed.

However, I will take the matter one step further. It is my view, that on any given interpretation, the term "public servant" or "public officer" must be taken to mean someone employed in the civil service in the strict sense of the word. I do agree therefore with Dr. Barnett, that the term would not apply to persons employed to a statutory body, such as the BGLC, whose constituent statute incorporates by way of reference the provisions of section 28 of the Interpretation Act. The definition in my opinion, deals with persons engaged in "the service of the Crown in a civil capacity in respect of the Government of Jamaica..." In this context the word "Crown" means "Her Majesty in right of Her Government in the Island." (See section 2(2) of the Crown Proceedings Act.) The appellant in this case was clearly not so engaged.

I also agree with Dr. Barnett that by virtue of section 125 of the Constitution, a person can only be appointed to a public office by the Governor General acting on the advice of the Public Service Commission. It is beyond dispute that the appellant was not so appointed.

There is one further aspect of the case that must be considered. Paragraph 12 of the First Schedule to the Act expressly states that the office of Chairman or member of the Commission shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica. The clear inference therefore, is that the persons employed by and subordinate to those persons

would not have a more elevated constitutional status. Accordingly, paragraph 25 of the First Schedule expressly empowers “the Commission” to “employ ...on such terms and conditions as it thinks fit ...” the staff of the Commission. This section in my view is reinforced by section 28(2)(ii) and (vi) of the Interpretation Act.

Conclusion

Having regard to the foregoing, I agree with the submissions on behalf of the respondent, that the appellant was not a public officer within the terms of the Public Service Regulations (1961). She was employed to and appointed by the Betting Gaming & Lotteries Commission acting in its own judgment and exercising the powers granted to it by paragraph 25(1) of the First Schedule to the Act, and section 28 of the Interpretation Act. In the circumstances, the respondent as her employer had the statutory power to dismiss her. She was employed under a contract for services and as such, she is not a public officer.

I am not in agreement also with the submission of the appellant that the learned judge erred in law in relying on the case of *R v Binger, Vaughan and Scientific Research Council, Exparte Chris Bobo Squire* (supra).

The grounds relating to the second question also fail. I would dismiss the appeal with costs to the respondent to be taxed if not agreed.

HARRIS, J. (Ag.)

This is an appeal from a judgment of the Honourable Miss Justice Gloria Smith in which she ruled that the respondent has power to dismiss the appellant, having employed her, and that she is not a public officer.

The principal facts which form the genesis of the litigation can be briefly outlined. On June 1, 1995, the appellant commenced employment with the respondent. Her letter of appointment dated May 22, 1995, under the hand of the General Manager for the Respondent, recorded the terms and conditions of her employment. A copy of the letter was executed by the appellant on May 31, 1995. Her contract of employment was terminated on February 19, 2001.

On April 23, 2002, she instituted proceedings against the respondent, seeking relief, inter-alia, for wrongful dismissal. A Case Management Conference was conducted on June 12, 2003, at which time it was agreed between the parties that the following preliminary issues be referred to the Court for its determination.

- "(a) Whether the defendant has any statutory powers to dismiss the Claimant and;
- (b) Whether or not the Claimant has the status of a "Public Officer" within the terms of the Public Service Regulations."

The grounds of appeal with respect to question 1 are as follows:

Ground 1

- "(1) The Learned Judge erred in finding that Section 35 of the Interpretation Act was applicable to the issues before her or included any rule or regulation which governed the **BETTING, GAMING & LOTTERIES COMMISSION (BGLC)**.
- (2) The Learned Judge erred in finding that Section 35 of the Interpretation Act was the basis for any

power in the BGLC to terminate the Claimant's services."

Mr. Henry argued that section 35 of the Interpretation Act bore no relevance to the issues before the learned trial judge. The Betting, Gaming & Lotteries Act specifically incorporates the provisions of section 28 of the Interpretation Act and, as an express consequence of making the Betting, Gaming & Lotteries Commission a corporate body, omitted section 35. He further urged that the maxim *expressio unius est exclusio alterius* applies, in that, statements in statutory provisions which are specifically stated, exclude those which are omitted. It was also contended by him that as a body corporate, the respondent does as a necessity of incorporation require the power to dismiss an officer.

It was Dr. Barnett's submission that it was a basic rule of statutory interpretation that a provision which permits an entity to employ also gives it a right to dismiss. He argued that sections 28 and 35 of the Interpretation Act are critical to the determination of the issues.

The first question which arises is whether section 35 of the Interpretation Act is a determinant factor as to whether the respondent was empowered to dismiss the appellant, as the learned trial judge found. This the Court will have to resolve the issue by examination of the framework of the relevant statutes and decide whether a right of dismissal was conferred on the respondent by virtue of section 35 of the Act. It is therefore necessary to set out the pertinent provisions of the Betting, Gaming & Lotteries Act and the Interpretation Act.

Section 4 of the Betting, Gaming & Lotteries Act provides:

"4. -(1) There shall be established a body to be called the Betting, Gaming and Lotteries Commission.

(2) The Commission shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.

(3) The provisions of the First Schedule shall have effect as to the constitution and operation of the Commission and otherwise in relation thereto."

Section 25 (1) part III of the First schedule of the Betting, Gaming & Lotteries Act states:

"25. -(1) Subject to the provisions of this paragraph, the Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a manager, a secretary and such other officers, servants and agents as it thinks necessary for the proper carrying out of its functions:

Provided that no salary exceeding seven thousand five hundred dollars *per annum* shall be assign to any post without the prior approval of the Minister."

Section 28 (1) of the Interpretation Act, so far as is relevant states:

"28.-(1) Subject to subsection (2) where an Act passed after the 1st April, 1968, contains words establishing, or providing for the establishment of, a body corporate and applying this section to that body those words shall operate –

- (a) to vest in that body when established –
 - (i) the power to sue in its corporate name
 - (ii) the power to enter into contracts in its corporate name, and to do so that, as regards third parties, the body shall be

deemed to have the same power to make contracts as an individual has;

- (iii) the right to have a common seal and to alter or change that seal at pleasure;
- (iv) the right to acquire and hold any real or personal property for purposes for which the body is constituted and to dispose of or charge such property;
- (v) the right to regulate its own procedure and business; and
- (vi) the right to employ such staff as may be found necessary for the performance of its functions;"

Section 35 of the Interpretation Act reads:

"35. Where by or under any Act a power to make any appointment is conferred, then, unless the contrary intention appears, the authority having power to make the appointment shall also have power to remove, suspend, reappoint or reinstate any person appointed in exercise of power."

By section 4 (1) (2) of the Betting, Gaming and Lotteries Act, the respondent is ordained a body corporate expressly endowed with the powers bestowed on it by statute. As a creature of statute, its powers are circumscribed by the statutory provisions by which it is regulated. Its powers are restricted to those which are expressly conferred on it, or impliedly authorized by statute. However, it does not always follow that express reference to provisions in an enactment excludes any implied reference to another. The maxim *expressio*

unius exclusio alterius in some cases may be of assistance in construing a statute.

In **Dean v Weisengrund** [1955] 2 All ER 432 at p. 438 Jenkins L.J. with reference to maxim said:

"But this maxim is, after all, no more than an aid to construction, and has little, if any weight where it is possible as I think it is in the present case, to account for the "expression unius" on grounds other than an intention to effect the "exclusion alterius."

At page 439 he went on to say:

"In **Colquhoun v. Brooks**, (1887), Lopes, L.J. said (21 Q.B.D. at p. 65):

"The maxim 'expressio unius, exclusio alterius', has been pressed upon us. I agree with what is said in the court below by WILLS, J., about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice."

The application of the maxim in the instant case would result in obvious uncertainty and injustice rendering section 25 (1) Part 11 of the First Schedule of the Betting, Gaming and Lotteries Act inconsistent in its operation.

The respondent's constitution and operation are subject to the First Schedule of the Betting, Gaming and Lotteries Act. It is empowered to appoint employees by virtue of section 25 (1) Part II of the First Schedule. Not only is the respondent authorized to appoint and employ officers but may do so on such

remuneration, terms and conditions as it deems fit. This right, however, is subject to the approval of the Minister of Finance being a condition precedent to any appointment to a post, the salary of which does not exceed \$7,500.00 per annum.

A right to employ is vested in the respondent. The appellant's salary at the date of employment was \$309,421.00 per annum which clearly had been in excess of \$7,500.00. It has been shown that ministerial approval had been sought with respect to the Appellant's employment. This was unnecessary. The respondent was entitled to employ or appoint the appellant without the Minister's intervention. The fact that the Minister's approval was granted would in no way divest the respondent of the exclusive right to employ the appellant.

The Betting, Gaming and Lotteries Act is silent as to powers of dismissal. It would not have been the intention of Parliament, to deprive it of its powers to dismiss. Having conferred on the respondent a privilege to employ, it could not be that it would not have been endowed with competence to dismiss. Applying the maxim in the instant case would result in manifest absurdity. It would clearly render the operation of section 25 (1) Part 111 of the First Schedule to the Act capricious and unjust. One is compelled to look to some apposite legislation as to the respondent's authority to dismiss and such enactment would be the Interpretation Act. The Interpretation Act is of general application to every statute, unless an intention to the contrary is shown.

In construing section 25 (1) Part III of the Schedule to the Betting, Gaming and Lotteries Act, regard must be had to other provisions of the Interpretation Act, notwithstanding the Betting, Gaming and Lotteries Act expressly includes section 28 of that Act. Specific provision having not been incorporated in the Betting, Gaming and Lotteries Act with respect to dismissal of employees, recourse must be had to section 35 of the Interpretation Act. Section 35 of the Act must, as a necessity, be imported into the Betting, Gaming and Lotteries Act for its efficacy and full effect. By section 35, the bestowal of a right to appoint is expressly inclusive of the power to remove "any person appointed in exercise of the power" to appoint.

Mr. Henry contended that section 35 of the Interpretation Act confers the power of "removal, suspension, re-appointment or re-instatement of any person appointed in exercise of the power" but no words with reference to termination of employment used.

In **Marquis Camden v Commissioners of Inland Revenue** [1914] 1

KB 641 at pp 647 and 648 Cozens-Hardy M.R. said:

"It is for the Court to interpret the statute as best they can. In so doing the Court may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well known and authoritative dictionaries..."

Eady L.J. at page 649 and 650 said:

"It is the duty of the Court to construe a statute according to the ordinary meaning of the words used, necessarily referring to dictionaries or other literature

for the sake of informing itself as to the meaning of any words..."

In order to discover the true meaning of the word "remove" in the context of section 35 of the Act, one must seek assistance from an authoritative dictionary. One of the meanings assigned to the word "remove", in the Oxford dictionary, is "dismiss from office." This is the meaning which is intended to be conveyed by section 35 of the Act.

As a rule, words must be construed as conveying their natural and ordinary meaning unless it is evident that they are used in a technical sense.

The word "remove" must be given its natural and ordinary meaning. It needs no extraneous aid to construction. "Remove" in the context of section 35 of the Interpretation Act read in conjunction with section 25(1) Part 111 of the Schedule to the Betting, Gaming and Lotteries Act could only be interpreted to mean, "remove from office". The right of dismissal by the respondent is manifestly ensconced in section 35 of the Act. The provision undeniably operates to clothe the Respondent with authority to dismiss any employee appointed by virtue of its right to employ or appoint him or her.

Mr. Henry also argued that the respondent is bound to follow the procedure laid down in the Public Service Regulations. In support of this proposition he cited the case of **R v The National Water Commission, Ex parte Desmond Alexander Reid** 21 J.L.R. 62.

The case cited is distinguishable from the present case. In that case the Commission had adopted and published certain disciplinary procedures which

they were obliged to follow before dismissing an employee for disciplinary breaches. The disciplinary procedures could not have been changed by the Commission without ministerial approval, in light of a transitional provision in the National Water Authority (Change of Name and Amendment) Act 1980.

In the present case paragraphs 4 of the Affidavits of Courtney Williams and Vaughan Goodison, both sworn on July 22, 2003, declare that the respondent adopted the Public Service Regulations in the regulatory procedure of its administrative activities with respect to staff. The learned trial judge found that this procedure was used by the respondent as a guideline.

It appears to me that even if the respondent utilized the procedure laid down by the Public Service Regulations with respect to matters affecting staff, the respondent is not mandated by statute so to do. This is an option the respondent chose to exercise and one which it could have changed at any time. It had a right to regulate its own procedure by virtue of section 28 (1) (a) (v) of the Interpretation Act. If it decided to use the Public Service Regulations in the management of its administrative procedures, this would not ascribe to the appellant rights as a holder of public office engaged in public service.

Mr. Henry outlined the functions of the respondent which are carried out by staff members. The functions to which he referred are those:

- (a) to regulate and control betting and gaming operations and to conduct lotteries.
- (b) to give advise and make recommendations to the Minister.

- (c) to grant licences to persons or entities involved in gaming operations.
- (d) to investigate breaches of licenses and impose penalties.

He urged that these functions are ones in which the appellant was employed in a civil capacity for the Government of Jamaica. Was she employed to execute these functions in a civil capacity for the Jamaican Government? Was she involved in public service as a public officer?

The right to appoint, remove and discipline a public servant is vested in the Governor General by virtue of section 125 of the Constitution. Such appointment is carried out on the recommendation of the Public Service Commission. There is no evidence that in the case of the appellant her appointment was instituted on the recommendation of the Public Service Commission so as to accord her the status of a public servant. There is nothing to show that the functions, which she carried out, were in a civil capacity, in respect of the Government of Jamaica. I propose to deal with this issue more extensively later.

It is of interest to note that under the Civil Service Establishment Act, the service of a public servant, who falls within the purview of the Act, would not be deemed public service unless the Minister so orders. Further, at the time of her appointment although the relevant Minister's approval was sought, such approbation was not required by law.

Section 28 (1) (a) (11) of the Interpretation Act grants the respondent the right to enter into contracts. The respondent is entitled to engage in contractual

relations with persons, including the appellant, whose salary surpasses \$7,500.00 annually, without the Minister's approval, in accordance with section 25 (1) of the Betting, Gaming and Lotteries Regulations.

On the appellant's execution of the letter of appointment, she entered into a contract with the Respondent. Section 28 1(a) (v) of the Interpretation Act endows the respondent with regulatory powers concerning its business and procedure. Having executed the letter, the appellant became subjugated to the rules and regulations of the respondent as is borne out by the third paragraph of the letter which reads:

"Your appointment will be subject to the rules and regulations of the Commission and is terminable by two (2) months notice in writing on either side, or two (2) months pay in lieu of notice by the Commission."

The terms and conditions laid down in the letter of appointment were accepted by the appellant. She submitted herself to the rules and regulations of the respondent. If, as Messrs Williams and Goodison averred, the Public Service Regulations (1961) were intended to be the governing edict of the Betting, Gaming and Lotteries Commission, express provision would not have been made granting a right to the respondent to make its own regulation.

The appellant was paid by the respondent, but not from the Consolidated Funds as urged by Mr. Henry. Under section 16 (a) (b) (c) of Part II of the Schedule to the Betting, Gaming and Lotteries Act the respondent's funds and resources are such that it would not in my view, rely on the Consolidated fund to meet its obligations.

Section 16 provides:

- "16. The funds and resources of the Commission shall consist of –
- (a) sums placed at its disposition pursuant to the provisions of section 28 or section 31 of the Act;
 - (b) moneys collected as penalties under section 14;
 - (c) all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions under this Act or any other enactment."

Under section 28(1) of the Betting, Gaming and Lotteries Commission Act the Minister of Finance is at liberty to establish schemes for financial contributions from bookmakers. By 28 (2) of the Act such contributions must be applied to matters such as:

- "(a) the improvement of breeds of horses;
- (b) the advancement or encouragement of veterinary science or veterinary education;
- (c) the improvement of horseracing;
- (d) the improvement of athletic games and sports;
- (e) contribution to purses in connection with horse races run on approved racecourses;
- (f) the regulation and control of the horse-racing industry by the Jamaica Racing Commission exercising functions under this Act, the Jamaica Racing Commission Act, or any other enactment;

- (g) the carrying out of the functions of the Commission under this Act or a other enactment."

The provision at (g) above clearly shows that there is a distinction between funds paid into the Consolidated Fund and those which are available to the Commission in carrying out its functions. Payment of salaries must rank as a part of the respondent's functions, and it was the respondent which paid the appellant's salary.

By section 14 of the Betting, Gaming and Lotteries Commission Act monies collected as penalties for breaches under the Betting, Gaming and Lotteries Act are paid to the respondent and are available to its use. Under the Act, the respondent is given the right to utilize other funds or property which become vested in it, in fulfilling its functions. It is clear the respondent would enjoy a source of funding of its own and would not have to resort to the use of the Consolidated Fund to meet salaries and allowances for the staff as is in the case of public servants.

It is clear that the appellant was employed to the respondent and it was endowed with the right to dismiss her. The learned trial judge was correct when she found that section 35 of the Interpretation Act was applicable to the issues before her. Her finding that the respondent was empowered to dismiss the appellant is unassailable.

Four grounds were filed with respect to question 2, the first two are stated hereunder:

- “(1) The Learned Judge erred in finding that the definition of “The Public Service” demonstrated beyond doubt that the phrase is meant to cover persons employed in the “Civil Service” in the strict sense of the words and not to persons employed to a Statutory Body.
- (2) The Learned Judge erred in considering the definition of “Public Office” in Section 125 of the Constitution by itself rather than in conjunction with the definition of “Public Officer” and “Public Service” in order to answer the question posed.”

Mr. Henry argued that the learned trial judge erred in giving consideration to section 125 of the Constitution without taking into account matters such as the evidence of the appellant that the former Ministry of the Public Service approved all employment to the respondent, as well as other evidence that the Public Service Regulations (1961) was utilized by the respondent in regulating administrative proceeding with respect to staff. He further argued that she failed to consider the type of work carried out by the staff at the Betting, Gaming and Lotteries Commission who are paid from public funds, and the unchallenged evidence that the Betting, Gaming and Lotteries Commission is a part of the National Budget, performing “specified public services.”

Section 125 of the Constitution provides:

“125. -(1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission.”

Section (1) (1) of the Interpretation Section of the Constitution provides:

“public officer” means the holder of any public office and includes any person appointed to act in any such office;

“the public service” means, subject to the provisions of subsections (5) and (6) of this section, the service of the Crown in a civil capacity in respect of the Government of Jamaica (including service as a member of the Judicial Service Commission, the Public Service Commission or the Police Service Commission) and includes service in respect of the former Colony of Jamaica.”

By section 125 of the Constitution, the appointment of public officers resides with the Governor-General who acts on the Public Service Commission’s advice. Persons in the public service are restricted to persons appointed by the Governor-General. Those persons are ones who serve the Crown in a civil capacity by virtue of section 125 (1) of the Constitution. “Crown” means Her Majesty, in right of her government in the island and “officer,” in relation to the Crown, includes servant of Her Majesty. The appellant was not appointed by the Governor-General nor can she be said to be a servant of her Majesty, she being an officer of a statutory body not government department.

Although public servants are appointed by the Governor-General on the recommendation of the Public Service Commission, the Governor-General, may, however approve the appointment of a public servant for employment with the Betting, Gaming and Lotteries Commission. Section 25 (2) part 111 of the Schedule to the Betting, Gaming and Lotteries Act provides:

"(2) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any officer in the service of the Government to any office with the Commission and any officer so appointed shall, while so employed, in relation to pension, gratuity or other allowance, and in relation to other rights as a public officer, be treated as continuing in the service of the Government."

Section 25 (2) of the First Schedule to the Betting, Gaming and Lotteries Act irrefutably distinguishes a person who is an employee of the Betting, Gaming and Lotteries Commission and one who is a public servant desiring to be employed with the Betting, Gaming and Lotteries Commission. It expressly prescribes that such a public servant retains his entitlement and is treated as continuing in the service of the Government of Jamaica. The fact that there is specific provision by which the Governor-General may sanction the appointment of a public servant to the Betting, Gaming and Lotteries Commission, with such an officer being recognised as continuing in the public service, clearly demonstrates an obvious line of demarcation between holders of a public office and employees of the Betting, Gaming and Lotteries Commission. If it had been decreed that an officer of the Betting, Gaming and Lotteries Commission is a public servant, there would have been no necessity for this distinction.

It is patent that although the respondent is a statutory corporation set up by government, its officers are not public servants. It does not rank as a department of government. In making the distinction between statutory companies and government departments Carberry, J.A., in **R v. Dr. A. Binger**,

N.J. Vaughan and Scientific Research Council, ex parte Chris Bobo

Squire, (1984) 21 JLR 118 at page 125 declared:

"The (Scientific Research) Council appears to me to be a fairly typical statutory corporation set up by Government, with the intent that, subject to a certain measure of overall control by Government, it is to carry out the functions set out in section 5 of the Act. It is *not* a department of Government but an entity with a life of its own intended to operate like any other corporation or company, liable to sue and to be sued like anyone else. Though it has public elements I would not regard it as being akin to a Government department or operating in the public law field. Such decision as it might make would be akin to those made by any other corporation, public or private, and so not seem to impinge on the citizens in the way that the decision with regard to slum clearance, demolition orders, or control of building etc. do. It may from time to time get involved in the field of public law, but primarily it was intended to operate in the field of private law with the flexibility that implies. During the course of the argument learned counsel for the appellant referred us to a decision of the High Court of Australia *The Sydney Harbour Trust Commissioners v Ryan* (1913) C.L.R. 358... the case illustrates that a Statutory Corporation once set up, enjoys all the liabilities and rights of ordinary corporations: and as regards its servants it operates in the field of private law, unless any special reason can be found, as in **Ridge v. Baldwin** for holding that the employment is a "public office."

It follows therefore that the respondent, not being a department of government, its employees could not be recognized as having the rank of public servants.

The final grounds which can conveniently be considered simultaneously were stated as follows:

"(3) The Learned Judge erred in finding that the Claimant's employment is based on "an

ordinary contract of service" without considering the important issues of what were the terms of her contract of service and whether those terms called upon her to perform services on behalf of the Government of Jamaica in a civil capacity.

- (4) The Learned Judge erred in Law in relying on the case of **R v Binger, Vaughan and Scientific Research Council, Exparte Chris Bobo Squire**, 1984 21 JLR 118, as authority for the view that the Claimant was not appointed to a public office, and was subject to an ordinary contract of service, as the said case is distinguishable from the instant, on material facts, (in particular the terms, scope and effect of the different statutory provisions) and the relevant law."

It is necessary at this stage to outline the Contract. It was expressed in the following terms:

"Ref. P/E 4

May 22, 1995

Miss Eugennie Ebanks
173 Sixth Salmon Way
Braeton, Phase 1
Bridgeport P.O.
ST. CATHERINE

Dear Miss Ebanks:

I am directed to offer you employment as Acting Director of Administration in the services of the Betting, Gaming and Lotteries Commission, with effect from June 1, 1995.

You are being employed in the first instance for a probationary period of six (6) months. If at the expiration of the probationary period your work is regarded as satisfactory, you will be appointed to fill the post.

Your appointment will be subject to the rules and regulations of the Commission and is terminable by two (2) month's notice in writing on either side, or two (2) month's pay in lieu of notice by the Commission.

You will be responsible to the General Manager for the due performance of your duties. A copy of the duties and responsibilities for the post is attached.

You will be remunerated as under:

Basic salary	-	SEG 1 282,000 per annum
Commuted Travel Allowance	-	26,388 per annum (without Motor Car)
		57,984 per annum (with Motor Car)
Laundry Allowance	-	4,245 per annum
Uniform Allowance	-	7,176 per annum
Duty Allowance	-	15,000 per annum

On confirmation you will be: -

- (i) required to comply with the conditions of the Commission's Pension Scheme and contribute to it 5% or 10% of your monthly salary.
- (ii) eligible for Group Life Insurance coverage which will be effected on the first day of the month following the date of confirmation of your appointment.
- (iii) enrolled in the Blue Cross Health Insurance Scheme and will be required to make a contribution equivalent to 10% of the cost of coverage.

You will be entitled to leave as under:-

Vacation Leave	-	35 working days
----------------	---	-----------------

Departmental Leave - 14 working days

Sick Leave - 14 days per calendar year

The normal hours of work are from 8:30 a.m. – 5:00 p.m. Mondays-Thursdays and 8.30 a.m. to 4:00 p.m. on Fridays, with the usual one (1) hour for lunch. You may be called on from time to time to work outside of these hours in order to meet emergency situations.

Please signify your acceptance of the appointment based on the foregoing terms and conditions by signing the attached copies of this letter.

Yours faithfully,
BETTING, GAMING AND LOTTERIES COMMISSION

Annette Smith (Mrs.)
GENERAL MANAGER."

The Learned Trial Judge found that the appellant's employment was the subject of an ordinary contract of service with the respondent. The question therefore is whether in light of her employment she was a servant of the respondent, or, an employee of the government, and the holder of a public office.

In dealing with the issue as to whether an employee of a statutory authority is its servant, or a public servant, Carberry J.A., in **Binger's** case, (supra) at page 150 G stated:

"To decide whether a servant or employee is the holder of a "Public Office" in the sense in which that term is used in this context, as distinct from being a servant in a simple master and servant relationship, there must be some element of a public nature that marks out the office. It is not enough that the employer is a statutory corporation... But it may be

sufficient if the effect of the statute is to create a special status."

In **Binger's** case (supra) the applicant was employed to the Scientific Research Council. His employment was terminable by three months' notice by either party. The contract between the parties contained provisions for suspension and dismissal. The Applicant was suspended and subsequently dismissed. On dismissal the applicant sought relief in the nature of certiorari and prohibition. In upholding a preliminary objection, the Supreme Court found that the relationship of master and servant existed between the Applicant and the Scientific Research Council. The Council, being a statutory body, had discretionary powers to appoint officers on terms and conditions as it deems fit. The findings of the Court were upheld on appeal.

Mr. Henry urged that the issues before the court in **Binger's** case (supra) are dissimilar to those in the present case. It was also his contention that although section 8 (1) of the Scientific Research Council Act is almost similar to section 25 (1) of the First Schedule to the Betting, Gaming and Lotteries Act, the Scientific Research Council Act does not contain provisions akin to section 4 of the Betting, Gaming and Lotteries Act, incorporating section 28 of the Interpretation Act and it excluding section 35 of that Act.

Binger's case (supra) had been given consideration by the Learned Trial Judge. The fact that section 8 (1) of the Scientific Research Council Act is substantially comparable to section 25 (1) of the First Schedule to the Betting, Gaming and Lotteries Act and that the Scientific Council Act is silent as to

sections 28 and 35 of the Interpretation Act, would not preclude the Learned Trial Judge from taking the case into account. What is of importance is whether the general principles laid down in **Binger's** case (supra) was applicable to this case.

The Scientific Research Council having appointed Binger also had power to dismiss him. On dismissal, and on an application for prerogative orders, as a preliminary point, the Court was called upon to determine whether the parties enjoyed a relationship of master and servant. In the present case the respondent has the power to appoint and dismiss the appellant. On dismissal, the issue of a master and servant relationship arose. The Learned Trial Judge was guided by the principles laid down in the decision in **Binger's** case (supra) in determining whether a contract giving rise to a master and servant relationship was concluded between the appellant and respondent. In my view, she was correct in so doing.

The respondent, the Betting, Gaming and Lotteries Commission, enjoys all rights and subject to liabilities of an ordinary company. The Betting, Gaming and Lotteries Act demonstrates that it was established by the Government, reserving some amount of ministerial supervision over its functions. It is a separate entity from the government department. The intention of the framers of the Betting, Gaming and Lotteries Act was to bestow on the respondent an existence of its own. It cannot be denied that it carries with it some public character. However, it cannot be recognized as operating as a government department. In my view

the respondent not being a department of government, is authorized to employ staff in such terms and conditions as it deems fit.

By the letter of appointment, the appellant accepted employment in the service of the respondent. She consented to become subject to the its Rules and Regulations. The respondent is empowered to make its own regulations. Even if no Rules or Regulations were promulgated by the respondent and it chose to adopt the procedure laid down in the Public Service Regulations, the implementation of those Regulations would not convert the status of the respondent into a department of government. The relationship of master and servant doubtlessly existed between the appellant and respondent.

In the circumstances of this case, the Betting, Gaming and Lotteries Act had not created a special status which would warrant the appellant being classified as the holder of a public office. She did not enjoy rights of a public officer within the context of the Public Service Regulations.

Further, paragraph 12 of the First Schedule to the Betting, Gaming and Lotteries Act expressly excludes the Chairman and members of the Betting, Gaming and Lotteries Commission from being afforded the status of public officers within the context of the Constitution. It appears to me that Parliament in its wisdom, having specifically excluded the Chairman and members of the Betting, Gaming and Lotteries Commission from being holders of public offices, must have intended that the employees of the Commission would also be

restricted from being accorded the status of public officers within the meaning of section 125 of the Constitution.

It is clear that the appellant was not a public officer within the purview of the Public Service Regulations (1961). Her employment by the respondent was by virtue of the powers granted to them under section 25 (1) of the First Schedule to the Betting, Gaming and Lotteries Act and section 28 of the Interpretation Act. The respondent, being her employer, was empowered to dismiss her.

I would dismiss the appeal with costs to the Respondent to be agreed or taxed.

FORTE, P.

ORDER

Appeal dismissed. Costs to the respondent to be taxed if not agreed.

