

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2023/0335

BETWEEN:

ANDY GREENE

Claimant

And

THE COMMISSIONER OF POLICE

Defendant

Appearances:

Mr. Wayne Marsh for the Claimant

Ms. Carla Brookes-Harris for the Defendant

2024: March 11;
May 15

JUDGMENT

- [1] **WILLIAMS, J.:** The Claimant-Police Constable Andy Greene fears that he will be unlawfully dismissed from the Royal Antigua and Barbuda Police Force by the Defendant who is the Commissioner of Police. Consequently, on 21st September 2023, the claimant commenced proceedings by Fixed Date Claim Form seeking declarations and an injunction to prevent this from happening.
- [2] The claimant had initially also sought an interim injunction to restrain the defendant from dismissing him from the Force. However, the parties agreed to an early trial of the claim, and this application was withdrawn. The parties by consent order filed on 21st February 2024 agreed that no disciplinary proceedings would be undertaken against the claimant pending the determination of this claim.

Evidence

- [3] At this point, it is necessary to briefly outline the factual basis for the claim. The Claimant's evidence is contained in three affidavits filed on 21st September 2023, 14th December 2023 and 4th March 2024 respectively.
- [4] The defendant's response is contained in four affidavits sworn to by Assistant Superintendent Grantley Simmons (hereafter ASP Simmons), Senior Sergeant Kenny McBurnie (hereafter Sgt. McBurnie) and Constable Kizzy-Tonge Nedd. The affidavits of ASP Simmons and Sgt. McBurnie were filed on 3rd November 2023 whilst the affidavit of Constable Tonge-Nedd was filed on 20th November 2023. ASP Simmons swore to a further affidavit which was filed on 4th March 2024.
- [5] The defendant did not swear to an affidavit in these proceedings. This is unfortunate as many of the claimant's allegations relate to actions allegedly taken by him in his capacity of Commissioner of Police. The defendant's evidence would have been especially desirable in respect of providing details of his interactions with the claimant on the 18th, 22nd and 25th of August 2023.
- [6] However, ASP Simmons has given evidence as to what the defendant said at these meetings, but the claimant disputes the actual meaning of the defendant's statements. It therefore would have assisted the court greatly if the defendant had given evidence not only of what he said but also of what he meant.
- [7] ASP Simmons in his affidavit outlines meetings between the defendant and the claimant on 22nd and 25th August 2023. He states that these meetings were not disciplinary in nature. According to him, "The Defendant is within his authority to inform the Claimant as to his assessment of the Claimant's performance and conduct at work based on the number of disciplinary actions on his record where he was found and pleaded guilty."¹ ASP Simmons emphasizes that the defendant is

¹ Affidavit of Grantley Simmons filed on 3rd November 2023 at paragraph 29

aware that an officer cannot be dismissed from the Force unless there is due process and adherence to the disciplinary procedures in the Police Act and Regulations.

[8] Sgt. McBurnie and Constable Kizzy-Tonge Nedd describe the events at the Liberta Police Station on 13th June 2023. As these matters are the subject of disciplinary proceedings it is not appropriate for the court to make any findings of fact as to what transpired on that day especially where recollections of the events may differ.

[9] The factual basis of the claim relates to the following occurrences:

- a. An incident of 13th June 2023;
- b. An incident of 18th August 2023;
- c. A Meeting of 22nd August 2023;
- d. A Meeting of 25th August 2023; and
- e. A Disciplinary hearing held on 15th February 2024.

[10] Each of these incidents will now be briefly examined.

The Incident of 13th June 2023

[11] The Claimant was scheduled to report for duty at 5 p.m. on 13th June 2023 at the Liberta Police Station. However, he reported about fifteen to twenty minutes late. Senior Sergeant Kenny McBurnie who was the officer-in-charge of the station questioned the claimant as to the reason for his lateness.

[12] Sgt. McBurnie states that the claimant responded that his vehicle had broken down on the way to work. When Sgt. McBurnie pointed out that the claimant should have called to request assistance the claimant allegedly replied in a rude and intemperate manner.

[13] Sgt. McBurnie then informed the claimant that he was reporting him for being late for duty and insubordination. This allegedly prompted another intemperate outburst

from the claimant who then walked off. Sgt. McBurnie indicates that on 14th June 2023, he caused a disciplinary note to be made in the station diary concerning his interaction with the claimant. It should be noted that the claimant disputes Sgt. McBurnie's version of events.

Incident of 18th August 2023

[14] On 18th August 2023, the claimant was again on duty at the Liberta Police Station. On that day the defendant paid an unannounced visit to the station. On that occasion, the defendant was not satisfied with the manner in which the claimant had greeted him. The defendant was concerned that this reflected poor customer service on the claimant's part. The defendant seems to have expressed his dissatisfaction with the claimant in the presence of other police officers. The defendant then required the claimant to report to his office on 22nd August 2023.

[15] The claimant also alleges that on that occasion the defendant referred to a previous disciplinary charge against him in 2016 as well as Sgt. McBurnie's recent disciplinary note.² ASP Simmons disputes this and states that the defendant was referring to the report of adjudicated disciplinary matters for the month of June 2023. According to ASP Simmons, the claimant's name was on that report in addition to that of other persons.

Meeting of 22nd August 2023

[16] On 22nd August 2023, the claimant attended the meeting as required. In addition to the claimant and the defendant, ASP Simmons, Sergeant M. Stewart, and Assistant Superintendent Rodney Ellis (ASP Ellis) were present.

[17] At that meeting, the defendant examined the claimant's personal file and referred to previous disciplinary matters brought against him. In relation to a previous disciplinary matter involving the claimant, the Defendant reportedly said to ASP Ellis, *"Ellis you normally recommend dismissal but recommended reduction in pay."*

² Claimant's Affidavit filed 21st September 2023 at paragraphs 15 and 16

The claimant submits that this was a directive to ASP Ellis to recommend dismissal in the event of any further disciplinary matters involving the claimant.

[18] In this regard, the Claimant states, “Since there was a note placed in the Liberta Station Diary by S/Sgt. McBurnie, I firmly believe that I could be charged and brought before ASP Ellis or ASP Simmons for a hearing of those charges. The statement of the Respondent was clearly a directive to both of them to recommend my dismissal from the force.”³

[19] The claimant was then requested to submit a letter to the defendant convincing him why he should remain in the Police Force. The claimant was required to submit this letter on 25th August 2023.

Meeting of 25th August 2023

[20] On 25th August 2023, the claimant attended a further meeting with the defendant and presented the letter which he had been previously required to write. After having the claimant read the letter out loud, the defendant expressed doubts that the claimant had written the letter himself.

[21] The claimant alleges that at the conclusion of that meeting, the defendant indicated that he had not yet decided whether he would allow him to remain in the police force. He allegedly told the claimant to enjoy Police Week and that he would call the claimant back to inform him of his decision.⁴ ASP Simmons who gave affidavit evidence on behalf of the defendant, neither confirms nor denies that the defendant made these alleged statements.⁵

³ Claimant's Affidavit filed 21st September 2023 at paragraph 21

⁴ Claimant's Affidavit filed on 21st September 2023 at paragraph 29

⁵ Affidavit of Grantley Simmons filed on 3rd November 2023 at paragraph 25

Disciplinary Hearing of 15th February 2024

[22] Acting Senior Sergeant Byers-Walker was designated to investigate the disciplinary report made by Sgt. McBurnie. She completed her report on 13th November 2023. On that day the claimant was served with disciplinary charges of being late for duty by 20 minutes and two counts of insubordination. These disciplinary offences arose out of his interaction with Sgt. Mc Burnie on 13th June 2023.

[23] On 15th February 2024, the claimant appeared before Assistant Superintendent Jeffrey Morgan (ASP Morgan) who was appointed under the delegated powers of the defendant to convene a disciplinary tribunal to hear these charges. At that hearing the claimant pleaded not guilty to the charges

[24] The hearing was adjourned to 22nd February 2024 to facilitate disclosure on the claimant. However, by consent order filed in this matter on 21st February 2024, it was agreed that the disciplinary proceedings would not proceed until a determination of this claim.

Relief

[25] The Claimant seeks the following relief:

1. A declaration that the decision of the Commissioner of Police/Respondent to instruct the Claimant to write a letter to him by Friday 25th August 2023 convincing him why the Claimant should be allowed to remain in the Royal Police Force of Antigua and Barbuda is void and unlawful and of no legal effect.
2. A declaration that the decision of the Respondent to summon the Claimant to a meeting at his office to state reasons why he should not be terminated from the police force is unlawful.

3. A declaration that the actions of the Respondent when he demanded that the Claimant write a letter to him convincing him why the Claimant not be dismissed from the force amounted to a trial of the Claimant for an alleged disciplinary offence when a discipline was written in the Liberta Police station diary accusing the Claimant of having committed certain disciplinary offences on 13th June 2023.
4. A declaration that the Respondent's actions at the meetings held on 22nd August 2023 and 25th August 2023 was illegal, void and of no legal effect.
5. A declaration that in light of all that has happened, the actions of the Respondent was in breach of the rules of Natural Justice.
6. A declaration that in all circumstances, if charged the claimant will be unable to receive a fair trial for the disciplinary report made by SGT. McBurnie when he wrote a note in the Liberta Station diary on 13th June 2023.
7. A declaration that the action of the Respondent is unlawful, null and void and in any event without due process.
8. An injunction restraining the Respondent from dismissing the Claimant from the Royal Police Force without due process and without affording the Claimant a fair trial.
9. An injunction restraining the Respondent from initiating or instigating any disciplinary charges against the Application which is based on any facts or allegation which is similar in nature to the facts stated in the affidavit of the Claimant in this action.
10. Damages, inclusive of aggravated and exemplary damages.

[26] The claimant also includes the usual prayers for costs, interest and further or other relief.

Issues

[27] The issues for determination are as follows:

1. Whether the defendant has breached the Police Act and Police (Discipline) Regulations and the rules of natural justice in relation to the Claimant?
2. Whether any intended disciplinary proceedings instituted against the claimant in respect of the events of 13th June 2023 would be unlawful?

Applicable Law

[28] In their written submissions the parties seem to agree that this matter concerns the power of the Commissioner of Police to discipline police officers. A subsidiary issue is whether the defendant has exercised these powers appropriately and within the scope of his authority over the claimant.

[29] The Royal Antigua and Barbuda Police Force is established by the **Police Act**.⁶ **Section 6(1)** of that act establishes the position of the Commissioner of Police who “shall have the command and be responsible for the superintendence of the Force.” **Section 105(5)** of the **Constitution of Antigua and Barbuda** provides as follows:

“The power to appoint persons to hold or act in offices in the Police Force below the rank of Sergeant (including the power to confirm appointments) and, subject to the provisions of section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Commissioner of Police.”

⁶ Cap. 330 of the Revised Laws of Antigua and Barbuda

[30] It is not disputed that the claimant was appointed to the Royal Antigua and Barbuda Police Force pursuant to **section 105(5)** of the Constitution quoted above. It is also not disputed that the defendant has the power to discipline or remove the claimant from office. In this regard, the Police Act and regulations made thereunder provide how these powers of discipline are to be exercised.

[31] **Section 16(3)** of the **Police Act** specifies the circumstances in which the employment of a police constable may be terminated. These include retirement, resignation, termination on medical grounds and abolition of office. For the purposes of this claim only **section 16(3) (a)** which provides that a constable may leave the force “on dismissal or removal in consequence of disciplinary proceedings” is relevant.

[32] The disciplinary process itself is set out in the **Police (Discipline) Regulations**⁷ which are made pursuant to **section 35** of the **Police Act**. **Regulation 3** creates disciplinary offences which are listed in a Schedule to the said regulations.

[33] **Regulation 4(1)** of the **Police (Discipline) Regulations** provides as follows:

“When a report, allegation or complaint is received by the Commissioner of Police from which it appears that a member of the Force may have committed an offence, the matter shall be referred to an investigating officer who shall cause it to be investigated.

[34] The next step in the disciplinary process is specified in **Regulation 5**. This provides for the investigating officer to “decide whether the member of the Force shall be charged with an offence.” If the Investigating Officer decides that the member is to be charged, the Investigating Officer shall enter the offence on a discipline form.

⁷ S.R.O 32/1967

[35] **Regulations 8 and 9** specify the procedure for hearing the charge itself. These regulations provide for the officer to be represented by another member of the Force or by counsel. The accused officer is also entitled to call witnesses.

[36] In the event that the officer is found guilty of the disciplinary offences, the following punishments may be imposed pursuant to **Regulation 11**:

- (a) dismissal from the Force;
- (b) requirement to resign from the Force either forthwith or on such date as may be specified in the decision and dismissal on refusal to do so;
- (c) reduction in rank;
- (d) reduction in the accused's rate of pay for such period not exceeding one year as may be specified in the decision;
- (e) fine not exceeding two hundred dollars;
- (f) reprimand;
- (g) caution.

Discussion

[37] In regards to the interactions between the defendant and the claimant on 18th, 22nd and 25th August 2025 counsel for the claimant submits; "It is beyond doubt that the Respondent engaged in a disciplinary process of his own with respect to the claimant."⁸ On the other hand, counsel for the defendant submits that "the meetings held on 22nd August, 2023 and 25th August 2023 and the request of the claimant to write a letter were to address the concerns the Defendant had with the Claimant's past evaluation and disciplinary records and to ascertain whether he is committed to remain in the Force as a police officer."⁹

[38] Were the meetings between the defendant and the claimant an attempt to discipline him or simply aimed at addressing issues with his performance? The answer lies

⁸ Claimant's Submissions paragraph 1

⁹ Defendant's Submissions paragraph 9

with an examination of the defendant's powers to command the Police Force pursuant to **section 6(1)** of the **Police Act**.

[39] In **Clifford Jackson v. The Commissioner of Police**¹⁰ Justice Astaphan outlined the nature of service in the Royal Antigua and Barbuda Police Force as follows:

“[4] The Royal Antigua and Barbuda Police Force is a Disciplined Body, Members of which are required to obey established Rules, Regulations and Codes of Conduct. That Body is also hierarchical and non-democratic. This hierarchical undemocratic regime is reinforced by Statute and Regulations. Members of Disciplined Forces in Antigua and Barbuda are required to submit themselves in total to the hierarchy. There is no debate; no discretion to do, or not to do that which you are told, ordered or directed to do by an Officer superior in rank to you – save and except where those orders or directives are illegal. It is a rigidly disciplined culture; same as the Armed Forces, and necessarily so.”

[40] In **Clifford Jackson** Justice Astaphan continued in relation to disciplinary laws and regulations:

“[8] Any and all actions taken under those Disciplinary Laws, Regulations and Rules, to be exempted from the engagement of all the Constitutionally guaranteed Fundamental Rights, must be Lawful. The moment any such action is unlawful, the Member of the Force is covered with the plenitude of his Constitutional Protections, without exception. It need not be emphasized that those exemptions do not relate to non-disciplinary Laws, Regulations and Rules as they relate to Members of the Disciplinary Force.”

¹⁰ Clifford Jackson v. Commissioner of Police, ANUHCV2010/0487 (decided 23rd August 2012)

[41] Finally in relation to the powers of the Commissioner to “command and superintend the Force” pursuant to **section 6(1)** of the **Police Act**, **section 16(3)** of the **Interpretation Act**¹¹ is applicable. **Section 16(3)** provides as follows:

“Where an enactment empowers any person or authority to do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing as are incidental to the doing thereof.”

[42] In light of the foregoing, I find that the defendant has the authority to give lawful commands to police officers under his command. Further, the defendant has the power to review an officer’s performance of his or her duties and is entitled to make reference to that officer’s disciplinary record in doing so. These powers are reasonably incidental to the defendant’s powers of command over the Police Force by virtue of **section 6(1)** of the **Police Act**.

[43] However, the defendant cannot purport to exercise his powers of discipline except in accordance with the **Police Act** and the **Police (Discipline) Regulations**. This principle has been made clear in the case of **Clifford Jackson v. The Commissioner of Police** quoted above.

[44] The defendant’s actions will therefore be examined in this context in order to determine their legality. On 18th August 2023 the defendant criticized the claimant’s manner of dealing with the public in the presence of other police officers. However, the Claimant does not allege that the defendant threatened him with any of the punishments specified in **Regulation 11** of the **Police (Discipline) Regulations**. Accordingly, I find that the defendant’s actions at the Liberta Police Station on 18th August 2023 were lawful and reasonably incidental to his powers as Commissioner of Police.

¹¹ Cap. 224 Revised Laws of Antigua and Barbuda

[45] The next episode in the sequence of events is the meeting held on 22nd August 2023 between the defendant, the claimant and other senior police officers. The claimant has several complaints concerning this meeting. The most significant complaint being that the defendant remarked to ASP Ellis as follows; *“Ellis you normally recommend dismissal but recommended reduction in pay.”*¹²

[46] The claimant claims that these words are an instruction to ASP Ellis to recommend the claimant's dismissal in the event of any further disciplinary hearings. I disagree. Much clearer words would be needed on the defendant's part to communicate such an instruction. I find it more likely than not that the defendant was noting that ASP Ellis seemed to be lenient where the claimant was concerned. This would be a mere observation. I therefore find no illegality on the defendant's part in relation to that remark.

[47] I also find no unlawfulness in the defendant referring to the claimant's past disciplinary record. I also do not believe that the defendant had made reference to Sgt. McBurnie's disciplinary note concerning the incident of 13th June 2023. This is clear as an investigator was not appointed in relation to that matter until October 2023. The claimant's complaints in this regard are therefore unfounded.

[48] This brings us to the request for the claimant to write a letter convincing the defendant that he should remain in the Police Force. This aspect of the case will be considered as a whole taking into account both the events of 22nd and 25th August 2023. The claimant presented the letter as instructed on 25th August 2023. However, the defendant seemed to have doubts as to whether the claimant had actually written the letter himself. No findings are necessary as to the authorship of the said letter.

[49] What is relevant though, are the defendant's alleged comments at that meeting. The claimant alleges that the defendant told him to enjoy his Police Week and that he

¹² Claimant's affidavit filed 21st September 2023 paragraph 20

would make a decision as to his continued membership in the Force at some point in the future.¹³ ASP Simmons who gave evidence on behalf the defendant neither confirms nor denies that the defendant made this statement.¹⁴

[50] The effect of this is to put the claimant to strict proof of his assertions. However, there is nothing in the evidence tendered in these proceedings to indicate that the claimant's recollection of events is incorrect. The defendant also had the option of cross-examining the claimant but has not done so. I accordingly find that the defendant made the statement that the claimant attributed to him. I have taken judicial notice of the fact that Police Week activities in Antigua and Barbuda took place last year from 10th to 17th September 2023. Thus, I find that the defendant meant that he would decide whether or not he should dismiss the claimant from the Police Force once Police Week activities had concluded in September.

[51] ASP Simmons in his affidavit states that the Defendant could not dismiss the claimant from the Police Force except in accordance with the disciplinary procedures. This is of course correct and is in accordance with **section 16 of the Police Act** and the **Police (Discipline) Regulations**. Therefore, requiring the claimant to write a letter to justify his continued service in the Police Force was contrary to the provisions of the Police Act and Regulations. The defendant has no power to terminate the claimant's employment except in accordance with the law. The defendant's instructions of 22nd August 2023 to write the letter were therefore ultra vires his powers and contrary to law.

[52] For the sake of completeness, I note that there are jurisdictions where the law gives the Commissioner of Police the power of dismissal apart from disciplinary proceedings. These powers may be exercised without calling upon the officer to show cause why he should not be dismissed. **Section 31 of the Police Act**¹⁵ of

¹³ Claimant's affidavit filed 21st September 2023 at paragraph 29

¹⁴ Affidavit of Grantley Simmons filed 3rd November 2023 at paragraph 25

¹⁵ Cap. 10.01 Revised Laws of Saint Lucia

Saint Lucia is an example of such legislation. However, the Police Act of Antigua and Barbuda does not confer any such power on the Commissioner.

[53] The claimant seeks various declarations and an injunction on the basis that the defendant's actions were unlawful. However, the defendant (through ASP Simmons) has admitted that the claimant can only be dismissed if the disciplinary process is followed. Therefore, there is in my view very little danger that the claimant will be illegally dismissed from the Royal Antigua and Barbuda Police Force. Accordingly, injunctive relief is not necessary.

[54] The claimant had also challenged the defendant's actions on the grounds that they were in breach of natural justice. In particular, he was not given an opportunity to be heard before certain decisions were taken against him. However, as a result of my finding that the defendant had acted outside of his powers it is not necessary to rule on this issue.

[55] The appropriate relief in the circumstances is a declaration that the Respondent's instruction to the claimant to write a letter convincing him why he should remain in the Force is ultra vires the **Police Act** and the **Police (Discipline) Regulations** and is thus void and of no effect. A further order will be made for the claimant's letter dated 24th August 2023 which was prepared in accordance with said instruction to be removed from the claimant's personal file.

Disciplinary Hearing of 15th February 2024

[56] The claimant alleges that any further proceedings have been so tainted by the defendant's actions that it is unlikely that these will be adjudicated fairly. Counsel for the claimant states: "Any tribunal established to adjudicate on the charges will be at the behest of the Commissioner of Police/Respondent. The Respondent has clearly given directives that a recommendation for dismissal of the claimant be returned if the claimant is tried. In fact, it is respectfully submitted that had it not

been for the claim filed by the claimant, he would have already been terminated from the Force without due process.”¹⁶

[57] The problem with the above submission is that there is no substantial evidence to support it. The disciplinary charges are scheduled to be heard before ASP Morgan who was not at the meetings 18th, 22nd, and 25th of August 2023. The claimant has also tendered no evidence that the defendant has sought to influence ASP Morgan in any way.

[58] Further, in terms of procedural safeguards, the provisions of **Regulations 8 and 9** of the **Police (Discipline) Regulations** ensure that the claimant’s right to be heard will not be impaired. Thus, it is fair for this court to have confidence that the proper due process and natural justice principles will be upheld.

[59] Accordingly, there is no reason for the court to prevent the disciplinary process from going forward.

Costs

[60] The parties have each had some measure of success in this claim. Accordingly, the appropriate order will be that each party should bear their own costs.

Order

[61] The court therefore orders as follows:

1. It is hereby declared that the defendant’s instruction of 22nd August 2023 which required the claimant to write a letter by 25th August 2023 to justify why he should remain in the Royal Antigua and Barbuda Police Force is void and of no effect.

¹⁶ Claimant’s Submissions at paragraph 26

2. The claimant's letter dated 24th August 2023 which was prepared in accordance with the defendant's instruction of 22nd August 2023 is to be expunged from the claimant's personal file.
3. All other relief sought by the claimant is dismissed.
4. No order as to costs.



Rene Williams
High Court Judge

By The Court

Registrar