

THE COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.23 OF 2004

BETWEEN:

JOSEPH JNO. LEWIS

Appellant

and

THE COMMISSIONER OF POLICE
THE POLICE SERVICE COMMISSION
THE ATTORNEY GENERAL

Respondents

Before:

The Hon. Mr. Adrian D. Saunders
The Hon. Mr. Michael Gordon, QC
The Hon. Ms. Suzie d'Auvergne

Chief Justice [Ag.]
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. J. Gildon Richards for the Appellant
Ms. Gloria Augustus for the Respondent

2004: October 13;
November 23.

JUDGMENT

[1] **SAUNDERS, C.J.[AG.]:** This case represents round two in the Court of Appeal between these parties. A year ago, this court had determined that Joseph Jno. Lewis, a police officer then on probation, had been dismissed by the Commissioner of Police in breach of the rules of natural justice. The Commissioner had not given the police officer an opportunity to respond to charges leveled against the officer by the Commissioner. We thought that it was not in the interests of the parties to order the officer's reinstatement. We remitted the matter to a Judge in Chambers to determine what measure of damages should be paid to Mr. Jno. Lewis following upon his unlawful dismissal. The Master

assessed the damages but Mr. Jno. Lewis is still aggrieved. He considers that the Master's award was inordinately low. He has appealed to this court.

- [2] The Master awarded Mr. Jno. Lewis the sum of \$3,479.18. Mr. Jno. Lewis claims that he is entitled to at least \$521,877.70. The enormous gap between these two figures reflects as between the Master and Mr. Jno. Lewis' legal advisers a complete difference of approach towards the assessment. The Master approached the assessment in this fashion: He noted that Mr. Jno. Lewis was merely on probation; that the Police Regulations contemplate that such officers could be dismissed if they were unfit to be confirmed; that the facts proved by the Commissioner suggest that Mr. Jno. Lewis could well have been deemed unfit; that, had the Commissioner observed the principles of natural justice, the Commissioner would therefore have been entitled to dismiss Mr. Jno. Lewis; and that therefore Mr. Jno. Lewis was only entitled to "a reasonable period [of notice] which would have covered the exercise of the proper procedures by the Commissioner".
- [3] Mr. Jno. Lewis and his legal advisers see matters quite differently. As far as they are concerned, the Master was not entitled to consider whether the officer could have been lawfully dismissed if the principles of natural justice had been properly observed. They are of the view that the officer, a 30 year old man, should be regarded as being entitled to all the emoluments he would have earned as if he had attained the retirement age of 60 years subject to any sums earned by him by way of mitigation of damages.
- [4] Perhaps at this stage I should briefly recount the circumstances that led up to the officer's dismissal. As a new recruit, Mr. Jno. Lewis was a constable on probation for a period of two years. Section 7(2) of The Police Act states that "if, at any time during the period of probation, the constable [was] found wanting in character or intelligence, or [was] otherwise unfitted to be a member of the police service his appointment may be terminated". Termination would be by the Police Service

Commission (PSC) but that body could delegate that function to the Commissioner. In this case the PSC had indeed properly delegated the function to the Commissioner.

- [5] During his first year Mr. Jno. Lewis performed creditably. Then he was transferred to Soufriere. A few months later he started reporting ill. Between 4th April, 2001 and 22nd October, 2001, he was absent from work for an aggregate of over 50 days. For all of those days, save two of them, he submitted sick leave forms. On many occasions he reported ill immediately after his scheduled days off. There are only three officers stationed at Soufriere and the frequent and unexpected absences of Mr. Jno. Lewis naturally placed undue strain on his colleagues.
- [6] It is idle to speculate on whether Mr. Jno. Lewis was a malingerer or whether, as he deposed, the water in Soufriere made him ill. One way or another, on the known facts, the Commissioner was entitled to take the view, which he took, that this recruit was unsuited, because of his constant absences, to be confirmed as a police officer. In these circumstances, it is rather difficult to see how Mr. Jno. Lewis can be expected to obtain the level of damages that he claims. There is no basis to presume that this officer would have been confirmed in his employment.
- [7] In the case of **Boyo v. Lambeth L.B.C.**¹ the English Court of Appeal held that “an employer’s liability in damages for wrongful dismissal did not continue beyond the time at which, under the terms of the contract of employment, the employer could lawfully have brought the contract to an end”. I think the same principle can be applied here. The officer’s employment could lawfully have been brought to an end by the Commissioner if the latter had complied with basic natural justice requirements. I see no reason why Mr. Jno. Lewis should be awarded damages over and beyond a sum representing salary for a reasonable period of time that it would take the Commissioner to have so complied. In my view the Master rightly considered that a period of two months was ample time for the Commissioner to

¹ (1994) I.C.R. 727

have concluded all the formalities that would have attended lawful termination of Mr. Jno. Lewis' employment and I would therefore dismiss this appeal with costs to the Respondents in the sum of \$2,000.00.

Adrian Saunders
Chief Justice [Ag.]

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Suzie d'Auvergne
Justice of Appeal [Ag.]