

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2016/0219

BETWEEN:

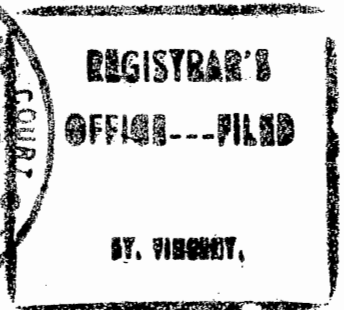
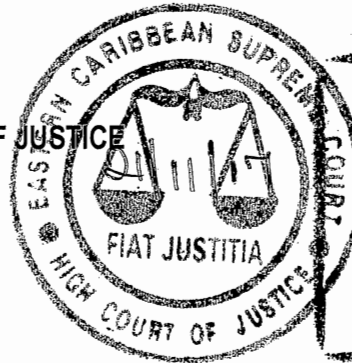
PUBLIC SERVICE UNION

CLAIMANT

and

PUBLIC SERVICE COMMISSION

DEFENDANT



Appearances:

Mr. Joseph Delves for the claimant

Hon. Attorney General for the defendant, with him Mr. Duane Daniel and Ms. Karen Duncan

2017: Nov. 21

ORAL DECISION

BACKGROUND

- [1] **Henry, J.:** The defendant the Public Service Commission objects to three sentences being admitted into evidence as part of the evidence-in-chief of the witness Mr. Joel Poyer. In that regard, the Public Service Commission asserts that paragraph 18 of the affidavit of Joel Poyer filed on the 11th of January, 2017 is offensive in respect of the last sentence which reads:

'For the reasons set out herein and in the claim which this affidavit accompanies, the claimant maintains that the defendant is not guided by regulation 19 and does not follow or apply it, and or follows or applies it inconsistently and chaotically'.

- [2] The Public Service Commission argues that by making that statement the witness is essentially usurping the court's authority, because whether or not the Public Service Commission is guided by Regulation 19 in considering applications or decisions, regarding promotion, is a matter for the court to make findings on. The Public Service Union does not object to this sentence being struck out and has not expressed an opinion one way or the other regarding whether it should be struck out as being offensive.
- [3] With respect to paragraph 19, the Public Service Commission objects to the last sentence in paragraph 19 of the same affidavit which reads:
- 'The claimant asserts that this is a breach of regulation 19'. The Public Service Union expresses no opinion one way or another regarding whether that sentence is offensive and inadmissible.'
- [4] Thirdly, the Public Service Commission objects to paragraph 12 of the affidavit of Joel Poyer, filed on the 19th of May, 2017, and the last sentence in that paragraph on the ground that, that last sentence seems to be speculation and or hearsay. That sentence reads:
- 'As a result of the Union's letter, Mr. Brian Johnson the Director of Forestry withdrew his membership from the Union'.
- [5] That sentence speaks to the decision of the Director of Forestry in withdrawing his membership. In that regard, it seems to suggest that the Director of Forestry communicated to Mr. Joel Poyer the reason why he withdrew his membership, or that Mr. Joel Poyer heard him communicate his reason to someone who could be the Public Service Commission. It does not say. It could be speculative if Mr. Poyer was not present and had no firsthand knowledge of the reason for the decision; and it would be hearsay if the decision for the withdrawal of the letter was not communicated by Mr. Brian Johnson to the defendant Public Service Commission in the presence of the witness Mr. Joel Poyer.
- [6] It is impossible for the court to make a determination how and when Mr. Joel Poyer became aware of the statement contained in that paragraph. For that reason, I make no decision striking out the

last sentence of paragraph 12 of that affidavit. I will permit it to remain, subject to it being elicited from him, the information got to him in a fashion which renders it inadmissible by virtue of contravention of the rules regarding hearsay and/or speculative in that, he has no firsthand knowledge of the reason for the withdrawal of the letter.

- [7] With respect to paragraphs 18 and 19 of the first affidavit of Joel Poyer filed on the 11th of January, 2017, they speak to interpretation of regulation 19 of the Public Service Commission Regulations. The contents of Mr. Poyer's affidavit do not reflect that he is trained as a lawyer or that he has any legal training whatsoever. In those circumstances, it does not appear that if he is qualified to make the utterances contained in those paragraphs, and for those reasons, those paragraphs would be excised as being inadmissible.
- [8] With respect to the objection raised by the Public Service Union to the document as contained at page 117 of trial bundle 1 on the ground that it could not have been in the claimant's contemplation at the time the claimant initiated its claim; and on the ground that the court earlier in these proceedings struck it out as not being in the claimant's contemplation; the court takes into account the submissions made on behalf of the Public Service Union, to the effect that the letter concerns events which took place in the Ministry of Forestry; that the witness is a Forestry Officer who intends to give direct evidence on the letter; that the witness Joel Poyer is a trustee of the Union and is entitled to look at those documents; and further that the witness is seeking to produce that letter into evidence to establish its existence.
- [9] To the extent that the witness is seeking to produce that letter into evidence to establish its existence, it is unnecessary for the witness to tender the document. For that purpose he can just allude to it. To the extent that the document is not authored by the witness Joel Poyer, it would appear to be hearsay and rendered inadmissible by virtue of the Evidence Act, specifically section 47. To the extent that it is contended by the Public Service Union that the witness is a trustee of the Union and therefore could be a custodian of the document and entitled to produce it on the

Union's behalf, the Public Service Union would be required to satisfy the provision of section 46 and/or 47 of the Evidence Act.¹

[10] Section 47 (2) provides that where a party intends to give a statement in evidence which is made by someone else, he must seek the leave of the court. Secondly, that such evidence is not admissible before the conclusion of the examination in chief of the person who made the statement. It does not appear from the trial bundle that the author of that statements is a prospective witness in this matter. It therefore seems that the Public Service Union has failed to establish that in the circumstances of this case, there is justifiable reason to permit the Public Service Union's witness Joel Poyer to produce that exhibit, which appears at page 117 of the trial bundle.

[11] It appears in all the circumstances that, that statement consists exclusively of hearsay material which is inadmissible, pursuant to the provisions of the Evidence Act specifically section 47. For those reasons the court will accede to the application by the Public Service Commission to exclude that letter from the testimony of Joel Poyer as an exhibit to his affidavit, filed on the 19th of May, 2017.

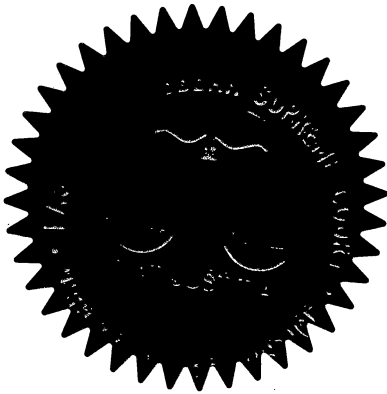
ORDER:

[12] In all of the circumstances, it is ordered:

1. Paragraphs 18 and 19 of the affidavit of Joel Poyer filed on the 11th of January, 2017 are excised.
2. I make no order, in regards to the last sentence of paragraph 12 of the affidavit of Joel Poyer filed on the 19th of May, 2017.
3. The last sentence in paragraph 20 (xiii) of the affidavit of Joel Poyer filed on the 19th of May, 2017 is excised, as well as the exhibit JP 4-7 referred to in that sentence.

¹ Chapter 220 of the Revised Laws of St. Vincent and the Grenadines 2009.

4. Paragraph 4 the affidavit of Joel Poyer filed on the 11th of January, 2017, 7th of April, 2017, 19th of April, 2017 and 19th of May, 2017 are admitted into evidence as his evidence-in-chief, minus the sentences and portions which have been excised.
5. Adjourned to a date to be fixed by the Registrar in January, 2018 in consultation with the parties.
6. The Registrar is to schedule the conclusion of this trial over a period of three days.
7. The Registrar is to issue notice of hearing to the parties at least 14 days in advance with proof of service.
8. Claimant has carriage of this order.



Esco L. Henry
HIGH COURT JUDGE

By the Court


Registrar