

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2021/0121

BETWEEN:

JAVONSON WILLOCK

Claimant

-and-

**CHIEF OF DEFENCE STAFF OF THE ANTIGUA AND BARBUDA DEFENCE FORCE
ATTORNEY GENERAL**

Defendants

APPEARANCES:

Mr. Wendell Alexander for the Claimant

Ms. Joy Dublin, Ms. Rose- Ann Kim and Ms. Chandra Codrington for the Defendants

2024: April 8th

June 27th

DECISION ON ASSESSMENT OF DAMAGES

[1] **DRYSDALE, J.:** The matter for consideration is an assessment of damages for the breach of the Claimant's natural justice rights. The matter stems from allegations of misconduct which resulted in the First Defendant instructing the Claimant to resign his Commission which would have had the resultant effect of terminating his career with the Antigua and Barbuda Defence Force. By order dated 20th September 2023 the parties agreed to settle this matter. There being no agreement on damages and costs the issue of assessment of damages went to trial. The quantum is assessed on the evidence of the Claimant, the evidence of Lieutenant Colonel Alando Michael and the law.

Background

- [2] The Claimant is a Captain within the Antigua and Barbuda Defence Force ("ABDF"). He was enlisted on 21st October 2005 and was made a Captain on 1st February 2015.
- [3] In December 2020 the Claimant was accused of misconduct which involved fraternizing with junior ranks and was instructed to resign from the ABDF.
- [4] By Amended Fixed Date Claim filed on 2nd January 2022 the Claimant sought several orders and declarations against the First Respondent, the Chief of Defence Staff ("CDS"). The Claimant's allegations were that the CDS violated several of his rights, *inter alia*, the right to a fair hearing and due process. The Claimant also sought damages and costs against the CDS.
- [5] The matter was set down for trial on 20th September 2023. However, counsel for the Defendants conceded that section 19 of the Defence Act, 2006 had been repealed and that their legal submissions accordingly were not reliable on the issues of natural justice. Counsel for the Claimant agreed that the claim for constitutional breach should be withdrawn, and it was ordered by Consent:
- a. That the entire proceedings against the Claimant as it relates to allegations of misconduct is hereby declared null and void.
 - b. The First Defendant is directed to remove the letter of reprimand from the Claimant's file in respect of the disciplinary convictions in relation to these proceedings.
 - c. This matter is referred to the First Defendant to be handled in accordance with the Defence Act 2006, its amendments and statutory regulations.
 - d. This matter is set down for report on settlement on the issue of damages and costs to 26th October 2023 unless a consent order is sooner filed.
 - e. The Claimant shall have carriage of this order.
- [6] There was no settlement on damages to be awarded to the Claimant and the court fixed a date of 8th April 2024 as the date for the hearing of the assessment of damages.
- [7] The Claimant has claimed a total award of \$380,134.38 under the following heads:

- | | |
|-----------------------|--------------|
| a. General Damages | \$228,134.00 |
| b. Exemplary Damages | \$50,000.00 |
| c. Aggravated Damages | \$42,000.00 |
| d. Vindictory Damages | \$60,000.00 |

[8] The Defendants on the other hand say the damages awarded should be a total of \$2,000.00 and costs of \$9,737.00. The award of costs as submitted by the Respondent is broken down as follows:

- | | | |
|----|---|------------|
| a. | Consultation | \$600.00 |
| b. | Preparation of Application for Administrative Order and Constitutional Relief | \$1,800.00 |
| c. | Preparation for Trial | \$6,250.00 |
| d. | Disbursements | \$1,087.00 |

The Evidence

[9] At the assessment hearing the witnesses called were the Claimant and Lieutenant Colonel Alando Michael. The witness statements¹ of both witnesses were admitted as their evidence in chief, and they were cross-examined.

Captain Javonson Willock

[10] Captain Willock asserts that the actions of the First Defendant have caused him harm. He says that prior to being subject to these disciplinary charges he maintained an unblemished record and enjoyed a sterling reputation of integrity and respect from his colleagues, associates and friends. After commencing proceedings against him the First Defendant on 8th September 2021 wrote to the Chairman of the Defence Force who is also the Prime Minister of Antigua and Barbuda highlighting that he, the Claimant, was the organiser of a games night “with the intention that there would be a night of debauchery and sexual orgy.” The letter also stated that the Claimant’s behaviour “has become so acrimonious that having him continue in the institution would adversely affect discipline

¹ The witness statement of the Claimant was filed on 14th February 2024 and the witness statement of Lieutenant Colonel Michael was filed on 21st March 2024.

and would therefore be untenable.” The Claimant complains that this letter to the Chairman irreparably damaged the core of his credibility and his reputation as a senior military officer. He says the First Defendant owed him a duty of care to protect his good name from public scrutiny over work-related allegations until such time as he was afforded a fair opportunity to be heard and/or convicted.

[11] The Claimant also takes issue with the fact that details of the investigation which were known only to high-ranking members of the ABDF were disclosed to the public including news publications and radio stations. He says that on 24th December 2020 the Staff Judge Advocate Lt Col Alando Michael told him that his family life would be destroyed if he did not resign as per the First Defendant’s instructions, he says that Lt Col Michael also threatened that the allegations would be made public knowledge. Subsequently on 7th June 2021 a host on Observer Radio broadcasted matters of the classified investigation and disciplinary proceedings against the Claimant. During the broadcast the soldier being investigated was identified as having a case in the High Court to be heard on 8th June 2021 and as living on Camp Blizzard with his wife and two young children. The Claimant says that he was identified as the said soldier as a result of the details which were disclosed.

[12] He says that after the broadcast went viral his classmates and military colleagues reached out to him in the hopes that he was not the person being referred to. He says that it was unpleasant to explain that he was in fact the person being referred to in the news report. The Claimant says that he was subject to heavy criticism by his peers, superiors, and subordinates within the ABDF as a result of the allegations made. He says he was labelled as a sex fiend, sycophant, and a criminal and that he felt humiliated because the conduct of the disciplinary proceedings and the allegations against him were being ventilated in the public domain.

[13] After the allegations were released into the public domain the Claimant’s wife was bombarded with phone calls and began to form the belief that the allegations were true. Their marriage broke down and she expressed wanting a divorce. The Claimant’s wife later left the matrimonial home. He says that the breakdown of his marriage is a direct result of the allegations made by the First Defendant.

[14] Since their separation the Claimant says that his wife has informed him that agents of the First Defendant informed her of a series of allegations to include that he “live down with two women”, he

says his wife was also questioned about whether they were living together. Subsequently he received correspondence instructing that he provides evidence that his wife and children were living with him on base in the accommodation provided for married officers or that he would have to seek alternate living arrangements. Following this the Claimant had to leave the base and pay rent of \$1,850.00 monthly at a different residence. The Claimant says that before he and his family were living at the accommodation provided for married officers, he received a monthly rent allowance of \$1,200.00 and that he stopped receiving the allowance upon moving into the accommodations at Camp Blizzard.

[15] He says that the separation from his wife has caused him to experience serious financial hardship and that he has to rely on family members for financial support.

[16] He also says that the actions of the First Defendant have caused his trust and confidence to deteriorate to the point that he no longer wishes to work with him. The Claimant has sent out numerous job applications and says that he missed two employment opportunities because of the allegations made against him by the First Defendant. On one job interview the Claimant says he was asked about the allegations being circulated about him and that he was put on the spot as a result of the question. On another interview he says he was verbally offered the position of Human Resources Manager but that the offer was revoked after the company he was interviewing spoke to one of the First Defendant's agents about him while conducting a background check.

[17] The Claimant says that he was instructed to turn in his service pistol and service phone without explanation. He complains that he was given no assignment, no command and stripped of all his responsibilities during the investigation and hearing of the complaint made against him. He says that since 22nd February 2021 his only task has been to report to his Commanding Officer on a daily basis.

[18] The Claimant says that the First Defendant told him that his career was over and that he would never be upgraded or promoted once he, the First Defendant, remained the head of the ABDF. The Claimant says that he wrote to his Commanding Officer to inquire about his outstanding upgrades and that he was advised that because of his conduct in 2020 no recommendation was made for him

to receive any upgrade. To date the Claimant is being compensated at the rate of Captain after three years despite being in the rank for 9 years. He says that the First Defendant's decision to withhold his salary increase has significantly set him back.

[19] The Claimant says that on 18th January 2024 his Commanding Officer instructed him to report to the Intelligence Officer in the person of Karl Jarvis, he claims that this letter was a psychological attack to oppress and derail him while he was on vacation, he says that he began studies for a law degree in November 2023 and that he has not been able to focus and is behind.

[20] The Claimant says that the First Defendant's continued effort to subject him to unlawful investigation is not in good faith but is influenced by malice, spite, and ill will. He says the First Defendant's actions have caused serious injury to his mental state and feelings, and that he is overwhelmed, frustrated, and bewildered which has caused him to experience headaches and difficulty sleeping.

[21] He also says that this ordeal has taken a significant toll on his mental state and that he has had several nightmares about some of the senior officers in the ABDF. He said he had to see psychological assistance on multiple occasions and that in the first instance he sought professional help and obtained an assessment. Sometime following this the Claimant's Commanding Officer suggested that he see a psychologist because he was demonstrating behaviour that was unlike his usual self.

[22] In the circumstances the Claimant contends that the First Defendant acted maliciously, and in an insulting and oppressive manner which has caused him mental distress and anguish, injury to his feelings and self-esteem. He says the First Defendant pressured him to resign knowing that such action was unlawful.

[23] At the hearing of this matter the Claimant stated that one of the claims he was making is for loss of earnings and constructive dismissal notwithstanding the fact that he was still employed with the Antigua and Barbuda Defense Force at the rank of Captain. The Claimant also confirmed that he was still being paid his monthly salary and that his pay was never withheld or reduced.

[24] As for his claim that he is entitled to rental allowance, upon questioning the Claimant agreed that section 7 of the Defense Rate of Pay and Allowances Regulations 1998 stipulated the officers that are entitled to rental allowance and that the rank of Captain did not fall within the categories of officers listed in section 7.

[25] When asked about his assertion that the First Defendant's actions caused the breakdown in his marriage the Claimant admitted that he was the one that commenced divorce proceedings against his wife.

[26] He also admitted that there was no evidence which indicated that the First Defendant caused the details of the investigation against him to be released into the public domain.

[27] The Claimant also said that while the disciplinary proceedings against him were ongoing he was intimately involved in the preparation of his court matter and completed a bachelor's degree in human resources management with first class honours. He was able to accomplish this despite his claim that he was under serious mental distress during this period.

Lieutenant Colonel Alando Michael

[28] The evidence of this witness is that the First Defendant is currently in the process of correcting administrative errors which occurred in relation to granting of commissions of several officers with the exception of the Claimant. He says that at no time was it implied that the Claimant would not be promoted or upgraded, and that the Claimant was aware that his promotion and upgrade in the Force is based on his performance and conduct as well as whether there was a billet² available.

[29] Around 20th September 2020 the Government of Antigua and Barbuda instituted a salary freeze for the period 2020 – 2021. The implication of this was that during this period no officers within the force could be promoted as this would result in an increase in their salary.

² In the Defence Force the term billet is used to describe and/or identify a vacant position within the Force.

[30] The witness says that the Claimant remains employed with the Antigua and Barbuda Defence Force at the rank of Captain and receives his monthly salary together with his duty allowance and that notwithstanding the investigations into the Claimant's conduct his monthly payments have been maintained.

[31] The Claimant was afforded accommodation for himself and his family in the Married Officers' Quarters situated on the Defence Force Base pursuant to Force Policy as he met the requisite criteria. In February 2024 a report was received that caused the First Defendant to conclude that the Claimant's spouse no longer wished to reside with him in the assigned accommodations. Section 7 of the Defence (Rates of Pay and Allowances) Regulations 1998 provides the criteria for rent allowances in the Defence Force, the witness said that the Claimant did not fall within the provisions of section 7 and is therefore not eligible for rent allowance.

[32] The witness also says that he is aware that details of the investigation into the Claimant's conduct and subsequent court proceedings have been disclosed to the media but that he is unaware of the source of the news media's information. He says that all members of the Force inclusive of the First Defendant are bound by an Oath of Secrecy which prohibits them from disclosing force matters to anyone outside of the Defence Force, he went further to say that the Oath of Secrecy has not been breached by the First Defendant or anyone acting on his instructions.

[33] It is a requirement within the Force that all members report any incidents of physical or psychological illness to the Force Medical Station. The First Defendant's records indicate that the only report of illness received from the Claimant was that of mental fatigue. Further it was recommended that the Claimant attend sessions with the Force Psychologist, however the Claimant did not maintain the recommended visits.

[34] The witness also says that neither the First Defendant nor anyone acting under his instructions contributed in any way to the Claimant being unsuccessful in obtaining alternative employment.

[35] On cross examination Lieutenant Colonel Michael denied that the Claimant was entitled to an upgrade as eligibility for an upgrade depends on several factors. The witness acknowledged that the letter written by the Chief of Defence Staff to the Prime Minister in his capacity of Chairman of the

Defence Force during the time that the disciplinary proceedings were pending and while this claim was pending before the court. However, the fact that it took the defendants two years to acknowledge their wrongdoing would have caused a measure of frustration and inconvenience to the claimant.

Assessment of the Evidence

[36] Although the claimant filed a rather detailed witness statement and was subsequently cross-examined on the issues presented in his primary evidence, much of his testimony did not correspond with the terms of the consent order. Indeed it is my concerted opinion that the Claimant's approach and the overall handling of the matter clearly indicate his belief that, due to the parties' acknowledgment of liability that the defendants' attempt to discipline him contravened the statute entitled him the right to damages for every imaginable grievance, not just the defective procedure. This mistaken belief likely influenced how the case was presented and the arguments submitted.

Issues

[37] Given that this is an assessment of damages, the issues for determination are centred on the following:

- i. What is the pre-existing cause of action upon which the claim for damages is predicated
- ii. Whether the claimant is entitled to damages.
- iii. If yes the measure of any such damages.

Analysis

What is the pre-existing cause of action upon which the claim for damages is predicated?

[38] The parties dispute the nature of the pre-existing cause of action that underpins the claim for damages. The Claimant argues that the cause of action is misfeasance in public office and relies on

X and others (Minors) v Bedfordshire County Council et al³ in support of his contention and contends that the Claimant he is entitled to significant damages in the circumstances. The Defendants counter that this is a claim predicated on breach of an obligation with respect to the Claimant and cannot be equated to a misuse or abuse of authority to willingly cause harm to him. The Defendants therefore reject the notion that this case is about misfeasance in public office by the First Defendant.

[39] As indicated previously this matter was settled on the day of trial by the parties. Although the consent order covered various elements, the part pertaining to this issue stated, “[t]he entire proceedings against the Claimant regarding allegations of misconduct are hereby declared null and void.”

[40] While the Claimant provided thorough and detailed evidence about the defective process and dealings with several police officers, the truth is that there was no formal adjudication on liability regarding the veracity of the Claimant’s statements. Without a judicial finding that the Defendants acted unlawfully and with malicious intent the claim for misfeasance in public office cannot be substantiated.

[41] Moreover, a consent order was agreed upon without any admission of fault, except for the recognition that the disciplinary process was defective and did not adhere to the statutory requirements. This aligns more closely with a breach of statutory duty where the primary concern is whether the statute was violated rather than the intent or malice of the Defendants. I find therefore that the term of the consent order does not fulfill the criteria for misfeasance in public office but amounts to a mere claim for the violation of a statutory duty. Therefore, any damages if so determined would be for the purpose of compensating for that specific violation.

Whether the claimant is entitled to damages

[42] In cases administrative claims, the awarding of damages is not automatic. It is subject to the court’s judgment and often hinges on the existence of a quantifiable loss suffered by the Claimant that was not rectified by the correction of the process in question. Learned Justice Remy in the case of **Delon**

³ [1995] 3 All ER 353

Charles v Commissioner of Police⁴ reaffirmed the stance articulated in Blackstones Civil Practice regarding this matter stating, “all public law remedies are discretionary and that the court may refuse for example where the public body has already remedied its position to meet the Claimant’s demands. Even where the claim has been successful an award of damages is not automatic.”

[43] The Claimant has classified his claim for damages into four categories: general damages, exemplary damages, vindictory damages, and aggravated damages. Invoking the principle established in **Cornillac v. Lewis**⁵, he contends that he is entitled to compensation for pain and suffering resulting in pecuniary and non-pecuniary loss due to inter alia the dissolution of his marriage, constructive dismissal, the loss of rental allowance and loss of reputation. The Defendants have responded by stating that the flawed process has been corrected by recognizing its deficiencies and by removing any letters of reprimand from the Claimant’s record, thereby reducing any continued damage to his reputation or future career opportunities.

[44] These claims must be tested within the context of the breach of statutory duty and the discretionary nature of damages to determine if compensation is warranted.

Breakdown of marriage

[45] It has not been demonstrated to the court’s satisfaction that the evidence presented is adequate to link the breakdown of the marriage to the erroneous disciplinary process. The Claimant submits that being disciplined for participating in an orgy at the police compound was the exclusive reason for his marriage ending. While such an event would undoubtedly strain any marriage, I remain unconvinced that it was the sole cause for the dissolution. Marriages inherently face challenges and conflicts, and without corroborative evidence, attributing the breakdown solely to this incident is self-serving and unverifiable. It is improbable that the defective procedure was the cause of the marital breakdown, as opposed to the action that initiated the procedure.

⁴ ANUHCv2011/0623

⁵ Civil Appeal No 30 of 1964 Trinidad and Tobago

[46] The Claimant has indicated that it was not until after June 7th, 2021, following the publication of a broadcast of a senior Defence Force soldier's impending court session for an event organized at Panan Base in August 2020 during a lockdown, which led to his wife receiving numerous phone calls, that she began to entertain the possibility that the charges against him had merit. It is important to note that the court hearing on June 8th, 2021, was related to the very lawsuit brought forth by the claimant. From this and the evidence of the claimant, one could infer that throughout the flawed proceedings, the Claimant's wife was supportive and content. However, the commencement of this legal action appears to align with the deterioration of their marriage, a sequence the court finds strange and not credible, further suggesting that the flawed disciplinary process was not the reason for the dissolution of their marriage. Moreover, there is no evidence to suggest that the disciplinary proceedings were ever disclosed to the public a fact that the Claimant readily admitted.

Publication of information in the news media and to potential employers

[47] The Claimant posits that the flawed disciplinary process was published to the media which had the resultant effect of preventing him from gaining alternative employment. The Claimant has not provided clear and direct evidence to link the First Defendant with the dissemination of information to the press. The Claimant has indicated that another officer suggested that the First Defendant's could potentially disclose the information, which could ruin his family life. Consequently, the Claimant has asked the court to deduce that the First Defendant is probably the informant. Given that this claim is directed solely at the First Defendant, and given the second-hand evidence linked to the First Defendant, coupled with the fact that the First Defendant does not employ or other members of the Defence Force and all circumstances, the court refrains from conjecture about the identity of the informant and concludes that the claimant has failed to substantiate this part of the claim. It is also worth noting that this case, filed by the Claimant, was not done under seal, leaving the possibility for the information he complained about to be retrieved through other means not directly attributable to the First Defendant.

[48] I note also that no satisfactory evidence has been provided that the First Defendant or his officers interfered with the Claimant's attempts to seek alternate employment. Indeed, following an interview for a position, the Claimant was informed that, despite not being chosen, his application would be retained for consideration for a more fitting opportunity should it become available. This implies that

the Claimant has not been excluded from alternative employment opportunities, nor has his reputation adversely influenced his employment prospects.

[49] In the circumstances I am unable to find that the First Defendant caused details of the Claimant's matter to be in the public domain and or caused his attempts to gain alternative employment.

Loss of Earnings/Constructive Dismissal

[50] **Halsbury's Law's of England**⁶ sets out the parameters for a claim of constructive dismissal as follows:

“In a contract of employment there is an implied term that the employer will not, without reasonable and proper cause, conduct himself in a manner calculated as likely to destroy or seriously damage the relationship of confidence and trust between employer and employee...the implied term of trust and respect in the contract of employment has been held to have overriding effect, that is to say that, even when the employer has the power to act in a particular way under the terms of the contract, he must exercise that power in the light of his overall duty of trust and respect, with the result that, if he does not do so, the employee may be contractually **entitled to leave** and claim constructive dismissal in spite of the employer's claim that he was merely exercising his contractual rights.” (emphasis mine)

[51] For a claim of damages arising from constructive dismissal to be valid, there must be an infringement of the employment agreement by the employer that erodes the foundational principles of trust and confidence, and harms the employer-employee relationship. Additionally, the infraction must be grave enough to drive the employee to resign in response to the employer's conduct.

[52] The Claimant has sought compensation for purported loss of earnings and wrongful termination. However, the Claimant's own testimony reveals that he received his complete salary and benefits after the misconduct charges were made, all the way through to the hearing date. In fact, the Claimant has never been denied the benefit of his salary and continues to be employed in the capacity as a

⁶ 4th ed, volume 39 para 44

Captain in the ABDF. Such testimony undermines his assertions of earnings loss and constructive dismissal.

[53] The Claimant has additionally claimed that he is due for a promotion and a salary increment. Yet, no substantiating evidence to support his entitlement to either a promotion or a salary enhancement has been submitted to this court. Additionally, the Defendants have demonstrated that there was a salary freeze during the years 2020 to 2021, which would have impacted all police officers' potential to receive a salary increase. Furthermore, the Claimant has not proven that there was a suitable vacancy for which he was unfairly overlooked for promotion due to the process. Merely holding a belief or expectation, absent a definitive promise or commitment, is inadequate to establish the claimed right to entitlement.

[54] Therefore, the Claimant has not met the necessary criteria to seek damages for a breach involving loss of income or constructive dismissal, given that he remains employed and is actively working.

[55] In light of the foregoing, I am unable to grant damages as claimed under these heads.

Rent Allowance

[56] The evidence of the claimant is that he received a rental allowance of \$1,2000.00 per month which ceased when he relocated to housing designated for married officers at Camp Blizzard. The Claimant now asserts that he is entitled to this rent allowance, given that he is no longer resident at Camp Blizzard.

[57] Section 7 of the Defence (Rates of Pay and Allowance) Regulations No. 19 of 1998 which provides the criteria for the payment of rent allowances in the Defence Force states as follows:

"7.(a) Rent allowance is only applicable to personnel who qualify as mentioned in sub paragraph (b) (c) and (d) and who hold the following appointments:-

- (i) Commander (if not provided with a rent free accommodation)*
- (ii) Deputy Commander*
- (iii) Commanding Officers*
- (iv) Force Sergeant Majors*
- (v) Unit Sergeant Majors*

- (vi) *Any other senior appointment so determined by the Commander*
- (b) *An unaccommodated rent allowance at the rates set out in Part II of the Schedule shall be paid to a member of the Force who is married.*
- (c) *An officer is entitled to an unaccommodated rent allowance where he-*
 - (i) *Is maintaining his wife and his dependent children; and*
 - (ii) *Is not accommodated in quarters provided by the*
- (d) *An other rank is entitled to an unaccommodated rent allowance where he*
 - (i) *Is maintaining his wife and*
 - (ii) *Is not accommodated in quarters provided by the Crown for married personnel.*
- (e) *An officer or another rank who is in receipt of such an allowance shall notify his Commanding Officer forthwith of any change in the circumstances of his family which affects his entitlement to the allowance."*

[58] Under section 7(a), eligibility for a rent allowance is contingent upon holding a position listed within that section. The Claimant's rank as a Captain does not align with any of the appointments outlined in 7(a)(1)-(v), thus rendering him ineligible for this benefit. Despite this, the Claimant did receive a rental allowance previously, but there is no clear explanation for this payment. Without a lawful basis for the rent allowance he once received, it seems the choice was between receiving a rent allowance or being provided housing. Given that the rent allowance stopped when he was allocated housing, and considering he is now disqualified from housing, it logically follows that he is not entitled to have the rent allowance reinstated.

[59] Regarding the conditions of his residence at Camp Blizzard, the Claimant did not specify the terms of his stay. However, it seems he recognized that his continued occupancy was contingent upon having his family live with him at the base. This is evidenced by the fact that the Claimant left Camp Blizzard after questions were raised about his family's presence and his right to stay without them. Consequently, I concur with Lieutenant Colonel Michael's testimony that a prerequisite for housing eligibility was that the Claimant live with his spouse and children.

[60] Additionally, it seems paradoxical that the Claimant would initiate divorce proceedings against his wife yet simultaneously contend for a rental allowance, which is predicated on the condition of

supporting his wife. It is also observed that the Claimant has not submitted any proof of continuing to support his wife following their separation.

[61] Crucially, in relation to the evaluation of damages, the claimant has failed to demonstrate that the defective disciplinary procedure led to his loss of the rental allowance. It should be noted that the claimant claimed his marital troubles began following the public disclosure of this High Court case, which occurred several months subsequent to the flawed process. Moreover, since the court had already determined that there was no connection between the marital breakdown and the flawed disciplinary action, there is no foundation to conclude that the loss of housing or rental allowance was due to the defective process.

Pain and suffering, emotional distress and loss of reputation

[62] The Claimant argues that the objective of damages is to, as much as possible, restore him to the financial situation he would have been in if not for the First Defendant's wrongful conduct in public office. To that end he submits that he was, a high-ranking military Commissioned Officer who, suffered from (i) a denial of due process, (ii) ridicule both within and beyond the ABDF, (iii) humiliation and embarrassment by his superiors, (iv) being deprived of his tools and left without assignments or duties for several months, and (v) the loss of his nuclear family, all as a consequence of the First Defendant's illegal actions. He therefore submits that consequent upon the First Defendant's misfeasance that he is entitled to substantial damages in the sum of \$200,000.00.

[63] The Defendants dismiss the idea that the Claimant has a right to compensation for, among other things, emotional distress. They associate this particular claim with the claimant's allegations of lost remuneration, the dissolution of his marriage, and the publicizing of the case in the media, all of which they had previously refuted. Consequently, the Defendants contend that the Claimant does not deserve any compensation for emotional distress or damage to reputation. I concur that matters related to the dissolution of the marriage, and the publication and the resultant effects are not subject to recovery, as previously determined by this court.

[64] The Claimant has also seemingly argued that the change in work duties resulted from a flawed disciplinary process. However, there are two main issues with this argument. Firstly, the Claimant

has not provided any independent evidence to support the assertion that this change directly resulted from the disciplinary process. Without such evidence it is difficult for the court to establish a causal link between the disciplinary action and the change in duties. Secondly, there is no evidence or legal basis to suggest that the claimant is entitled to remain in a particular position. Employers have the right to reassign employees as needed unless there is a specific contractual agreement or policy. Whilst the claimant may believe that he is not effectively utilized this is not a sufficient basis for damages.

[65] However, there could be some validity to the claims of denial of due process, loss of reputation, humiliation, and ridicule within the ABDF which will be examined hereunder.

[66] In order to establish loss of reputation, the Claimant has referred to media coverage of this case and has relied on hearsay evidence from other individuals. However, no independent evidence has been presented by the Claimant to demonstrate that negative comments were made about him, diminishing his reputation in the eyes of others. Additionally, it's important to recognize that reputation is influenced not only by an individual's self-perception but also by external perceptions. Mitchell J as he then was in the case of **Mansoor v Silcott**⁷ affirmed that:

'No witnesses were called by the Claimant to give evidence of the Claimant being lowered in their estimation of him or of any injury whatsoever to the Claimant's reputation as a result of the Defendant's calypso. **Since reputation is not what a person thinks of himself but what others think of him, the Court cannot in the circumstances make a finding of actual injury to the Claimant's reputation based only on the evidence of the Claimant himself.**' (emphasis mine)

[67] Since the Claimant has not presented independent evidence of damage to his reputation resulting from the flawed process or otherwise, damages cannot be recoverable.

[68] Despite the Claimant's assertion of damages due to humiliation and ridicule, there is no independent evidence to substantiate this claim. This significantly weakens the claim. Further the Claimant

⁷ ANUHCv2010/0209

submitted a medical report, presumably documenting the psychological stress resulting from the flawed process as further evidence of the consequences of the humiliation and ridicule faced. However, this report was not attached to a witness statement from the author of the report neither was it attached to an expert report. According to the precedent set in the case of **Bergman v Evans**⁸, medical reports in the form of expert evidence require court permission for deployment. Since the Claimant neither sought nor obtained such permission, this evidence remains inadequately presented and cannot be accepted as truth. I therefore give no weight to it.

[69] It is important to bear in mind that the consent order focused on the procedural flaws in the disciplinary process, and not the underlying cause being the incident itself. Therefore, it is essential to differentiate whether the ridicule stemmed from the flawed disciplinary process or the Claimant's actions. While the nature of the allegations likely provoked ridicule independently of process fairness, the Claimant's conviction by the disciplinary committee could lead others to treat them as guilty, even without proper opportunity for defence. Consequently, the Claimant is entitled to damages for ridicule steaming from the flawed process.

[70] In light of the flawed process, the Claimant should have been given the opportunity to consult with a lawyer before the disciplinary proceedings began. Additionally, the Claimant was not provided with evidence against him prior to the proceedings. These actions constitute clear violations of due process, to which the Claimant was entitled. I am therefore of the view that the Claimant should be compensated with regards to these matters.

[71] For guidance on the quantum to be awarded I look to the decision of **Dail Crawford v The Public Service Commission of St. Kitts and Nevis**⁹ where the claimant, Dr. Crawford, was a medical doctor specialising in Gynaecology and Obstetrics registered as a consultant OB/GYN practitioner and held a licence to conduct a private medical practice. Dr. Crawford was granted privileges to use the facilities at the public hospital to care for his private patients. Following several complaints raised in relation to the claimant's performance as an OB/GYN the claimant's hospital privileges were suspended by the Medical Chief of Staff on 12th September 2014. Thereafter the Medical Board upheld the suspension of the claimant's privileges. Following this the claimant was invited to a

⁸ [2019] UKPC 33

⁹ SKBHCV2015/0189

meeting with the Medical Board to discuss the cases of alleged mismanagement and professional misconduct. At that meeting on 28th November 2014 Dr. Crawford read a prepared statement under protest raising the issue that he was not afforded an opportunity to respond to the allegations. The claimant was suspended pending an investigation by the Medical Board. By letter dated February 25, 2015, the PSC informed Dr. Crawford that the Governor General had approved the recommendation of the PSC that he be suspended pending an investigation by the Medical Board. Dr. Crawford's attorneys wrote to the chairman of the PSC pointing out the breach of the rules of natural justice and demanded Dr. Crawford's reinstatement. When the matter of his reinstatement was not addressed, Dr. Crawford sought redress in the court by way of an application for judicial review. Carter J. ruled that the PSC breached section 32(2) of the Public Service Act by suspending Dr. Crawford without allowing him to make representations in his defence and that the recommendation to the Governor General to suspend him was unlawful. The court in assessing general damages considered the sum of \$50,000.00 as an appropriate award based on the impact that Dr. Crawford's unlawful suspension would have had on him.

[72] In the Crawford case, damages were assessed considering the impact of the suspension on the claimant, a medical doctor's ability to practice privately and their overall reputation. The court awarded a global sum of \$50,000.00. While this court did not find damages for the reputation of the Claimant it did make a determination that damages for ridicule and humiliation within the ABDF were recoverable.

[73] Ergo, in light of the Crawford case and any distinctions, the First Defendant's refusal to allow the Claimant legal representation and access to the evidence, along with the subsequent agreement to remedy the default by removing all letters of reprimand from the Claimant's file, coupled with the time taken to acknowledge the flawed process and implement remedial measures, I am of the considered opinion that an award of \$25,000.00 is appropriate.

Exemplary Damages

[74] In the landmark case of **Rookes v Barnard**¹⁰, the House of Lords identified three distinct categories for the awarding of exemplary damages. These categories are designed to penalize the wrongdoer rather than to compensate the wronged party, and they are as follows:

- i. Oppressive, arbitrary, or unconstitutional actions by government officials.
- ii. Cases where the defendant's behavior was deliberately calculated to yield a profit for themselves.
- iii. Situations where a statute explicitly permits such awards.

[75] The Claimant's argument for exemplary damages hinges on an alleged case of misfeasance. However, the court has previously clarified that liability was established as breach of statutory duty rather than misfeasance. Importantly there was no admission or evidence of malice, ill will or any factors supporting a claim of misfeasance. In the absence of such admissions and or findings, a simple breach of statutory duty does not justify a claim for exemplary damages.

[76] Albeit that the court has determined that this case involves a breach of statutory duty rather than misfeasance, and that there are no findings of malice and ill will, if I am mistaken in concluding that this absence precludes a claim for exemplary damages based on the claimant's evidence, I must also address the credibility of the claimant to determine if the conduct was egregious to justify a punitive award. Having carefully examined the Claimant's evidence presented and his demeanor, I am not persuaded that the Claimant was being entirely forthright, and I find his testimony lacks credibility and appears to embellish crucial details. While I acknowledge that the First Defendant acted improperly, I do not believe the Claimant's assertion that he was harassed and bullied to resign. Whilst the Claimant may have been advised of the practical consequences of his actions and resistance to resigning, I do not believe that these comments were continuous or reached the severity that the Claimant contends. I find that they did not amount to harassment or bullying but were rather presented to the Claimant as an option to save face under the circumstances. Notwithstanding the fact that a comment may have been made, which I found did not rise to the level of harassment or bullying, the comment did not align with the statutory procedure that the Claimant was properly entitled to participate in before determining his future or assessing the validity of the allegations against him. This misalignment rendered the actions of the First Defendant as improper, thereby

¹⁰ [1964] A.C. 1129

justifying the consent order, which was very limited in its scope, being entered into by the parties. Therefore, I find that there is no additional element of wrongful conduct that warrants the penalty of exemplary damages.

Aggravated Damages

[77] Aggravated damages, although typically awarded in tort claims where the wrongdoer's conduct has been particularly egregious or has caused humiliation, distress, or injury to the innocent party, may also be recoverable in an administrative law claim.

[78] Similar to exemplary damages, aggravated damages in administrative claims are designed to compensate for the high-handed or oppressive conduct of the wrongdoer. However, they are not meant to be punitive; instead, they serve a compensatory purpose. This distinction is particularly important in administrative claims, which are typically designed to ensure that public bodies act lawfully rather than compensating for personal injury or distress.

[79] To be eligible for aggravated damages, the claimant must show that the defendant's conduct was not only unlawful but also included malice, ill will, or bad faith. Considering that the question of whether the defendant's actions warranted punitive exemplary damages was previously addressed and rejected, and given that the facts have not changed, the claimant does not qualify for an award of aggravated damages.

Vindictory Damages

[80] In **Attorney General of Trinidad and Tobago v Ramanoop**¹¹ the court stated as follows:

"When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him

¹¹ [2005] UKPC 15

compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.” (emphasis mine)

[81] The Defendants maintain that the Claimant is ineligible for vindictory damages due to the withdrawal of his constitutional claim as per the consent order, a stance with which I agree. Once a claim is withdrawn, the Claimant cannot rely on that retracted claim as a basis for damages.

Costs

[82] Although this matter was scheduled for the assessment of damages and costs, the Claimant failed to adhere to the rules necessary for a proper determination of costs. Consequently, I abstain from specifying a particular amount of costs as part of this judgment

Order

[83] Based on the foregoing It is hereby ordered that the Defendants shall pay the Claimant the following:

- a. General damages of \$25,000.00
- b. Costs to be assessed if not agreed
- c. Interest

Jan Drysdale
High Court Judge

By the Court

proRegistrar

