



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CONSOLIDATED CLAIMS NO. HCV 06153 of 2011 AND HCV 06154 OF 2011

CLAIM NO. 2011 HCV 06153

**IN THE MATTER OF THE CIVIL PROCEDURE RULES 2002
PART 56**

AND

IN THE MATTER OF THE COMMISSIONER OF POLICE

AND

IN THE MATTER OF THE JAMAICA CONSTABULARY FORCE

REGINA V. THE COMMISSIONER OF POLICE

EX PARTE TERRENCE EARL DUNCAN AND HENRY BARTON

**Judicial Review – Termination of Relationship – Whether Employees or Office
Holders – Whether Judicial Review Appropriate**

HEARD: 7th AND 8th March 2012 and 5th April, 2013

BEFORE: JUSTICE DAVID BATTS Q.C.

**Michael Howell & Roxanne Mars instructed by Knight, Junor & Pickersgill for
Claimant.**

Alicia McIntosh instructed by the Director of State Proceedings for Respondent.

1. Clive Henry Barton is an auto-body repairman and Terrence Earl Duncan is an auto mechanic. They have each served this country in that capacity for 22 years and 17 years respectively. They worked continuously without interruption or complaint at the Jamaica Constabulary Transport and Repairs Division. Mr. Duncan is 52 years old having been born in 1959, Mr. Barton is 40 years old having been born in 1971.

2. These consolidated claims have come before this court of Judicial Review because in July 2011 they both found themselves suddenly and without notice, in the category of the unemployed. They have received no form of compensation, no pension and no gratuity whatsoever. They consulted attorneys and after an exchange of letters this claim was filed in court.
3. In the course of the hearing I enquired of counsel for the Crown whether she intended to pursue this matter and whether legalities aside there was not some other way the matter might be resolved. Counsel indicated that her instructions were to proceed. It is a matter of some concern that a government (or anyone for that matter) could reward long and dedicated service in this way.
4. However, I am a judge presiding in a court of law and must decide these issues without regard to moral questions and I shall consider only the legal issues placed before me.
5. Each Fixed Date Claim, filed pursuant to Leave granted on the 12th October 2011 seeks:
 1. An order of Certiorari to quash the decision of the Commissioner of Police for the Non-Renewal of Contract on July 2, 2011 and a further order that the Commissioner be compelled to reinstate the Claimant as a District Constable/Auto body repairman.
 2. A Declaration that the Commissioner of Police acted unlawfully and/or contrary to the principles of natural justice when it was decided not to renew the Applicant's Contract of Employment.
 3. An order as to the costs of this claim.
 4. Such further or other relief as this Honourable Court deems fit.
6. The claims are supported by Affidavits which tell more or less the same tale:
 1. Having worked for some considerable time in the capacity of auto mechanic/auto body repairman, in January 2011 their stated position was changed to District Constable.
 2. Notwithstanding the change in the description of the job title they both continued to do the very same job as before.

3. On or about the 3rd January 2011 they signed a new contract of employment as District Constable for a six month period January 3, 2011 to July 2, 2011.
4. On June 28th 2011, 6 months later, they received a letter stating that the Jamaica Constabulary Force (Rural Police) will be terminating their contract with effect 30th June 2011.
5. That letter stated no reason for the termination nor were either of them aware of any investigation pertaining to their work or conduct.
6. They retained an attorney who wrote to their employers and received a reply dated 17th August 2011 from the Human Resources Branch of the Jamaica Constabulary Force. That letter stated,

"Reference is made to your letter dated August 11 2011 in which you have indicated that the above individuals are your clients and you act on their behalf. The contents are duly noted.

Please be advised that Messrs. Duncan and Barton were employed on a contractual basis for the period January 2011 to July 2011 and their contract of employment was not renewed.

The initial letter issued inadvertently stated "Termination" and was subsequently retracted and a new letter was forwarded to the Transport and Repairs Division for delivery to Messrs. Duncan and Barton (see copies attached).

They were paid all outstanding sums owing to them."

The copy letter attached (dated 1st July 2011) reads as follows:

*"Re: Non-Renewal of Contract
District Constable Clive Barton*

This serves to officially inform you that the Jamaica Constabulary Force (Rural Police Force) will not be renewing your contract agreement which concludes on 2nd July 2011. You will be paid up to the 2nd July 2011 and all sums for vacation leave earned for the

period will also be paid. Additionally you will be paid Technical Allowance for the 6 months period January to June 2011 at the level of category 'C'.

Thank you for the contributions you have made to the Jamaica Constabulary Force and we wish for you all the best in your future endeavours."

7. The affidavits go on to state that employment with the Transport and Repair Division has been a lifelong career and they gave exemplary service in the period.
8. In the case of Terrence Duncan he states that in June 2010 Superintendent of Police Dietrich advised him to sign some documents in order to be recognized as an official contractor with the Government of Jamaica, before he could be paid. He sometime later completed an application filed with the Contractor General to be registered as an auto mechanic with the government of Jamaica. On the 6th October 2010 he was given an official Certificate of Registration for the national Contracts Commission making him a Registered Contractor with the Government as a Grade 5 Auto mechanic. The registration expires on 6th October, 2011.
9. They both complain of breaches of natural justice as they were not given a hearing before their contract was terminated.
10. At the commencement of this matter I enquired of Counsel for the Claimant whether Judicial Review as a remedy was available to his clients and made reference to the "Bobo Squire" line of cases. Counsel responded that he had obtained leave and that his client had no alternative remedy due to the passage of time and because the Industrial Disputes Tribunal had no jurisdiction in relation to matters involving the Constabulary (S. 25 of the Labour Relations and Industrial Disputes Act). He therefore elected to proceed with this claim for Judicial Review.

11. The parties agreed upon a bundle of documents which was admitted as Exhibit 7.
12. When cross examined Clive Barton stated that he was paid by the job. He stated he was employed by the Police Transport and Repairs Division. He first started as an apprentice. He writes a bill in order to be paid. He describes it as task work. In January 2011 "they" took himself and others to a room and "swear us as District Constables." After January 2011 he continued to do the same type of work. They did not tell him he would be a District Constable for 6 months. He was shown a pre employment Statement (Exhibit 6) which he admitted signing. He said he had no written employment contract. He was unaware of any probation period when he was made a District Constable. He also stated that no tax was deducted when he was paid. He said no one told him how to do his job but his working hours were 8 to 4:30 with a break at 12:00 – 1:00 for lunch. If you were late it could lead to suspension.
13. Terrence Duncan was also cross-examined. He was also paid based on bills submitted. He denied he was told the contract was for a 6 month period. He never received a letter saying he was employed to the JCF. He said he received \$45,000 per month after being made District Constable. Prior to that he was paid when a bill was submitted. He would get \$35,000 or \$15,000 per fortnight. "They give me anything they feel like to give us."
The following exchange occurred,
Q: In the 17 years you were not an employee
A: No, I just work"
He too denied knowing that the position of District Constable was for a temporary period.
14. In answer to the Court he stated that when he worked he used premises of the Transport and Repair Division. He has his own tools. He has a fixed time period. The bell would blow to let them know when to stop working. He pays his own tax as it is not deducted. He is required to wear a uniform which he had to purchase.

15. The respondent's affiant was not cross examined. Sanchia Gordon Hall was the Senior Director of the Human Resource Management and Development Department of the Jamaica Constabulary Force. She stated that prior to January 2011 both claimants did "job work" for the JCF. When the need arose they worked on JCF vehicles, and were paid upon presentation of their bills. At no time were they employees of the JCF.
16. She deponed further that in January 2011 they were told that they could apply to become District Constables. They did so and a 6 month contract was entered into between the claimants and the JCF.
17. They were given preliminary documents to sign. However, the contract terminated on the expiration of 6 months. By letter dated 28 June 2011 it was erroneously communicated to them that their contract was terminated effective 30th June 2011 pointing out that the JCF would not be renewing the contract which expired on the 2nd July 2011. At all material times the Claimants employment was on a contractual basis only.
18. Upon completion of the evidence each Counsel made submissions. This court invited submissions on the issue of jurisdiction. Counsel for the Defendant provided written skeleton submissions as did claimant's counsel.
19. Mr. Howell in his oral submissions stated that the Constables (District) Act had no provision which gave power to create a 6 month contract as District Constable. Further that when regard is had to the provisions of the Act, once appointed, a District Constable ought not to be removed without a fair hearing. He urged the court to prefer his client's oral testimony that they were unaware of a 6 month contract, to the evidence at paragraphs 5 and 6 of their respective affidavits, which is to the contrary. He also prayed in aid the Charter of Rights.

20. Miss McIntosh for the Crown, in her oral submissions, urged the court to find that the men were not employees. They were on a fixed term contract. If indeed the Commissioner of Police had no jurisdiction to enter into a 6 month contract as District Constables then that contract would be void and their status prior to that would be applicable. Hence they would be independent contractors. She relied on authorities to support a submission that this court has no jurisdiction where the issue is a contract for employment or indeed a matter of private contract. She relied on the cases of ***R v. Dr. A. Binger, NJ Vaughn and Scientific Research Council, Ex parte Chris Bobo Squire (1984) 21 JLR 118; Carlisle Howson and Andrea Howson v. The National Health Fund Claim NO. 2011 HCV00480*** unreported Judgment of Campbell J. Q.C. 1st February 2013 and ***Francis Municipal Councillors of Kuala Lumpur [1962] 3 AER 633***. When asked, counsel indicated that she could not resist an order to convert the proceedings.
21. I have carefully read the submissions provided as well as the authorities submitted by each counsel. In coming to my decision I have not found it necessary to resolve issues as to whether or what was the nature of the contractual relationship between the Claimants and the state. This is because on the evidence there cannot be a plausible submission that they had been appointed to the office of District Constable. The documentation suggests that steps preliminary to such an appointment had been made. I therefore find on a balance of probabilities that the Claimants were not validly appointed District Constables. Further the purported 6 months probationary period alleged by the Defendant is clearly ultra vires the provisions of the Act and would in any event be void and I so declare. None of these findings however negate the fact that for some considerable period both claimants worked on some contractual basis with the state. Whether that has terminated or was changed in January 2011 or in July 2011, does not change the fact that it was on a basis of contract. A private contract between the citizen and the state. One of the issues to be determined is whether it was a contract of employment or a contract for services. Another

issue is the terms and basis of termination of the contract whatever its nature. I agree with Counsel for the Crown that these issues are not appropriate for a court of Judicial Review.

22. In this regard it is necessary only to quote the words of my brother the Honourable Mr. Justice Campbell Q. C. as follows:

“A public body often time achieves its statutory objects by contractual means; therefore, not every activity of a public body will be amendable to judicial review. Questions as to whether a public body is entitled to enter into certain contractual arrangements is one of public law, and may be challenged by judicial review; if it can be shown, inter alia, that the public body acted for some ulterior motives. Once the body enters into a contract, issues concerning its enforcement is a commercial matter which can only be determined in private law.” (Hawson v NHF cited above)

23. The position as regards contracts of employment is only a specific application of that general principle. It follows I believe that the claimants in applying for Judicial Review of the termination of their contract (whether of employment or for services) came to the wrong forum.
24. It is appropriate that such issues be resolved after a trial and where there are pleadings, particulars, disclosure and discovery. It is not therefore a mere procedural matter. The issue in any event lacks the public interest element usual in Judicial Review.
25. The Rules, Order 56.10(3) (b) give the Court power to Order that the matter be dealt with as a claim and to give directions under Parts 26 and 27 (Case Management). This is what I propose to do.
26. I will therefore refuse the relief claimed in the application for Judicial Review. I direct that the claim continue as if commenced by Claim Form and propose to

make Case Management orders after I have heard submissions from both counsel.

27. On the question of costs I will hear the submission of Counsel before making an Order for the costs of this claim.

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David Batts Q.C.
Puisne Judge