

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

(CIVIL SUIT)

**BRITISH VIRGIN ISLANDS
BVIHCV 2010/305A**

JULIAN WILLOCK

Claimant

V

**THE ATTORNEY GENERAL
CHAIRMAN PUBLIC SERVICE COMMISSION
DIRECTOR OF HUMAN RESOURCES OF THE GOVERNMENT OF THE VIRGIN
ISLANDS**

Respondents

Appearances:

Gerard Farara Q.C Tana'ania Small Davis for the Claimant

Baba Aziz, Attorney General and Karen Reid Senior Crown Counsel for the Respondents

Judgment:

(2011: March 24th May 24th)

[Administrative Law – Judicial Review – Investigative Committee appointed by Governor to inquire into certain allegations against Permanent Secretary to ascertain whether disciplinary charges should be laid against him – whether such appointment ultra vires powers of the Governor and the Public Service Commission –Whether unlawful delegation of the powers of

the Public Service Commission rendering the report of the Investigative Committee void - Whether Investigative Committee breached its own procedural guidelines rendering entire procedure and report void- whether Public Service Commission having read the report will be biased against Claimant in any future disciplinary proceedings]

[1] **Joseph-Olivetti J:** - Mr. Julian Willock, a public officer is aggrieved by the Governor's decision, on the advice of the Public Service Commission, to investigate allegations of wrongdoing by him by setting up an Investigation Committee to conduct a preliminary inquiry and now seeks to challenge this decision on the basis that the Governor and the PSC have no power to so act. He has done so by way of the celebrated remedy of judicial review, crafted by eminent common law judges, to ensure that administrative decisions are subject to review by the courts and reached in accordance with the law.

[2] **The Facts**

[3] The facts are not in dispute and can be gleaned from the affidavit of Mr. Willock and that of the Ag. Director of Human Resources, Ms. Michelle Donovan-Stevens.

[4] Mr. Willock is the Permanent Secretary in the Ministry of Communications and Works having been so appointed on 22 March 2010. (Prior to that he was the Director of the Water and Sewage Department). On 22 July 2010 the BVI Beacon, a newspaper of long standing in the Territory, published an article, "PS Linked to Online News Site," which made certain allegations of misconduct against him. A copy was sent to the Department of Human Resources who submitted to the PSC. The PSC considered the allegations at their meeting of 27th July and decided to advise the Governor, **inter alia** that Mr. Willock be placed on compulsory leave under General Orders 6.8 and that an investigation be undertaken into the allegations in accordance with General Orders 3.27. The PSC having obtained the advice of the Attorney General also advised the Governor to appoint an Investigation Committee with certain terms of reference and

procedural guidelines for carrying on the investigation. The Governor accepted the recommendations.

- [5] In the meantime on 27 July Mr. Willock wrote to the Governor, the Deputy Governor and the Director of Human Resources taking issue with the allegations and provided what he termed, ‘supporting or exculpatory documents.’
- [6] The Deputy Governor on the Governor’s directive by letter of 27 July informed Mr. Willock that investigations would be conducted into the allegations made in the article of misconduct contrary to General Orders 3.27 and he was sent on compulsory leave with full salary and benefits and was also asked to provide comments on the said allegations within 7 days. He responded by letter of 6 August again with supporting documents. This letter was not considered by the PSC as they had already determined on their course and considered that such evidence would be considered by the Investigation Committee, **“who alone would determine whether disciplinary charges would be laid against the Applicant”**, to quote Ms. Donovan-Stevens at para. 10 of her affidavit.
- [7] The PSC embarked on the process of selecting the members of the Investigative Committee and by letter of 26 August so informed Mr. Willock.
- [8] Finally, on 20 September, the Governor, acting on the advice of the PSC appointed a three member Investigative Committee made up of the Chairman, Ms. Tamia Richards, a private citizen and attorney at law, Mrs. Carolyn Stoutt-Igwe a public officer and Mr. Michael Anthony a private citizen to investigate the allegations. They were each required to take an oath of secrecy. The letter of appointment of the Chairman indicates that the appointment was made by the Governor acting under section 92 of the Virgin Islands Constitution Order 2007. The other two letters were in similar terms.

- [9] By letter of 22 September Ms. Donovan-Stevens informed Mr. Willock of the appointment of the Investigative Committee and provided him with its Terms of Reference, its composition, the Guidelines and an explanation of the investigation process and the summary of the substantive allegations against him.
- [10] The Terms of Reference provide as follows:– “The terms of reference of the Investigating Committee are to investigate into allegations of misconduct, and to determine whether there is a case to answer in respect of all or any of the allegations stated hereunder: The allegations which arose out of a report in the BVI Beacon Newspaper of 22 July 2010 (as previously provided to you on 27 July 2010) are that you, Mr. Julian Willock on diverse days in 2010: (i) assisted Mr. Andrew Edwards, Mr. Matt Byrne, and Ms. Kelsey Foster to provide false information to Immigration Officials to enable them to gain admission into the Territory contrary to the laws of the Virgin Islands; (ii) employed Mr. Andrew Edwards, Mr. Matt Byrne and Ms. Kelsey Foster in your private business (Advance Marketing and Professional Services and Virgin Islands News online) without the requisite work permit contrary to the laws of the Virgin Islands; (iii) engaged in private interest/business (Advance Marketing and Professional Services and Virgin Islands News online) that conflicted with your official duties and responsibilities in that your private business meetings were held in the office assigned to you in the Central Administration Complex to perform your official duties as Permanent Secretary contrary to General Order 3.6; (iv) provided one of your private employees named in (i) and (ii) above with the contact information of a police officer, a public officer, in pursuance of your private enterprise contrary to General Order 3.11; (v) exerted extensive editorial control and directly managed your private news business named in (iii) above contrary to General Orders 3.11”
- [11] The said letter of 22 September stated, **inter alia**:-“...the investigation is to be conducted in accordance with the enclosed Investigation Guidelines which were

provided to the Investigating Committee and is provided for your information and reference.”

- [12] The said letter of 22 September under the rubric, “The Investigative Process and Expected timeframe” stated, *inter alia*, “...The Committee shall with all possible dispatch, but not later than thirty (30) days from the date of its composition, forward to his Excellency the Governor and the Public Service Commission ... for their information the original statements and all relevant documents together with the Committee’s own report on the allegations. Subsequently you will be advised of his Excellency the Governor’s decision on this matter. If the Investigation Committee determines that there is not a case to answer and its findings is accepted by the Governor, acting on the advice of the PSC, you will be duly informed and directed to report to work accordingly. Should the Investigating Committee determine there is a case to answer the details regarding how the case will be answered will be communicated to you. The findings of the Committee may lead to disciplinary charges. In such an instance you will be provided the charges and the evidence used for the purpose of enquiry and given the opportunity to respond to the charges as a fair part of the hearing process.”
- [13] The Guidelines themselves stated, **inter alia**, that a face to face interview with Mr. Willock was central to the process.
- [14] Mr. Willock challenged the legality of the Committee by his solicitor’s letter of 23 September to the Director of Human Resources and in response the Attorney General by letter of 23 September relied on article 92(1) of the Constitution and Rule 34 of the Public Service Commission Regulations,” the Regulations,” to justify the appointment of the Committee. In addition, the Attorney General also assured Mr. Willock that the process embarked upon embodied the principles of fairness and respect for the rules of natural justice.

- [15] Further correspondence was exchanged but no party saw it fit to resile from his position.
- [16] In the meantime, by letter of 24 September the Chairman of the Committee, informed Mr. Willock of the allegations and required him to submit a written explanation within 7 days. Mr. Willock duly complied by letter of 5 October 2 without prejudice to maintaining his challenge to the validity of the Committee. He received no other communication from the Committee, even though the Governor at the request of the Committee had extended the time for it to submit its report. In particular, the undisputed evidence is that at no time did the Committee invite Mr. Willock to attend a face to face interview or apprise him of the evidence against him or give him an opportunity to comment on it.
- [17] Subsequently, by letter of 3 December the Director of Human Resources informed Mr. Willock that the Committee had completed and submitted its Report dated 30 November and that the Report was placed on the agenda for the PSC's meeting scheduled for 7 December.
- [18] Mr. Willock promptly launched these proceedings. First, he obtained an interim injunction which was granted by Hariprashad-Charles J on 15 December staying all proceedings of the PSC in connection with the Report until further order. And, I subsequently gave him leave on 3 February 2011 to apply for judicial review.
- [19] **Issues arising**
- [20] Mr. Farara, Learned Queen's Counsel for Mr. Willock, raised two major challenges which can be dealt with under the heads of legality and procedural irregularity.
- [21] **Issue I-Legality**
- [22] **Submissions**
- [23] Logically, the legality issue falls to be considered first. The gravamen of Mr. Farara's submission is as follows. The appointment of the Committee is **ultra**

vires the powers of both the PSC and the Governor conferred on them by the Constitution and the Regulations. Section 92 (1) of the Constitution gives the Governor the power to appoint and exercise discipline over public officers. However, the Governor is required to act on the advice of the PSC except where such advice would in his opinion be adverse to the interests of the Territory. Article 91 establishes the PSC whose functions, including matters of discipline of public officers are prescribed by the Regulations. The Regulations do not confer any power on the PSC to establish or appoint an investigating committee in circumstances where dismissal may be warranted as that procedure is contained in Rule 47. Here the allegations were so serious that if well founded could result in dismissal and therefore the PSC had to apply Rule 47 which it omitted to do and instead embarked on a wholly unauthorized course. The Governor does not have any autonomous authority to direct a course other than that set out in the Regulations and advised by the PSC and accordingly the appointment of the Committee was **ultra vires** and void.

[24] The gist of the arguments of Mr. Aziz, the learned Attorney General, can be summed up as follows. The Governor by virtue of article 92 (1) of the Constitution has power to appoint and discipline public officers and in exercising those powers he is required to act on the advice of the PSC. Further, by virtue of Rule 34 (2) of the Regulations read in conjunction with section 19 of the Interpretation Act he has all powers incidental to the exercise of that power and so can make provision for a case not covered by the Regulations. The Regulations do not expressly provide for a preliminary inquiry into disciplinary matters in relation to a senior public officer and therefore the Governor has implied power to remedy that by appointing an investigation committee to serve as a filter mechanism before deciding whether or not to lay disciplinary charges against Mr. Willock.

[25] **Issue II – Illegality - Court’s Consideration**

- [26] The answer to this issue of whether the appointment of the Committee was **ultra vires** the powers of the Governor and the PSC depends on the construction to be placed on the relevant provisions of the Constitution and the Regulations.
- [27] A general perusal of the Constitution confirms that in keeping with the Westminster model constitutions adopted by the Anglophone Caribbean, the Constitution maintains the separation of powers between the executive the legislature and the judiciary and in particular strives to insulate members of the civil service, the police service and the teaching service from direct political interference exercised by the Government of the day by the establishment of autonomous commissions e.g., the Teaching Service Commission, the Police Service Commission, the Judicial and Legal Services Commission and the Public Service Commission.
- [28] Lord Diplock in **Thomas v The Attorney General of Trinidad and Tobago** [UKPC.47 of 1980] at p. 5 emphasized the constitutional importance of such commissions. Those sentiments were endorsed more recently in our jurisdiction by Lord Mance in **Fraser v Judicial and Legal Services Commission and the Attorney General of St. Lucia** [UKPC 116 of 2006] at p. 7 para. 15.
- [29] The provisions of the Constitution which are directly concerned with this issue are Articles 91 and 92.
- [30] Article 91 establishes the Public Service Commission, "the PSC" and lays down the criteria for the selection and appointment of its members by the Governor and their tenure of office. It is curiously silent about the PSC's functions save to say in Article 91(9)- " Subject to this Constitution, in the exercise of its functions the Public Service Commission shall not be subject to the direction or control of any other person or authority."
- [31] Article 92(1) endows the Governor with power to appoint and discipline public officers. Article 92 reads:

“Subject to this section and to the other provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting in accordance with the advice of the Public Service Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty’s service”.

[32] To my mind, giving Article 92(1) a purposive construction and construing it in the light of the entire Article 92 and in particular 92(2) and 92(3) which provide for the Governor to refer the advice back to the PSC for reconsideration, the Governor is obliged to accept the advice of the PSC unless he applies the proviso and so has no autonomous jurisdiction over public officers. And, the proviso to Article 92 (1) has no bearing on this case as it is not the defence that the Governor acted otherwise than in accordance with the advice of the PSC.

[33] Both counsel argued the case on the basis that the Regulations (promulgated by SRO 29/1969 under section 51A of the 1967 Constitution) govern the proceedings of the PSC as no new regulations were made after the new Constitution of 2007. This is no doubt correct, as in the absence of new regulations, SRO 29/1969 would be regarded as existing law and remain in force subject to any modifications required to ensure conformity with the Constitution. See Article 115.

[34] The following provisions of the Regulations are also relevant.

[35] Rule 2 defines officer. It provides:– “ Officer means a public officer other than-
(a) a member of the Commission or the Judicial and Legal Service Commission ;

- (b) the Attorney General;
- (c) the principal audit officer of the British Virgin Islands;
- (d) an officer whose appointment is regulated by the Judicial and Legal Service Commission ;
- (e) police officers below the rank of Assistant Superintendent;
- (f) teachers whose appointments are regulated by the Primary Schools Commission”.

- [36] There can be no question but that Mr. Willock, albeit the holder of the office of a Permanent Secretary, falls within the definition of officer for the purposes of the Regulations.
- [37] Part VI A of the Regulations (Rules 3 to 44) deal with general discipline. Rule 33 (1) provides:- “The Commission shall deal with disciplinary proceedings against officers in the light of reports from Permanent Secretaries, and Heads of Departments or otherwise”.
- [38] Rule 33 (2) provides:- “Subject to paragraph (3) of this regulation where the Commission is of the opinion that disciplinary proceedings should be instituted against an officer, the Commission may recommend to the Governor that such proceedings be instituted.”
- [39] Again it is pellucid from Rule 33 that only the PSC can recommend to the Governor that disciplinary proceedings be commenced against any officer.
- [40] Rule 34(1) provides:- “any misconduct by an officer shall be dealt with under this Part of the Regulations as soon as possible after the time of its occurrence.”
- [41] Rule 34(2) provides – “any case not covered by these Regulations shall be reported to the Chief Establishment Officer and the Commission may issue instructions as to how the case is to be dealt with and the case shall be dealt with accordingly.”

- [42] Clearly, Rule 34 mandates that all misconduct by an officer must be dealt with under Part VI. However Rule 34(2) envisages that there may arise circumstances of misconduct which may not fall within the specific provisions of Part VI and so gives the PSC a discretion as to the procedure to be employed in such a case.
- [43] Rule 35 provides:- “Where upon a **preliminary investigation** or a **disciplinary enquiry** an offence against any law appears to have been committed by an officer, the Commission shall, unless action by the police has been or is about to be taken, consult the Attorney General as to whether criminal proceedings should be instituted.”[Emphasis added].
- [44] Rule 37 (1) provides:- “Where there have been or are about to be instituted against an officer- (a) disciplinary proceedings; or (b) criminal proceedings; and where the Commission is of the opinion that the public interest requires that that officer should forthwith cease to perform the functions of his office, the Commission may recommend his interdiction from such performance.”
- [45] Rule 37(2) provides:- “An officer so interdicted shall, subject to the provisions of regulation 41, be permitted to receive such proportion of the salary of his office, not being less than one half, as the Governor may decide after considering the recommendation of the Commission.”
- [46] Rule 38 provides:- “An officer in respect of whom a **disciplinary enquiry** is to be held shall be entitled without charge to him to receive copies of or to be allowed access to any documentary evidence relied on for the purpose of the enquiry. He shall also be given upon request a copy of the evidence (including copies of documents tendered in evidence) after the enquiry is closed”. Emphasis added.
- [47] Rule 42 enumerates the penalties, among them dismissal, which may be imposed where a disciplinary charge has been established.

- [48] Part VI B (Rules 45-50) deals with the procedure to be employed in disciplinary proceedings. The procedure differs depending on whether the officer earns \$4008 per annum or in excess thereof and whether or not the PSC is of the opinion that the misconduct is not so serious as to warrant proceedings under Rule 47 with a view to dismissal.
- [49] Rule 45 reads:- “(1) Where – (a) it is represented to the Commission that an officer whose basic annual salary (whether fixed or on a scale) exceeds \$4008 has been guilty of misconduct; and (b) the Commission is of opinion that the misconduct alleged is not so serious as to warrant proceedings under regulation 47 with a view to dismissal; the Commission may cause an investigation to be made into the matter in such manner as it may think proper; and the officer shall be entitled to know the whole case made against him, and shall be given an adequate opportunity of making his defence”.
- [50] Rule 45 (2) provides:- “ If the Commission is of the opinion that the allegation is proved, it may recommend such punishment other than dismissal as may seem just”.
- [51] Rule 46 is not relevant as it concerns an officer earning less than \$4008.00 per annum in a case where the misconduct is not so serious as to warrant proceedings under regulation 47 with a view to dismissal.
- [52] Rule 47 (1) provides:- “Subject to the provisions of these Regulations an officer may be dismissed only in accordance with the procedure prescribed by this regulation”.
- [53] Rule 47 (2) reads:- “The following procedure shall apply to an investigation with a view to the dismissal of an officer whose basic annual salary (whether fixed or on a scale) exceeds \$4008-

- (a) the Commission (after consultation with the Attorney General if necessary) shall cause the officer to be notified in writing of the charge and to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself;
- (b) if the officer does not furnish such a statement within the time so specified or if the he fails to exculpate himself **the Governor shall on the recommendation of the Commission appoint to enquire into the matter a Tribunal consisting of not less than three officers selected with due regard to the standing of the officer concerned, and to the nature of the charges made against him;(emphasis added.**
- (c) the Tribunal shall inform the officer charged that on a day specified the Tribunal will enquire into the charges and that he will be permitted to appear before the Tribunal and defend himself;..”

[54] Rule 47 (2) (d) to (e)make provisions for the officer charged to be present on the examination of witnesses and to put questions to them, to be given access to all documentary evidence relied on and to be represented by a public officer or by counsel.

[55] Further provisions are made in Rule 47(2)(g) to (j) for the Tribunal to report to the Commission that the evidence in support of the charges are insufficient without calling on the officer for his defence , for it to submit a report of its findings to the Commission and for the Commission to recommend to the Governor that the officer be dismissed or a lesser penalty be imposed.

[56] On perusal of the Regulations and the foregoing provisions in particular it is readily apparent that the disciplinary procedure laid down therein is comprehensive and was intended to apply to all public officers, except those excluded by the definition of “officer” therein , whether holders of pensionable, non-pensionable positions or holders of weekly paid posts and daily-paid and

casual employees. However, in matters of discipline different procedures apply depending on the salary of the officer and whether the charge could lead to dismissal or not. According to the scheme laid down by the Regulations disciplinary matters which could incur a penalty other than dismissal must be dealt with under Regulations 45 and 46. Where the matter concerns an officer who earns more than \$4008.00 per annum and could lead to dismissal it must be dealt with under Rule 47(2). Where the officer concerned earns less than \$4008.00 per annum and dismissal may result the matter shall also be dealt with under Rule 47(1) unless the PSC determines that it be investigated by a Permanent Secretary or Head of Department or such other officer as the Governor may appoint. Daily paid workers and casual workers are dealt with under Regulations 46.

[57] I observe that by **The Appointment to Public Officers (Devolution of Human Resources Functions) Derogation Order Regulation 2008**, the Governor delegated some of his powers under section 92 (1) of the Constitution, (including administration of disciplinary proceedings for minor offences) to certain Authorized Offices which term encompasses Permanent Secretaries. There is no question that this Order is not applicable here.

[58] It is common ground that Mr. Willock earns an annual salary in excess of \$4008.00 and that the allegations made against him are so grave that if proved, can warrant his dismissal. The case therefore falls squarely within Rule 47 and the procedure laid down in Rule 47 (2) must apply. The Learned Attorney General's argument that the Regulations make no provision for the appointment of an investigation committee and that therefore the Governor has implied authority to appoint one cannot be sustained. Clearly, the framers of the Regulations saw no need for the PSC to hold a preliminary investigation in a situation where Rule 47 is engaged. Neither the general law nor the procedure laid down by Rule 47 (2) require such a preliminary inquiry where a senior officer is charged with offences which may lead to his dismissal. Furthermore, no implied power to appoint an

investigating committee can arise as such a power can only be prayed in aid if it is necessary to ensure the effective exercise and implementation of the powers and procedure laid down in Rule 47. The fact that Mr. Willock is a Permanent Secretary is of no consequence as the Regulations apply to all officers as defined. Section 19(3) of the Interpretation Act Cap.136, which provides that where an enactment empowers any person or authority to do any act that person or authority shall be deemed to have all powers which are reasonably necessary or incidental to accomplishing that act or thing, therefore cannot assist.

- [59] I also cannot accede to Mr. Aziz's submission that Rule 35 envisages the holding of a preliminary investigation and so impliedly bolsters his argument that the Governor has the power to appoint an investigative committee such as was appointed here. The terms, "preliminary investigation" and "disciplinary enquiry" are not defined in the Regulations and when one considers the whole of Part VI it is apparent that they are not terms of art. For example, the term "Disciplinary inquiry" was also used in Rule 38. This to my mind, in the context of Part VI, can only mean disciplinary proceedings as provided for in that Part.
- [60] From this it follows that the Governor's action on the advice of the PSC or on his own had no power to establish an investigative committee and that all the proceedings of the Committee including the Report are invalid and cannot be relied on by the PSC.
- [61] A further concern was raised about the Report. As I understand it, Mr. Farara argued that on the evidence it can be inferred that the members of the PSC have read the Report and that they will be prejudiced thereby. Therefore the PSC, as presently constituted, having read the invalid Report should be disqualified from taking any further disciplinary action against Mr. Willock. The logical conclusion of this argument if it holds good is that Mr. Willock cannot be subjected to any further disciplinary measures by the PSC unless all its members are forced to remit office and new members appointed.

[62] This argument on its face appears attractive. However, on closer examination it cannot be maintained. In my view it does not follow that the mere fact that the members of the PSC have read the Report, which includes Mr. Willock's written explanation, will mean that they will be prejudiced against him if the Report is invalid

[63] In **Grant v. Teacher's Appeals Tribunal & Anr. of Jamaica** [2006UKPC 59] Lord Carswell stated at p. 11 paras. 29 and 30 -: "The appellant's main contention about the validity of the hearing before the Personnel Committee on 20 May 1999 was that it was composed of the same persons who had taken part in the ineffective hearing on 7 October 1998. He submitted in his skeleton argument and developed the submission in his oral argument that this deprived him of a fair hearing, the more so as one member had, as he claimed, expressed at the earlier hearing a conclusion strongly adverse to him. It may be observed that the composition of the Personnel Committee is prescribed by Regulation 85. Much may depend on the facts of individual cases, but their Lordships do not consider that a hearing will necessarily be unfair if a committee or other body has heard a complaint before and proceeds to rehear it before reaching a final decision. The rehearing may still be fair and valid even if the committee has earlier reached a conclusion on the subject matter, provided it gives genuine and fair consideration to the case and any further facts or arguments put before it on the second occasion. In this respect their Lordships are of the view that, notwithstanding the difference in context and relevance of the statement, the opinion expressed by Lord Reid in *Ridge v Baldwin* [1964] AC 40 at 79 is apposite and applicable to the present case: "I do not doubt that if an officer or body realizes that it has acted hastily and reconsiders the whole matter afresh. after affording to the person affected a proper opportunity to present his case, then its later decision will be valid".

[64] I have regard to the composition of the PSC and in particular that its members were appointed the Governor in accordance with Article 91 of the Constitution.

There are five members, two of whom are appointed by the Governor acting in his own discretion, one on the advice of the Premier, one on the advice of the Leader of the Opposition, one after consultation with the Civil Service Association. I have no doubt that, not unlike a jury, if the PSC is advised that they should disregard the Report they would have no difficulty in doing so. Further, if in fact the PSC continues with disciplinary proceedings against Mr. Willock as they would be entitled to so do if they are of the view that the allegations against him warrant such and Mr. Willock can establish that the PSC relied on the Report resulting in an unfair hearing then he will have recourse to the courts for a remedy. The court cannot simply speculate that the PSC would be biased against him.

[65] Having held that the PSC and the Governor had no power to establish the Committee this disposes of the action and there is no need to consider the other issues raised. However, I should just add that in any event even if the Governor had the power advocated for by the attorney General that the appointment was invalid for two further reasons. First, the very composition of the Committee being composed as it was of two persons who were not public officers would have rendered it **ultra vires** the Regulations. I say this having regard to the scheme of the Regulations as can be gleaned from Rule 47(2)(b) in particular which in my judgment supports my view that any investigation committee should be made up of public officers.

[66] And second, the Committee was also illegal as the mandate given to it by its terms of reference divested the PSC of any residual power to consider whether to lay charges against Mr. Willock or not and left that issue entirely in the hands of the Committee. That this was the intention or understanding is also clear from the Ag. Director of Human Resources' statement at para. 10 of her affidavit referred to at para. 6 hereof. This amounted to an unlawful delegation of the PSC's powers. See **Vine v National Dock Labour Board** [1957 A.C. 488.

[67] See also Michael Supperstone QC and James Goudic QC Judicial Review 2nd Edn. Chapter 5. 5.15-“**Unlawful Sub-Delegation: Fettering by Divestment.** There is no absolute rule of law prohibiting the repository of a discretion from delegating the power conferred on it to another. However, there is a strong presumption that the repository of the power must exercise it personally (or in the case of a body, corporately). The maxim, **delegates non protest delegare** (the delegate is not permitted to delegate) has aptly been described as a rule of statutory construction, and whether it applies in a particular context therefore depends on the construction of the statute and whatever indications of a contrary intent can be deduced from the wording, objects and context. The presumption is strongest in the area of judicial and analogous powers, and here the indications needed to establish a contrary intention must be exceptionally strong.”

[68] Chapter 5 – 5.16 “**Judicial and similar proceedings**

The presumption that the repository of discretion must exercise it personally is strongest where power is given to a judge in a court of law. It is only slightly less strong in the context of tribunals, whether statutory or not, exercising powers of a judicial nature, including disciplinary powers. The use of the term “judicial” here is not intended to invoke a technical classification of powers; it is as likely to be used to explain a strict insistence on the personal exercise of a power as to require it. The presumption is not against sub-delegation only. The person or body entrusted with the decision, and nobody else, should take it. Thus the participation of persons not within the ambit of the delegation of authority in the decision under challenge will normally be fatal...”

[69] In coming to this conclusion I am conscious that we are concerned with the protection afforded to public officers by the Constitution and that that protection cannot be whittled away without strong indication that the Constitution permits such delegation.

[70] **Conclusion**

[71] In my judgment, for the reasons advanced, the Governor had no power to appoint the Committee and its proceedings and its Report are invalid. Accordingly, the PSC cannot rely on the Report to determine whether or not to lay disciplinary charges against Mr. Willock and they are prohibited from giving any consideration to it.

[72] Mr. Willock is to have his prescribed costs on the default basis in accordance with CPR 65.5 (2).

[73] The Court expresses its gratitude to counsel for their industry as reflected by both their oral and written submissions and the wealth of authority submitted. The Court also apologises for the delay in handing down this judgment which was due in the main to the fact that we received the official transcripts on 14 and 19 April.

.....
Justice Rita Joseph-Olivetti
Resident Judge,
Territory of the Virgin Islands