

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **NEVHCV2014/0030**

Between

Eustace Nisbett

Claimant

and

**Minister of Agriculture, Lands, Housing, Cooperatives & Fisheries
Nevis Housing and Land Development Corporation**

Defendants

Before: His Lordship Justice Ermin Moise (A.g)

Appearances:

Mr. Patrice Nisbett of counsel for the claimant
Mr. Terrence Byron of counsel for the Defendants

Claimant Present

Mr. Alexis Jeffers, 1st Defendant present

Mr. Dexter Boncamper, General Manager of the 2nd Defendant present

2019: March, 11th and 12th
March, 20th (Closing Submissions)
April, 12th

JUDGEMENT

[1] **Moise, J (A.g.):** This is a claim for judicial review. The claimant is aggrieved with the decision of the defendants to terminate his contract of employment as general manager of the defendant corporation as well as the termination of a financial grant offered to him by the Cabinet of the Nevis Island Administration (NIA) to assist with his studies abroad. The defendants had also effectively nullified a period of study leave which had previously been approved by the board of the 2nd defendant corporation. I will first highlight the facts upon which this claim is grounded and address

the issues raised in order to determine whether the claimant should be granted the relief which he seeks.

The facts

[2] In October, 2006 the claimant took up employment as the General Manager of the 2nd defendant (NHLDC). His contract was for an initial period of 3 years and would have expired in October, 2009. The claimant nonetheless remained in employment and his contract was renewed for a further period of 3 years on 10th March, 2011. On 23rd May, 2012 the claimant applied to the board of the 2nd defendant for study leave and for financial assistance in order for him to pursue a degree in law with the Holborn College in London, England. Copies of the acceptance letters from Holborn College were exhibited with the affidavit filed on 28th February, 2014. By letter dated 19th June, 2012, Mr. E. Robelto Hector, then chairman of the board of the NHLDC, wrote to the claimant informing him that his application was granted and that he may proceed to London to pursue his studies. The letter further noted that his contract of employment was extended to June, 2015, that he would continue to receive his remuneration as General Manager and that a grant of £9, 741.00 was approved as assistance for him during his period of study. I understand this grant was made to the claimant as a one-time payment prior to the commencement of his studies. The claimant was obligated to provide semester reports from his university and to make himself available to the 2nd defendant during his vacation should he be on island.

[3] In addition to the financial assistance granted by the NHLDC, the claimant wrote to the cabinet of the Nevis Island Administration seeking further assistance. By way of letter dated 3rd August, 2012 the Secretary to the Cabinet wrote to the defendant advising him that the cabinet had approved his request for assistance and agreed to meet 80% of his tuition and living expenses for the duration of his studies, which was due to end in June, 2015. He states that he had financial obligations such as a mortgage and other personal expenses to maintain. Upon the representations of the defendants and the grant of financial assistance from the NIA, he proceeded to London, along with his wife, in September, 2012 to pursue his studies. He attended the Holborn College as a full time student until he completed his degree in 2015. He has since been called to the bar to practice as an attorney within the federation.

[4] There was a general election in Nevis on 21st January, 2013 and a new administration took over management of the Nevis Island Administration. The board of directors of the 2nd defendant was changed and new leadership was introduced. In accordance with the Nevis Land and Housing Development Corporation Ordinance, the 1st defendant was ex officio chairman of the board of the NHLDC. Mr. Alexis Jeffers was appointed to that portfolio and took over the chairmanship of the NHLDC in January, 2013. During the course of his evidence he could not recall the exact date of his appointment.

[5] On 11th February, 2013 Minister Jeffers wrote to the claimant on the following terms:

Dear Mr. Nisbett,

The records reveal that study leave was approved for you for the period September, 2012 to June, 2015. Kindly furnish the transcript or academic results of your performance for the semester ending December, 2012. Additionally, kindly furnish information regarding your continued enrollment and the institution that you are currently attending.

Your timely response will be appreciated.

Yours faithfully

***Alexis Jeffers
Minister of Agriculture, Lands
Housing, Cooperatives & Fisheries***

[6] By way of email of even date the claimant responded to the 1st defendant and indicated that the college at which he is enrolled conducts examinations on an annual basis. Due to the fact that he had only commenced his studies in September, 2012 he had not yet undergone exams which were in fact scheduled for May to July, 2013. As such, he was unable to supply a transcript or academic results. The claimant also pointed out that registration took place on an annual basis and that an appropriate enrollment letter cannot be obtained until he progresses from year one. He also pointed out that all of the documents relating to his studies were presented with his application for study leave to the previous board and should be on his file with the NHLDC. The claimant did not receive a response to his communication. Instead, by way of letter dated 13th February, 2013 the 1st defendant wrote to the claimant terminating all disbursements to him until the information was provided.

[7] I must note at this stage that there was an initial objection raised to the tendering of this letter into evidence. Mr. Byron on behalf of the defendants indicated that although the letter was referred to in the claimant's affidavit in support of his claim, it was not exhibited. In fact, the exhibit which corresponded to that evidence was an unrelated document. At the hearing on 11th March, 2019, counsel for the claimant sought to cross examine Minister Jeffers on the content of the letter. Minister Jeffers had previously denied outright that he ever penned any such letter. He stated that he did not terminate, unilaterally or otherwise, any disbursements to the claimant. He states that any such decision must come from the cabinet. However, this issue was raised towards the end of the court session on 11th March, 2019 and I reserved the ruling on whether the letter should be put to Mr. Jeffers to the following morning. On the morning of 12th March, 2019, Mr. Byron on behalf of the defendants noted that he had now seen a copy of the letter and withdrew his objection to it being put to Mr. Jeffers. He also wished to have the document tendered himself and this was done. Mr. Jeffers acknowledged his signature on the letter and that it is the letter referred to in the claimant's affidavit. This letter was written on the letterhead of his ministry and in his capacity as the Minister of Agriculture, Lands, Housing, Cooperatives and Fisheries. The letter states as follows:

Dear Mr. Nisbett,

The letter sent to you dated June 19, 2012 from then Chairman of the Nevis Housing and Land Development Corporation, item # 4 states. "You must provide official semester reports from the college."

Additionally, it is an established fact that registration for the new classes are done at the beginning of a new semester.

To this end, with immediate effect, all disbursements have been terminated until the above condition is met.

[8] Having received this letter, the claimant wrote a further email repeating the information he had provided prior and undertaking to seek confirmation from the university of his attendance if that would appease the 1st defendant's concerns. In his letter the claimant stated the following:

“You are requesting that I send information regarding my registration for the second semester. You noted that “it is an established fact that registration for new classes are done at the beginning of the semester.” I have been as pellucid as humanly possible that I am doing a degree, which is based on examined annually (sic), between May and July. Therefore there are no NEW classes for which additional registration is required (as you have suggested). In light of this, there is no new documentation that the college has given to us. If it is your desire, please advise me and I can then have the college write to and inform you of my status.”

[9] The claimant sent further correspondence to the 1st defendant complaining of certain comments made by him on a radio program in Nevis on 13th February, 2015. The defendant did not deny being on this program and accepted that he may have commented on the claimant's study leave during a broadcast in February, 2013. What is also clear is that the claimant received no response to his communication and his offer to supply the defendant with information from the university regarding his status as a full time student.

[10] On 27th February, 2013, the 1st defendant again wrote to the claimant, this time informing him that the board of directors of the NHLDC had decided to terminate his employment with immediate effect. The letter states as follows:

Dear Mr. Nisbett,

I refer to my letter to you on the 11th day of February, 2013 in connection with your status and relationship with the Nevis Housing and Land Development Corporation and in particular your failure to supply evidence that you are in fact undergoing full time education at an approved University or College.

I noted your response to that letter: however, since that correspondence, the new board of directors at the corporation has met and has reviewed your status and performance at the corporation over the last six and a half years.

The evidence is that you have mismanaged the corporation's affairs and has spent much of your time during your period with the corporation engaging in private business and party political activities which was in clear contravention of the policy of the corporation and the standard expected from a public servant. Further, your failure to supply satisfactory evidence that you are in fact attending a university or college as you proposed to the corporation for which it agreed to grant you study leave.

In the circumstances, the board of directors of the corporation has decided to terminate your employment with the corporation and to dismiss you under the terms of the contract of service dated 10th March, 2011, with immediate effect.

***Yours faithfully,
Hon. Alexis Jeffers***

[11] In his affidavit the claimant states that following his termination he sought the intervention of the Chief Labour Officer in the Department of Labour, Mr. Gary Liburd. The claimant refers to a letter dated 8th April, 2013 from Mr. Liburd. This letter was however not exhibited. What is apparent is that efforts to have this dispute settled by the Labour Department were not fruitful. On 16th April, 2013 the claimant received a letter from the chambers of Theodore L Hobson QC & Associates, acting on behalf of the NHLDC. In this letter it was alleged that there was no evidence that the claimant was enrolled at an approved university or college. The letter also indicated that the 2nd defendant was unaware that the Nevis Island Administration had offered assistance to the claimant for his studies abroad. It was stated that the claimant's employment with the corporation was terminated and his study leave nullified. In that regard the letter requested that the claimant repay the sum of \$41,591.15 (£9, 741.00) which was paid to him by the corporation as a grant in order to assist in pursuing his studies.

[12] In March, 2014 the claimant applied for and was granted leave to bring his claim for judicial review. In the affidavits filed in reply, the defendants sought to rely on a report from an accountant named Mr. Albert Edwards, which raised significant allegations of impropriety on the part of the claimant during his management of the NHLDC. This report was commissioned by the defendants in the early part of 2013. Mr. Dexter Boncamper, General Manager of the NHLDC notes in his affidavit of 1st July, 2014 that Mr. Edward was appointed by the board of the NHLDC to audit the affairs of the corporation. Mr. Boncamper states that on 26th June, 2014 he received a report from Mr. Edwards regarding the financial relationship between the claimant and the NHLDC during the period July, 2006 to 2013. He attached a copy of that report to his affidavit. Mr. Boncamper noted in cross examination that he had no discussions with the claimant regarding the content of the report. He states that the information was generated from the system in collaboration with the accountant of the NHLDC.

[13] During cross examination, Mr. Alexis Jeffers states that the investigation which was commissioned was not specific to the claimant but was to assist the new administration in determining the status of the 2nd defendant corporation. He states that it was during his initial queries regarding the status of the institution that he came to observe the claimant's name on the pay roll. Upon enquiries he received information regarding the study leave which was granted to the claimant. Despite this, the report attached to the affidavit was specific to the claimant and was a detailed assessment of the accounts which the claimant held with the NHLDC. Mr. Dexter Boncamper, general manager of the NHLDC, also indicated that the report was commissioned to ascertain the financial position of the corporation. What is important to note is that this report was commissioned and submitted after the claimant's contract and financial assistance had already been terminated. Despite this, the defendants seek to rely on the allegations contained therein as a justification for their actions in terminating the claimant's contract of employment.

[14] In his affidavit dated 1st July, 2014, Mr. Jeffers states that the report of Mr. Albert Edwards was commissioned due to the dire financial situation and an initial review of the financial records of the corporation. He states that the review was to cover the period of July 2006 to 31st January, 2013. I note that this would have covered the period of the claimant's employment as general manager of the NHLDC. In relation to that report Mr. Jeffers states that the ***"critical findings disclose a pattern of abuse of authority and other corrupt practices by the claimant."*** Mr. Jeffers goes on to note the following at paragraphs 20 to 23 of his affidavit:

"Apart from being allowed to purchase corporation lands and obtain building materials without paying the usual taxes thereon he had the corporation build an extended a costly road to his home even though at the time no other houses existed on that road."

Another outstanding and corrupt issue between the claimant and the corporation is the alleged sale of a house on lands in an under developed area owned by the claimant and his mother Avril Nisbett at Clifton Estate, Nevis to the corporation for \$187,000.00. This sale was approved by the chairman of the corporation E. Robelto Hector with no record of the decision of the directors' record minute book and no written agreement as is legally required. EC\$125,087.86 has already been paid to the claimant and his mother and

the corporation has no security in the property and no record of any valuation done by or on behalf of the corporation.

On becoming aware of this irregular transaction an independent valuator Mr. Michael Dore was employed by the corporation to give a valuation of the property and he has valued the property for \$120,000.00.

There is no doubt that the claimant has not only mismanaged the affairs of the corporation during the period of his employment but indulged in irregular and corrupt practices and his refusal to supply semester reports demanded by the board and not inform the corporation the name (sic) of the college or university he is attending full time more than justify his termination.

[15] Mr. Jeffers states in his affidavit that it was a policy of the corporation that neither directors nor the general manager was to benefit from the corporation except for director's fees, remuneration and the secretary fees of the manager who serves as the secretary to the board. Despite this, he claims that the claimant purchased 15,706 square feet of land at Low Ground Estate from the corporation at a highly subsidized price. This, according to Mr. Jeffers was not approved by the board of directors but rather by the chairman. It is alleged that the claimant ordered and purchased building materials through his account with the NHLDC to build his dwelling house and paid no import duty or taxes on these purchases. It was further alleged that the claimant owned a business known as Skill's Construction and provided services to this business through the corporation as well as to his brother Ellroy Nisbett. He also alleges that the claimant spent ***"much of his time engaged in political activities and is own private business instead of the business of the corporation."***

[16] In response to these allegations the claimant states in his affidavit dated 5th September, 2014, that there is no policy that the directors and manager of the NHLDC cannot benefit from the corporation. He denies that there was any policy prohibiting the purchase of property from the corporation provided that correct procedure is followed. The land which Mr. Jeffers refers to was being sold at the time for \$3.50 per square foot and was purchased by the claimant at \$3.00 per square foot. Mr. Boncamper in his own evidence noted that he could not recall what the price for land was in 2008 when this purchase took place. He however joined the organization after the claimant was terminated.

The claimant alleges that it was normal practice to allow staff and directors of the corporation to purchase property at this discounted rate. The claimant also accepts that his brother was engaged in a transaction with the corporation for the ordering of various postcards. This was a contract which was fulfilled and paid for. There were also some urgent purchases which were required and he sought assistance from his brother who lived in Florida to purchase those items.

[17] The claimant goes on in his affidavit to state that the NHLDC was involved in the construction of a number of roads. In the area of his residence, the corporation was engaged in a property development and that was the reason for the construction of the road which Mr. Jeffers complains of. He denies that there were no other houses in the area. Regarding the corporation's purchase of property from the claimant and his mother, Mr. Nisbett indicates that this was a decision taken by the board of directors. He states that the corporation was engaged in housing development in the area of Cotton Ground Village and the property which was purchased was used to launch a pilot project for one bedroom, studio rental units and would have been able to accommodate about 4 to 5 such units.

[18] The claimant also states that he has never been the owner of a business known as Skill's Construction. Attached to the evidence of the defendants is a receipt in the sum of \$3,000.00 issued by this company and signed by a Eustace Nisbett. The signature however, indicates that it was signed by a Eustace K Nisbett. The claimant states that this is not him and that this related to a different person altogether. When pressed in cross examination Mr. Jeffers stated that he was not familiar with who Eustace K Nisbett was and didn't do any further research about Skill's Construction.

[19] Regarding the purchase of building materials from the corporation at discounted prices, the claimant asserts that this was a benefit allowed to all members of staff. In his evidence Mr. Boncamper confirmed that staff members of the NHLDC are allowed to purchase materials at discounted rates. He notes that the corporation's purchases are already discounted from the suppliers and that the corporation is exempted from import duties. As such, if material is purchased the import duty would not be added to the price. He states that staff members are allowed discounts in the region of 20% to 30% of the corporation's prices on material.

[20] In essence, the claimant denies the allegations of impropriety leveled against him during these proceedings. However, insofar as the allegations of impropriety are relevant to this claim, paragraph 14 of the claimant's affidavit of 28th February, 2014 is worth repeating:

“Prior to my purported dismissal by the Board, I was never given the opportunity to respond to any of the allegations in respect of which I was being dismissed neither was I afforded a hearing, in order to defend myself against the said allegations...”

[21] In cross examination Mr. Jeffers stated that he saw no need to get an explanation from the claimant regarding the allegations contained in the report as the claimant's contract had already been terminated. He was also asked whether any of the members from the previous board of the NHLDC were contacted during the process of compiling the report. His response was that he did not know. In essence when pressed in cross examination Mr. Jeffers indicated that he found it unacceptable that the claimant was still on the pay roll because he was off island. To his mind it was unreasonable because he was still being paid \$7,500.00 a month. He thought is unconscionable due to the fact that this was agreed to by the previous board. The sums involved were unconscionable and that these payments would have gone until 2015. He summed it all up by stating that he had concerns with the package that the claimant received.

No Case Submission

[22] I wish firstly to address two issues raised during the trial at the close of the claimant's case. The defendants have consistently argued that the claimant has sued the wrong parties and that the cabinet of the Nevis Island Administration ought to have been the proper party instead. It is further submitted that the claimant has an alternative remedy in that his main grievance is that of breach of contract and ought not to be brought as a claim for judicial review. Mr. Byron for the defendants sought to raise these submissions and argued that there is no basis for the claim against the defendants as there was “no public law flavor” to this case. I did not accept this argument at that point in the proceedings and called upon the defendants to present their case. It is important however to highlight my reasons for doing so, especially since the second of these submissions were repeated in more detail in the closing arguments of the defendants.

[23] I note firstly, that there has been no allegation made against the Cabinet of the Nevis Island Administration. The letter which sought to terminate disbursements to the claimant was penned by the 1st defendant on his ministerial letterhead. Nowhere in the letter does it allege that the cabinet took any decision to termination or suspend disbursements to the claimant. At the point of the no case submission Mr. Jeffers had not yet given evidence. He did go on to deny that he terminated the disbursements and stated that such a decision can only be made by the cabinet. However, there is no evidence that the cabinet made this decision and the letter informing the claimant of this decision made no such representation. In essence therefore, the basis of the claim is that the minister took a decision that he had no authority to take and in a manner which breached the rules of natural justice.

[24] Further, the letter dated 27th February, 2013 was also penned by the minister on his ministerial letterhead. However, that letter did indicate that the decision to terminate the claimant's contract of employment was taken by the board of directors of the NHLDC. I note that the claimant takes issue with such a letter being written on the ministry's letterhead as opposed to that of the corporation. I too share a similar reservation. However, what is clear from the content of the letter is that the decision was taken by the board of directors of the 2nd defendant who has participated in these proceedings and does not deny taking such a decision; although no specific evidence of this was exhibited. It is that decision which the claimant seeks to impugn. I am therefore of the view that the defendants are proper parties to the proceedings.

[25] As it relates to the termination of his employment, the defendants also assert that the claimant's remedy is in private law and that this is not amenable to judicial review. Counsel for the defendants further crystalized this argument in his closing submissions and stated that in accordance with the decision of the House of Lords in **Ridge v. Baldwin**¹, public law rights as traditionally perceived, can only apply to those workers in the third category established by Lord Reid in that case. Instead, according to counsel for the defendants, the claimant's contract of service was a simple contract of employment. As such, judicial review is not available to him. Counsel goes on to refer to Lord Morris' contribution to the judgment in **Ridge v. Baldwin** where he states that “... **even if there had been no applicable regulations a decision to dismiss the appellant for neglect of duty ought to have been taken in the exercise of a quasi-judicial function which demanded an**

¹ [1963] UKHL

observance of the rules of natural justice." In reliance on these authorities counsel for the defendants makes the submissions outlined below:

- (a) The exercise of the power of dismissal under the claimant's contract of service involved no exercise of a quasi-judicial function. The claimant had undertaken under his contract of service to diligently and faithfully perform the duties as the manager of the NHLDC for the entire duration of its three year term.
- (b) With the contract of service still having more than one full year to run, a new board of directors under an incoming Nevis Island Administration comes into office to find that the claimant, in receipt of his full salary, has left the jurisdiction and is ensconced in London where he is pursuing a three-year course of studies.
- (c) It is axiomatic that he is not, he cannot be, diligently and faithfully or at all performing his duties as Manager of the NHLDC. He has, in fact, turned his back on those duties. He has abandoned his post.

[26] Counsel goes on to argue that the claimant's fate was tied to that of the government which employed him in the first place. Given that there was a change of government the glaring contradiction of the claimant's position became unavoidably apparent, and he suffered the fate of the previous government in that he was terminated. This termination was on the basis of his failure to perform his duties under the contract and as such is not amenable to judicial review. Counsel for the defendants claims to find support for this proposition in the case of ***R v. Berkshire Health Authority ex Parte Walsh***² where it was stated that "***whether a dismissal from employment by a public authority was subject to public law remedies depended on whether there was special statutory restrictions on dismissal which underpinned the employee's position and not on the fact of employment by a public authority per se ... a breach of that contract was not a matter of public law and did not give rise to any administrative law remedies.***" He also goes on to refer to the judgment of Lord Justice Scott Baker in the case of ***Tucker v. National Crime Squad***³ where he states that "***if the decision to end the appellant's secondment is not***

² (1984) 3 All ER 425

³ (2003) EWCA Civ 57

amenable to judicial review, that is the end of the matter. He has no remedy. Questions of fairness do not arise.”

[27] From the onset I wish to state that I do not agree with these submissions. Firstly, in my view, it is not open to counsel in written submissions to rely on justifications which were not the basis of the claimant's dismissal from office in the first place. Counsel seeks to argue that the claimant has abandoned his post and that this was a justifiable reason for his dismissal which, according to him, is not amenable to judicial review as it did not require a quasi-judicial exercise. However, the basis of the defendants' decision to terminate the claimant's contract of employment was contained in the letter dated 27th February, 2013 and further expounded in the evidence presented by the defendants. These were for his alleged mismanagement of the corporation's affairs, spending much time on his private affairs and being engaged in partisan political affairs. These were said to have been in breach of the corporation's policies. Further to that, the letter asserts that the claimant failed to provide an adequate response to the 1st defendant's enquiries about his status at a university. In his own evidence Mr. Jeffers conceded that he had grave concerns with the “package” which the claimant got. The reasons cited by counsel in his closing submissions are therefore not compatible with the reasons given in evidence.

[28] Counsel for the claimant refers the court to the case of *R (Beeson) v. Dorset County Council*⁴ where the court held that ***“the basis of judicial review rests on the free-standing principle that every action of a public body must be justified by law, and at common law the High Court is the arbiter of all claimed justifications.”*** Further reference was also made to the case of *Sheffield City Council v. Smart*⁵ where the following was stated:

“The means by which the exercise of power by any public authority is strictly limited to the scope and purpose of the power's granted, and subject also to the common law's insistence on rationality and fairness...”

[29] In essence the claimant argues that this case falls squarely within the realm of public law as it seeks to review the legal justification, or lack thereof, of the actions of the defendants and the general fairness in the process by which these decisions were made. For my part, I find much force

⁴ Unreported November, 2001 QBD

⁵ [2002] EWCA Civ. 4

in the relevance of the authorities cited by the claimant and authorities from our own courts have supported this. In the case of **Gary Nelson v. The Attorney General et al**⁶ Blenman J (as she then was) came to consider whether leave should be granted to the claimant to make a claim for judicial review. As it relates to the question of whether the matter fell within the ambit of public law, her ladyship noted the following at paragraph 44 of her judgment:

“It is well settled that judicial review is the procedure by which the Court exercises supervisory jurisdiction over tribunals and public bodies. It is also the means by which the Court controls the exercise of governmental powers. The Court in the exercise of this jurisdiction is not concerned with the merits of the decision of the body or tribunal but seeks to ensure that the body or tribunal has acted properly or within the ambit of its power in arriving at its decision; in a word the Court is concerned with the legality of the decision made.”

[30] Later on in her judgment Blenman J noted that ***“The gravamen of Mr. Nelson’s complaint is that his termination was unlawful since the Commission breached well established principles of natural justice. These are matters that will have to be fully ventilated at the trial. There is no doubt that they fall squarely within public law and are amenable to judicial review.”*** When this case went on appeal Blenman JA noted the following at paragraph 143 of her appellate court judgment:

“It is trite law that if a public authority intends to remove a person from office for cause procedural fairness requires that the person be given a hearing. I have no doubt that since Mr. Nelson was removed from office due to his unsatisfactory conduct he ought to have been given a hearing since his name and reputation were being questioned.”

[31] Clause 7 of the claimant’s employment contract states that:

“If the person engaged will at any time neglect or refuse for any cause (except ill-health not caused by his own misconduct) to perform his duties or to comply with any lawful order or will disclose any information respecting the affairs of the NHLDC to any

⁶ ANUHCv 2008/0552

unauthorized person, or will in any manner misconduct himself, the NHLDC may dismiss him, and on dismissal all rights and advantages of his engagement will cease.

[32] Clause 8 goes on to state that The NHLDC may at any time determine the engagement of the claimant by providing 3 months' notice in writing. If the employment is terminated other than in accordance with the terms of the contract, then the claimant would have been entitled to the full balance of the contract and all gratuities owed to him.

[33] In my view, the substance of the claimant's case falls squarely within the realm of public law. He does not claim breach of contract but rather seeks a review of the manner in which the decision to terminate his employment and nullify his study leave was made. He contends that the manner in which he was dismissed from his employment was a breach of the rules of natural justice in that he was not given an opportunity to be heard. I notice that the letter attempted to dismiss the claimant for cause. On the basis of the authorities he would have been entitled to a fair hearing and this is the basis of the claim which he had brought before this court. These are matters of public law and are properly before this court for consideration.

Illegality

[34] The first complaint made by the claimant is that the decision to terminate the financial assistance provided to him by the cabinet of the Nevis Island Administration was unlawful. It is now well established that the court is empowered to review a decision of a public authority if that decision was made outside of his/or her powers; whether legislative or otherwise. The principle is simply that a public authority must act within the powers conveyed upon him by law. He must also refrain from any action which the law does not allow him to perform; no matter how justified his actions may seem to him. This principle has been a long standing feature of the common law and referenced as far back as 1610 when Chief Justice Sir Edward Coke sought to admonish King James by stating that ***"the King hath no prerogative, but that which the law of the land allows him."***⁷ As Lord Diplock noted in the case of ***Council of Civil Service Unions v. The Minister of the Civil***

⁷ The Case of Proclamations (1611) 12 Co Rep 74

Service⁸, a decision maker “must understand correctly the law that regulates his decision-making power and must give effect to it.”

[35] The Nevis Island Administration is a creature of the Constitution of Saint Christopher and Nevis, having been established by section 102. As it relates to the functions and decisions of the cabinet, section 104(4) provides that section 62 of the Constitution shall also apply to the NIA. Section 62 states as follows:

“The Secretary to the Cabinet, who shall have charge of the Cabinet Office, shall be responsible, in accordance with such instructions as may be given to him or her by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the [premiere] may direct.”

[36] As noted in evidence, the claimant received a letter from the secretary to the cabinet informing him that his request for financial assistance was approved by the cabinet and that the NIA would meet 80% of his tuition and living expenses. There were no conditions placed on the claimant in this letter. All that he was required to do was to contact the Permanent Secretary in the Human Resources Department for further instructions or clarification. In my view therefore, a decision of the cabinet of this nature can only be overturned by the cabinet; unless of course the cabinet itself has lawfully derogated this power to someone else. If this decision is made, then it is the duty of the Secretary to the Cabinet to convey that decision to the claimant. Minister Jeffers in his own evidence accepted that he had no authority to terminate the claimant’s disbursements based on the fact that this was approved by the cabinet; and yet he claims to have merely communicated the decision in his letter dated 13th February, 2013. This is a letter which he initially denied penning altogether.

[37] Further, the letter from the Cabinet Secretary indicated that instructions and clarification of the grant was to come from the Permanent Secretary to the Department of Human Resources. I can find nothing in the letter, or any other law for that matter, which empowered Minister Jeffers to enquire

⁸ [1985] 1 AC 374

of and make demands of the claimant as it relates to the disbursement of funds approved by the cabinet of ministers for the furtherance of his studies abroad. No doubt as chairman of the NHLDC he may have had some concerns regarding the exercise of that institution's power. However as it relates to the scholarship grant to Mr. Nisbett from the cabinet, the 1st defendant had no legal authority to address this matter in the way he attempted to. It simply did not fall under his authority neither as minister nor chairman of the NHLDC.

[38] Further, the constitution requires that every decision of the cabinet is to be conveyed by the Secretary to the Cabinet who has the duty to arrange for the business of that body and to keep the minutes. It is of note that the letter dated 13th February, 2013 informing the claimant that his disbursements were terminated was not sent by the Cabinet Secretary; neither did the letter contain any evidence that the cabinet had taken a decision to terminate the claimant's disbursements. This letter was written on the Minister's letterhead and was said to be in keeping with a previous requirement from the NHLDC that the claimant provide official semester reports from his college; a requirement which was not contained in the letter of 3rd August, 2012. It states that it is an established fact that registration is required for new classes at the beginning of a new semester. I am unaware as to where and by whom this fact has been established. Nonetheless, with immediate effect the claimant's disbursements were terminated despite the minister's lack of authority to do so.

[39] I would add also that if the cabinet intended to make such a decision to terminate these disbursements, then the claimant would have certainly had a right to be heard prior to such a draconian step being taken. I am therefore fully satisfied that this decision was ultra vires and ought to be quashed as submitted by the claimant.

Natural Justice

[40] The claimant, in his affidavit, complains that the rules of natural justice were not applied to him when the defendants came to make the decision to terminate his employment and nullify his study leave. Just like the rule against illegality, the concept of natural justice has been a feature of the common law for a very long time. It has traditionally been encapsulated into two concepts. That is (a) the ***Audi alteram partem*** rule, which simply means to hear the other side and (b) ***nemo***

iudex in causa sua which is the rule against bias. It is now well settled that if a public authority intends to make a decision which may be adverse to an individual, that individual is entitled to be heard prior to the making of that decision. He is also entitled to be given full knowledge of the facts which may be relied on against him and a reasonable opportunity to respond to them. The decision maker must also be open minded and not clothed with bias or prejudice towards the claimant in any way. As I noted above, in the case of **Gary Nelson**, Blenman JA, with specific reference to the termination from employment, stated that “**if a public authority intends to remove a person from office for cause procedural fairness requires that the person be given a hearing.**”

[41] In the evidence presented in this case I note that Minister Jeffers indicated in his letter dated 27th February, 2013 that the board of the NHLDC had taken a decision to terminate the claimant's employment with immediate effect. The reasons given were for the alleged mismanagement of the NHLDC's affairs, spending much time during the claimant's period with the corporation engaging in private business and party political activities and for the claimant's failure to supply satisfactory evidence that the claimant was in fact attending a university or college as he had proposed to the corporation for which it agreed to grant him study leave. Certainly these allegations indicate that the termination of the claimant was for cause and I have little hesitation in finding that he would have been entitled to a fair hearing prior to the decision being made.

[42] In the letter dated 27th February, 2013 the allegations of misconduct were not specified. Whilst it was alleged that the claimant had spent much time during his tenure with the NHLDC conducting private business and engaged in political party affairs, none of these allegations were specified and the claimant was not given an opportunity to respond to them. Further, as it relates to the alleged failure on the part of the claimant to supply satisfactory evidence of his enrollment at a college in London, I note that the 1st defendant wrote to the claimant on 11th February, 2013 requesting this information. Despite the response of the claimant, which I find to be reasonable, within a mere two days his disbursements were suspended. The claimant then wrote to the 1st defendant enquiring as to whether a letter from the university would suffice and that if it did he would source such a letter and present it to the 1st defendant. There was no response but instead a letter of termination was sent to him a fortnight later. This is a clear example of a violation of the principles of natural justice.

[43] I note that the defendants have sought to provide evidence of mismanagement on the part of the claimant by tendering a report from accountant Albert Edwards. However, this report was presented to Mr. Boncamper on 24th June, 2014. The claimant's employment was terminated on 27th February, 2013. I find it difficult to accept that the content of this report can act as a justification for the defendants' actions when it simply was not available to the board of directors of the NHLDC when it took a decision to terminate the claimant's employment. Further, it was accepted by both Mr. Jeffers and Mr. Boncamper that at no point was this report discussed with the claimant. He was not contacted during the compilation of the information contained therein and neither was any member of the board who served during Mr. Nisbett's tenure as General Manager.

[44] This court is not called upon to determine whether the claimant has in fact mismanaged the affairs of the NHLDC. That was an investigation which the defendants embarked upon at their own instance and with full authority to do so. However, in doing so they ought to have observed the rules of natural justice and ensure that the claimant was given an opportunity to participate in this process so as to enable him to respond to every allegation made. They did not do so in violation of the long established principles which I have already referred to.

Conclusions

[45] I make one final observation as it relates to the evidence and general substance of this case. Both the claimant and Minister Jeffers sought to make heavy weight of the political affiliations of the parties involved in this matter. No doubt the events of February, 2013 emerged on the heels of a general election. Counsel for the defendants, in his own submissions, sought to persuade the court to consider the fact that a change of government ought to have occasioned a change in circumstance for the claimant. However, I wish to state that in the exercise of the very sacred principles of public law, this court is blind to race, gender, religion, political and any other affiliation or orientation which distinguishes us from each other. One feature of the common law is that it is designed to bring certainty to the diverse polity in which it administers the law. The citizen must know what is expected of him in order to plan his affairs accordingly and is entitled, by the mere fact of his very existence, to certain legitimate expectations regarding the manner in which executive authority is exercised over his life. Therefore, public authorities must know the ambit of and the limits to their powers and the manner in which these powers are to be exercised. It is now

trite that when a public authority seeks to exercise powers in a manner which may be adverse to a citizen, or anyone for that matter, he must observe the rules of natural justice. Regardless of whatever affiliations there may have been, what the claimant was entitled to is fairness and a right to be heard. These principles were violated and I am satisfied that he is entitled to the remedies which he seeks; save and except that I would decline to make an order for his reinstatement as General Manager of the NHLDC for reasons which I believe are now obvious to all.

[46] The claimant is entitled to damages for the remainder of his contract and for the disbursements which were withheld from him as a result of the 1st Defendant's unlawful termination of this grant. He however claims vindictory and exemplary damages. I express some doubt as to whether vindictory damages is available per se in judicial review proceedings, other than proceedings brought under the constitution. I will make no ruling on this and invite the parties to present submissions on this issue at the point of an application being brought by the claimant for an assessment of his damages.

[47] In the circumstances I make the following orders and declarations:

- (a) It is declared that the termination of the financial assistance granted to the applicant by the Nevis Island Administration as contained in letter dated 13th February, 2013 is ultra vires, null void and of no effect;
- (b) An order of certiorari is granted quashing the decision of the 1st defendant to terminate the financial assistance granted to the claimant by the cabinet of the Nevis Island Administration as contained in letter dated 13th February, 2013;
- (c) It is declared that the decision of the 2nd defendant to dismiss the claimant from his contract of employment as general manager of the NHLDC is a breach of the rules of natural justice and is therefore unlawful, null, void and of no effect;
- (d) An order of certiorari is granted quashing the decision of the 2nd defendant to dismiss the claimant from his contract of employment as contained in letter dated 27th February, 2013;

- (e) A declaration that the claimant is entitled to all or any disbursements, salary payments and other remuneration lawfully due and owing to him by virtue of his contract of employment and the grant of financial assistance approved by the cabinet of the Nevis Island Administration;
- (f) The claimant is therefore entitled to damages for the reasons outlined in (e) above and is at liberty to file an application for the assessment of those damages within 28 days from the date of delivery of this judgment. The claimant may also include further submissions on the issue of whether vindictory damages ought to be awarded to him on the facts of this case and if so how much is to be awarded;
- (g) Costs to be assessed pursuant to rule 65.12 of the CPR upon application by the claimant no later than 28 days from the date of delivery of this judgment; unless the parties have come to an agreement on the amount of costs to be awarded.

**Ermin Moise
High Court Judge**

By the Court

Registrar