



[2020] JMSC Civ 194

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012HCV00895

BETWEEN	JHAMEL BRYAN	CLAIMANT
AND	CARIBBEAN MARITIME INSTITUTE	DEFENDANT

IN CHAMBERS

Mr. O. Nelson instructed by Forsythe and Forsythe for Claimant

Mr. H. Wilson instructed by Wilson Franklyn Barnes for Defendant

Heard: April 16, 17, 18, 2018, January 31, 2019 and October 2, 2020

Defendant established by Act with Statutory Constitution – Defendant a Public Education body – Section 3 (1) of Caribbean Maritime Institute Act – Section 28 of Interpretation Act – whether contract between Claimant and Defendant – if contract whether contract breached – Disciplinary measures taken against Claimant – whether right to fair hearing denied Claimant – Credibility of parties

MORRISON, J

BACKGROUND

[1] The Claimant was at the time of filing this suit, a former student of the Defendant. He was separated from the Defendant as a result of a disciplinary hearing on March 22, 2011. The Defendant was at the time of the action complained of a corporation duly incorporated under the Maritime Institute Act with its campus at Norman Manley Highway, Palisadoes Park in the parish of Kingston.

[2] The Claimant in bringing this claim against the Defendant seeks to obtain damages, his re-admission to the Defendant Institution, interest, costs, Attorney's costs and such further and/or other relief as the Court sees just.

[3] The Pleadings read that:

- a. "The Claimant, Jhamel Bryan of 33 Booby Drive, Kingston 10 in the parish of Saint Andrew claims damages against the Defendant Caribbean Maritime Institute, a corporation duly incorporated under the Maritime Institute Act with its campus situated at Norman Manley Highway, Palisadoes Park in the parish of Kingston;
- b. By way of letter dated August 1, 2011, the Claimant was unlawfully and improperly excluded and separated from his course of study with the Defendant institution as a consequence of which the Claimant has suffered loss, damage and has incurred expenses;
- c. And the Claimant also claims costs, interest, and attorney's costs and any other further such relief that this Honourable Court may deem appropriate and just in the circumstances.

PARTICULARS OF INTEREST CLAIMED

[4] The Claimant claims damages against the Defendant for causing him to suffer loss, damage and to incur expenses and the Claimant claims damages, interest costs and attorney's costs.

[5] The Claimant further claims to be entitled to interest on such general damages that may be awarded at such rate and for such period as the Honourable Court shall deem just and on special damages claimed herein at the rate and in the amounts set out in the schedule of special damages attached hereto."

[6] The Claimant seeks:-

- a. Re-admission to the institution;
- b. Damages;
- c. Interest;

- d. Costs;
- e. Attorney's Costs;
- f. Such further and or other relief as the Honourable Court may deem just.

[7]

In his Particulars of Claim, the finer details of the Claim is presented as follows:

1. "The Defendant, Caribbean Maritime Institute was at all material times, a corporation duly incorporated under the maritime Institute Act with its campus situated at Norman Manley Highway, Palisadoes Park in the parish of Kingston;
2. By agreement between the Claimant and the Defendant, the Claimant was enrolled as a Phase II Cadet of the Caribbean Maritime Institute;
3. That by way of letter August 1, 2011, the Claimant was unlawfully and improperly excluded and separated from his course of study with the Defendant institution;
4. That exclusion and separation was a result of a disciplinary hearing held on Tuesday, March 22, 2011;
5. That at the hearing of March 22, 2011, the claimant was not afforded the opportunity to be heard or to get legal representation;
6. That by way of letter dated August 31, 2011, the Claimant wrote appealing the decision;
7. The Claimant was further invited to another meeting where he still was not afforded the opportunity to be heard or to get legal representation;

8. That by way of letter dated September 27, 2011, the Defendant confirmed the Claimant's exclusion and separation from the Cadet Programme.
9. As a consequence of the actions aforesaid the Claimant has suffered loss and damage and has incurred expenses."

THE DEFENDANT'S DEFENCE

[8] I wish now to state the defence of the Defendant in full:

- a. "The Defendant admits paragraphs 1 and 2 of the Particulars of Claim;
- b. Paragraph 3 of the Particulars of Claim is denied. The Claimant was enrolled as a Phase 1 Engine Cadet who was pursuing the Officer incharge of the Engineering Watch Programme (hereinafter referred to as "the programme");
- c. Save that the Claimant was separated from the programme aforesaid, paragraph 4 of the Particulars of Claim is denied. The Claimant was given an opportunity to be heard in his defence before the decision was made to separate him from the programme;
- d. The Defendant denies paragraphs 5 of the Particulars of Claim. The hearing on March 22, 2011, did not contribute to nor did it cause the Claimant to be separated from the programme;
- e. Paragraph 6 of the Particulars of Claim is denied. The Defendant will aver that the disciplinary hearing held on March 22, 2011, was in respect of an event unrelated to the present proceedings. On that occasion the Claimant was also afforded the opportunity to be heard in his defence.;
- f. The Defendant will further say that the disciplinary hearing held on March 22, 2011 was in relation to a charge for lying. At the disciplinary hearing the

Claimant was found guilty and given 100 demerit points and two weeks confinement. In consequence thereof, that matter was concluded;

- g. The Defendant denies paragraph 7 of the Particulars of Claim and will say that the Claimant's mother, Ann-Marie Vincent, by letter dated March 24, 2011, appealed the conviction in relation to the charge for lying;
- h. In further reference to paragraph 7, the Defendant will aver that on June 13, 2011, the Defendant was charged for the offences of wearing uniform in an inappropriate manner and setting a bad example for the company;
- i. A disciplinary hearing was convened on June 28, 2011 to hear these charges. During the hearing, the Claimant indicated to the disciplinary committee that he had a witness who he wished to call in his defence. As a consequence thereof, the disciplinary hearing was adjourned to June 28, 2011 to allow the Claimant to bring his witness;
- j. Upon the resumption of the disciplinary hearing, the Claimant was unable to produce his witness to give evidence on his behalf, and the disciplinary hearing proceeded without the Claimant's witness;
- k. The Disciplinary Committee heard evidence from the Claimant in relation to the offences of wearing uniform in an inappropriate manner and setting a bad example for the company. After a careful deliberation, the disciplinary committee found the Claimant guilty of the charges. The committee recommended that he should be separated from the programme.
- l. In the premises, it was this decision that the Claimant appealed by letter dated August 31, 2011;
- m. The Defendant will further say that when a recommendation is made for a student to be separated from any programme in the Defendant's institution, the Director of Professionals Studies, Captain Pretell, should be so informed and he was;

- n. The Captain Pretell invited the Claimant and his mother to a meeting. Also present at the meeting were Captain Devron Newman, Officer Cadet Kurt Williams and Phase 3 Engine Cadet Collin McBean. The meeting was called to explain the implications of the disciplinary committee's recommendation;
- o. The Claimant's mother, not being satisfied with the ruling of the disciplinary committee and the decision arising out of the meeting, sought the intervention of the Executive Director of the Defendant's institution, Dr. Fritz Pinnock, who referred the matter to an independent external body, Choose Life International, to determine the suitability of the Claimant to continue in the programme. Choose Life International conducted an enquiry. At the enquiry

were Justice Roy Anderson and Dr. Donovan Thomas who heard the Claimant in his defence as well as his accusers and recommended that he pursue another programme other than the one for which he was registered;
- p. Paragraph 8 of the Particulars of Claim is denied and the Defendant will say that the Claimant was referred to Choose Life International and was given the opportunity to be heard in his defence;
- q. The defendant admits paragraph 9 of the Particulars of Claim;
- r. If, which is not admitted, the claimant suffered the alleged or any loss or damage the same was not due to the action taken by the Defendant to separate the Claimant from the programme, as alleged in paragraph 11 or at all;
- s. In the premises, it is denied that the Claimant is entitled to the relief claimed or any relief from the Defendant for the reasons alleged."

THE CLAIMANT'S SUBMISSIONS

- [9] The Claimant submits that there was a contract between the Claimant and the Defendant. This contract had as its respective obligations that the Defendant renders tuition services and accreditation to the Claimant for the course of study he enrolled in at the Defendant's institution and for the Claimant to pay the fees charged in respect of the tuition and accommodation.
- [10] That a contract is established by Exhibit 1 which is a letter from the Defendant dated August 23, 2010 which signifies that the Claimant was offered a place in the Three Year Officer in charge of an Engine Room Watch programme. The above letter also sets out in detail the Claimant's obligations in respect of fees and preliminary actions required of him prior to full registration.
- [11] As to the question of whether the Claimant was excluded from his course of study by the Defendant, the Claimant submits that he was so excluded as per Exhibit 8, a letter from the Defendant dated August 1, 2011 that reads in part that, "Thus it is the decision from this Committee is as follows; **Separation from the CMI Cadet Program**".
- [12] The Claimant has not put before this Court the legal authority on which his case stands. The Claimant argues that if he was so excluded from his course of study then the question of whether his exclusion constituted a breach of contract by the Defendant, depends on a finding of fact by the court as to the reason for the separation from the course of study. Consequently, the Claimant argues, of acknowledging, that it cannot be submitted dogmatically that the separation amounted to a breach of contract. What is required, he submits, is a careful consideration of the circumstances giving rise to the separation.

The Defendant's Submissions

- [13] The Defendant's case is that the Claimant was seen in the Saint Andrew Harbour View Shopping Centre area wearing his PT uniform with civilian clothes. This was

in breach of Chapter Four D of the Discipline Regulations 2011/2012. Paragraph D deals with mandatory wearing of uniform. It states that “When wearing civilian clothes, the cadet and aspirant must ensure that their attire and personal appearance are appropriate for the situation and that they do not discredit the name of the Institute...No other civilian clothes are permitted and cannot mix with uniform.” This is a disciplinary offence. A disciplinary hearing was convened to hear evidence in respect of that charge. During the hearing, the claimant conducted himself in a manner unbecoming of an officer cadet in training. After a hearing before a duly constituted panel, a recommendation was made for the defendant to be separated from the officer’s programme. The claimant was offered a space in a land based engineering programme.

- [14] The claimant was given the option to appeal the decision of the panel, but failed or refused to do so within the time prescribed by the Regulations. Being aggrieved by the decision of the disciplinary panel, he instituted these proceedings.
- [15] The defendant is a public educational body incorporated under the Caribbean Maritime Institute Act. It possesses the ordinary attributes of legal personality and a capacity to enter into contracts within its powers by virtue of section 3(1) of the Caribbean Maritime Institute Act to which the provisions of section 28 of the Interpretation Act apply.
- [16] The relationship between the Claimant and the Defendant is founded on contract with statutory underpinnings. It is an implied term of the contract that in return for the payment of fees, the Claimant would be treated in accordance with the Defendant’s Regulations. However, because the Defendant is established by an Act with a statutory constitution, the right to a fair hearing or natural justice is derived from the Act and not from contract. If there is no statutory constitution, but merely incorporation by charter, there is no basis for disciplinary rules other than contract: **Wade on Administrative Law 9th edition at pp. 636-637.**

[17] Further, that the Claimant's pleadings and evidence-in-chief are fundamentally defective in that they do not demonstrate the existence of a contract between the Claimant and the Defendant.

[18] That the law that in an action for breach of contract, the following matters must be pleaded and evidence adduced thereof at trial:

First, the terms of the contract – in a breach of contract claim, the claimant must set out the relevant terms of the contract and allege with full particulars the precise breach of contract relied on. The nature and extent of the loss and damage must also be stated. If the claimant is alleging that there are certain implied terms in the contract, particulars should be given of the facts and matters relied on as giving rise to the alleged implied terms.

Second, the nature and type of the contract. In other words, is the contract a private contract or a public contract?

Third, the date and how it was made. There, the Claimant has not adduced any evidence of the date when the contract was made nor any consideration for it.

Fourth, whether the Defendant institute is a legal personality possessing the capacity to sue and be sued.

[19] The Defendant possesses the ordinary attributes of legal personality and a capacity to enter into contracts within its powers by virtue of section 3(1) of the Caribbean Maritime Institute Act to which the provisions of section 28 of the Interpretation Act apply.

[20] What were the express or implied terms of the contract and the alleged breach thereof.

[21] As to damages, the Defendant submits that the Claimant has not made out a case for breach of contract and his case should be dismissed.

- [22]** Further, and assuming that the Claimant was not afforded the opportunity to make representations at the hearings or to be accompanied by a representative of his choice, the possible course available to the court would be to quash the decision. That the court could only adopt such a course of action is on an application for judicial review. Also, that the court cannot make an order that the Defendant should re-admit the Claimant to the Defendant institute in the absence of a statutory power. This would be a usurpation of the Defendant's authority.
- [23]** The Defendant submits that a Claimant cannot obtain damages for breach of contract of a right to a fair hearing. The Claimant has not cited any authority for this proposition.
- [24]** The Defendant also submits that the primary thrust of the Claimant's case gives rise to a challenge primarily and predominantly in public law. The issues of breach of natural justice and procedural fairness are concepts rooted in public law. Therefore, judicial review was the appropriate procedure for a proper determination of the issues raised and the remedy sought. An action commenced by Claim Form is inappropriate to challenge a breach of natural justice and the remedy of re-admission.
- [25]** Also, that the instant case does not constitute a situation where the Claimant is asserting and entitlement to a subsisting right in private law which may incidentally involve the examination of a public law issue. Indeed, the Claimant's entire case is clothed in public law considerations.
- [26]** Again, the Defendant submits, that the proper course was for the Claimant to have applied to the court for an order of certiorari to quash the decision contained in the letter of August 1, 2011 and to invoke the court's supervisory jurisdiction in respect of the matter.
- [27]** The Defendant further contends that the Claimant did not make an application to amend his Claim Form to plea loss of chance and therefore cannot rely on it.

- [28]** Further, that the Claimant would have known of the monetary loss he would have suffered or has in his possession information concerning his potential loss, and such loss have been pleaded with sufficient particularity. That it is not sufficient for the Claimant to assert that he has suffered loss and damage without giving a quantification of the loss as an item of special damage in the statement of case.
- [29]** Furthermore, that the Claimant cannot, as he now seeks to do, make legal submissions on loss of chance when loss of chance was not pleaded as a head of damage and particularized in his witness statement.
- [30]** A further submission of the Defendant is that, the Claimant must prove as a matter of causation that he has a real or substantial chance as opposed to a speculative one of earning a certain salary. The Defendant's submission, in response to that of the Claimant, is that he would have earned in excess of US\$200,000.00. That, the Defendant argues, is not a substitute for pleadings.
- [31]** Lastly, the Defendant submits, that the potential earnings for loss of chance were not specifically pleaded in the statement of case. Accordingly, the Defendant argues, it introduces a new cause of action for which no prior notice was given to the defendant and ought to be struck out.
- [32]** As to mitigation, the Defendant submit that the claimant has a duty to use all reasonable step to minimize his loss. The claimant agreed that as far back as 2014, the defendant had reached out to him with a view to his readmission to the programme. If the offer was accepted this trial would have been unnecessary. In fact, prior to the trial of this matter, the Defendant again approached the Claimant with a view to his re-admission. The Claimant rejected the Defendant's offer.
- [33]** The Defendant placed reliance for his propositions on:
1. Administrative law by Sir Williams Wade
 2. Charmaine Bernard v Ramesh See Balack [2010] UKPC 15

THE ISSUES

[34] I concur with the Claimant in the formulation of the issues at hand. They are:-

1. Was there a contract between the Claimant and the Defendant;
2. Was the Claimant excluded or separated from his course of study by the Defendant;
3. If the Claimant was so excluded or separated from his course of study, was this a breach of contract by the Defendant;
4. Whether by this breach of contract the Claimant suffered loss and/or damage;
5. What remedy is available to the Claimant;
6. Would any award of damages to the Claimant be subject to deductions;
7. Whether the principle of mitigation of damages arise thereby.

THE EVIDENCE

[35] In his witness statement Mr. Jhamel Bryan states, among other things, that he attended school at the Kingston Technical School from 2006 to 2009 where he obtained passes in Technical Drawing (Level 3) and English Language (City and Guilds).

[36] That he applied to and was admitted as a student at the Caribbean Maritime Institute in September, 2009 in a preliminary course of study where he pursued subjects at the CXC and CAPE level in order to improve his Grade Point Average which is the overall qualifying system for matriculation into the Cadet Programme.

[37] That he completed the preliminary course of study in June 2010 and then was enrolled as a student/advanced phase one engine cadet in Marine Engineering from September 2010 to June 2011.

- [38] That in order to qualify for enrolment to the programme he had to pass a medical examination on July 21, 2010 for which he paid Five Thousand Dollars (\$5,000.00).
- [39] That by way of letter dated August 23, 2010 he was offered and accepted a place in the three year Officer in charge of An Engine Room programme and he paid all the fees in full.
- [40] He met Captain Robert Hibbert in February 2011 when he joined the staff at the Caribbean Maritime Institute as Dean of Discipline.
- [41] During February or march during the Inter-League Football Competition he got an order to command five cadets from his class to help carry some chairs for our superiors.
- [42] He went over to the cadets and pointed out three of them and called two others by name and they responded by objecting to carry out the tasks.
- [43] That while he was speaking to them, the company leader was observing me.
- [44] That he went to the company leader and told him that he was unable to get the other cadets to comply.
- [45] That he then proceeded to show him the cadets that he had instructed to carry out the order.
- [46] The company leader then reprimanded them and then further punished them in front of the other students.
- [47] That a disciplinary hearing was held on March 22, 2011. That by way of memorandum dated March 22, 2011 he was advised by Captain Hibbert of the decision of the disciplinary committee.
- [48] That this was not true but he was sanctioned however and received a "A" Class – 100 Points Demerit and two weeks confinement on campus from March 28 to April 11, 2011.

- [49]** That at that hearing Captain Hibbert refused to carry out any sort of investigations and concluded the proceedings without affording him the chance to defend himself. By way of letter dated March 24, 2011 he appealed Captain Hibbert's decision.
- [50]** The appeal was never heard.
- [51]** When he got there Captain Hibbert asked him why did I do it. He had no idea what Captain Hibbert was talking about and accused me of puncturing his left front tyre. He told him that I did not do that. In turn he replied that if he was outside and saw me I would be laying down dead beside his vehicle. I did not respond I only looked at him. He continued to threaten me and then dismissed me from his office.
- [52]** Sometime after Captain Hibbert came to him and asked him why people were calling me by nickname "Farmer Brown" and I advised him that it was because I was close to some of the senior officers who I had known from 2009 and that we had a good rapport which people found odd. That in reply, he also told Captain Hibbert that several students were afraid of interacting with the senior officers and that he did not share that similar fear.
- [53]** Captain Hibbert then suggested that he was an informer based on what he had heard from several students.
- [54]** That by way of letters dated July 29, 2011 he was issued with the appropriate letters in order to obtain my seaman's passport and his discharge book.
- [55]** That the day that he applied he was approached by one of the officers, Phase III Deck Cadet Max Ciurlizza, the Officer Cadet incharge of Discipline and he accused him that he deliberately tore the form that his name was recorded on for the application and that he would be sanctioned for insubordination.
- [56]** He denied the allegation and a disciplinary hearing was held and chaired by Captain Hibbert and he was once more sanctioned for something that he did not do.

- [57]** That by way of memorandum dated June 7, 2011 he was ordered to carry out marine related tasks starting June 8, 2011 to July 1, 2011. The Cadet will be supervised by Officer Cadet Collin McBean; The Cadet will report 0700 hours everyday and finishes at 1800 hours except Sundays; "A" Class offence – 100 points of demerit.
- [58]** That he proceeded to appeal the decision but that he never raised any response to my appeal.
- [59]** On June 13, 2011 he was accused by Phase III Deck Cadet Max Ciurlizza, the Officer Cadet in charge of Discipline and another officer, Miss Claire, that he was seen at the Harbour View Shopping Centre at approximately 1740 hours with his Physical Training uniform hanging out and bagging over his shorts.
- [60]** He denied the allegations directly to Captain Hibbert.
- [61]** That on June 28, 2011, Captain Hibbert told him that he heard that he like to snoop around and that he was not a team player. He went on to tell me that I gave him the impression that he could make a phone call and fix anything. Further he accused me of being able to get away with certain things because of persons that I was friends with.
- [62]** That by way of letter dated July 5, 2011 he formally challenged the allegation made against him about inappropriate attire and also apologised for calling the cadet officers liars but firmly suggested that they were mistaken in what they believed that they saw.
- [63]** He was not sanctioned but was told that he was guilty of being disrespectful to his cadet officers. This all happened without any hearing whatsoever.
- [64]** He appealed the decision but there was no further outcome.
- [65]** That by way of letter dated August 1, 2011 I was advised that I was being separated from the Cadet Programme.

- [66] Mr. Justice Anderson also asked him questions about his interaction with Captain Hibbert. He did not know at the time that his was a disciplinary hearing and he was also without representation and was not provided with the opportunity to properly prepare for a disciplinary hearing whatsoever.
- [67] That the decision to separate me from the Cadet Programme came as quite a surprise to him.
- [68] That ever since his exclusion from the Cadet Programme his academic prospects have been stymied and he has genuinely lost the opportunity to pursue his goals.
- [69] That at no point in all of my ordeals at the school ha she ever been given a fair hearing or allowed to have representation.
- [70] That when he received the letter dated August 1, 2011 excluding him from the programme he replied by way of letter dated August 31, 2011 appealing the decision.
- [71] That subsequently by way of letter dated September 27, 2011 he was advised that he was being offered enrolment in another programme that he had no interest in.
- [72] That as a consequence of the actions of the agents of the Defendant he has suffered loss and damage and has incurred expenses.
- [73] From the above the Claimant's repining suggests that he was more sinned against than of him sinning. Also, he suggest bad faith on the part of Captain Robert Hibbert who played a role in his demised circumstances.
- [74] From the witness statement of Jhonny Pretell that was received as his evidence-in-chief, his evidence is that, to quote:
- a. "I have full knowledge of the facts of this case and I am duly authorized to make this statement on behalf of the defendant. The facts stated in this witness statement are derived from my own knowledge except where stated otherwise, and are true to the best of my knowledge, information and belief".

- b. I am the Director of Marine and Professional Studies. In that capacity, my duties include:
- Developing the company of cadets and aspirants in the maritime profession as the officers who will operate and maintain the vessels from the Jamaican fleet and from the international strategic partnership fleets;
 - Instilling in the company of cadets and aspirants the highest concepts of honour, duty, loyalty, honesty, integrity and discipline as supreme values for the maritime career;
 - Instilling in the company of cadets and aspirants the love of the sea, of the marine environment and the respect of the maritime resources; and
 - Monitoring the unity of educational disciplinary and doctrine.
- c. The Defendant Institute offers several academic programmes. For the purpose of this witness statement, the programmes will be classified as **cadet programme and land based (engineering) programme**. The cadet programme has the mission to train potential officers for the Jamaican and international fleets with knowledge and doctrines inherent to the maritime profession. The land based engineering programme is designed to train engineers for the local industries.
- d. One of the objectives of the cadet programme is to instill in the company of cadets the highest concepts of honour, duty, loyalty, integrity and discipline as supreme values for the maritime career.
- e. The cadet programme has three components. An academic component, a disciplinary component and a sea training component. The sea training component allows cadets to apply their theoretical knowledge acquired in the classroom to practical situation on board ships and vessels.

- f. The cadet programmes on offering at the defendant Institute are the Officers in charge of Engineering Watch and Officer in charge of Navigational Watch. Both are professional seafarers programmes.
- g. The claimant applied for a space in the Officer in charge of the Engineering Watch Programme. He was interviewed and accepted in the programme.
- h. Each cadet who is offered a space in the cadet programme signs an agreement that he will abide by the internal regulations of the defendant Institute as contained in the **Cadet and Aspirant Programme-Discipline Regulations 2011/2012**.
- i. There is now shown to me mark "JP1" a copy of the Discipline Regulation 2011/2012.
- j. A cadet is deemed to have read and familiar with the entire contents of the regulations.
- k. A cadet who has committed a breach of the discipline regulations, depending on the nature of the offences, may either be sanctioned by the imposition of demerit points or separated from the cadet programme amongst others.
- l. Since the claimant was admitted to the defendant Institute he has committed several infractions of the discipline regulations with the resultant imposition of sanctions.
- m. The last disciplinary committee hearing in respect of the claimant was on June 28, 2011. He was separated from the cadet programme for the following disciplinary offences.
 - (i) Wearing uniform in an inappropriate manner;
 - (ii) Being a bad example for the company;
 - (iii) Lying;

(iv) Disrespect to a superior officer; and

(v) Disobeying a direct order

- [75]** The decision and finding of the disciplinary committee was communicated to the defendant by way of a memo. The claimant upon receipt of the finding and decision of the disciplinary committee had five (5) working days within which to appeal the decision to the Disciplinary Appeal Committee of which I am the chairman. An appeal was not presented to my office, but a letter dated July 5, 2011 was submitted to Captain Hibbert who presented it to me.”
- [76]** There is now shown to me a copy of that letter marked “JP2”.
- [77]** The Committee Meeting of the Department of Marine and Professional Studies usually meet four times for the year or twice per semester to discuss a number of matters and issues including the performance of the company of cadets. In this regard, we would look at the cadets who committed disciplinary offences and why. The committee met on July 26, 2011. The claimant’s disciplinary offences were brought to the attention of the committee, who found the evidence to be truthful and supported the verdict of the disciplinary committee.
- [78]** The committee advised the claimant by letter dated August 1, 2011 to appeal its decision to the Executive Director, Mr. Fritz Pinnock.
- [79]** There is now shown to me marked “JP3” a copy of that letter.
- [80]** The Executive Director has an overarching discretion whether or not to re-admit the claimant to the defendant Institute. Mr. Fritz Pinnock referred the claimant’s matter to Choose Life International.
- [81]** I wish to make it abundantly clear that the committee did not consider the claimant’s matter in the capacity of an appellate tribunal. The claimant did not appeal the disciplinary committee’s decision to the Disciplinary Appeal Committee. Therefore, the Committee Meeting of the Department of Marine and Professional

Studies only exercised a discretion whether or not to keep the claimant on the cadet programme.

- [82] By letter dated August 31, 2011 from the claimant to the defendant Institute, the claimant advised that he would be appealing the decision of the committee and would be seeking legal representation in that regard.
- [83] By letter dated October 5, 2011 from the claimant's attorney-at-law, Forsythe and Forsythe to the defendant Institute, Forsythe and Forsythe advised that it would be challenging the decision of the committee on the ground that it breached the principles of natural justice.
- [84] There is now shown to me marked "JP4" copies of the letters mentioned in paragraph 22 and 23 respectively."
- [85] The witness statement of Karen McKenzie was also received into evidence in this case as her evidence-in-chief for the Defendant.
- [86] The Claimant applied for and was accepted on August 23, 2010 to pursue the **Officer in Charge of the Engineering Watch** programme. This is a cadet based programme designed to develop officers to maintain and operate seagoing vessels from the Jamaican and international; fleets. A candidate pursuing this course must possess or develop during the duration of the course, the qualities of honour, duty, loyalty, honesty, integrity and discipline.
- [87] Since the Claimant was admitted to the programme he has committed several breaches of discipline. Previously, he had been charged and found guilty of the following offences:
- (i) Lying to a superior officer
 - (ii) Lack of Cooperation
 - (iii) Disobeying a direct order
 - (iv) Insubordination
 - (v) Conduct unbecoming of a cadet

- (vi) Being a bad example to other cadets
- (vii) Non compliance with sanctions

- [88]** On June 13, 2011, Officer Cadet Max Ciurlizza filled a written complaint against the claimant alleging that on June 11, 2013 the claimant was at the Harbour View Shopping Centre dressed in his PT (physical training) shirt with civilian shorts and the shirt was out of the shorts.
- [89]** There is now shown to me marked 'KMI" a copy of that complaint.
- [90]** A disciplinary hearing was scheduled for June 28, 2011. As is the practice, one week prior to the hearing, a memo containing the allegations was read to the claimant and other cadets on formation.
- [91]** The disciplinary committee was appointed by the Dean of Discipline, Captain Robert Hibbert. The disciplinary committee was convened to investigate the allegations against the claimant and to impose, if necessary, appropriate corrective sanctions. I sat on the committee as representing the secretariat. The disciplinary committee was chaired by the said Captain Robert Hibbert, who no longer worked with the defendant Institute. The other member of the disciplinary committee was 2nd Officer Kimone Claire.
- [92]** The disciplinary committee was furnished with a copy of the statement of complaint. The charge against the claimant was wearing uniform in an inappropriate manner which was read to the claimant. He pleaded not guilty. Officer Max Ciurlizza gave evidence in chief and the claimant was allowed to cross-examine him. The claimant also gave evidence in chief and was questioned by members of the committee.
- [93]** During the hearing, the Claimant accused the said Max Ciurlizza of lying and was disrespectful to him. He was requested by the discipline committee to apologize by letter to the said Max Ciurlizza, who was a superior officer and he retorted 'Mi nah write nuh letta." As a consequence, additional charges were laid against the

claimant. These were lying, disrespect to a superior officer, being a bad example to the company of cadets and disobeying a direct order.

- [94] The disciplinary committee accepted the evidence of the said Max Ciurlizza and rejected the evidence of the claimant. The disciplinary committee also found that the claimant breached the Honour Code by lying. The Honour Code states “**Cadets do not lie, cadets do not cheat or tolerate anyone who does; because of integrity and honour.**” Of course, the sanction for breaching the Honour Code is immediate expulsion.
- [95] After careful deliberations, the disciplinary committee found the claimant guilty of each of the offences. The disciplinary committee recommended that the claimant should be separated from the **Officer in charge of the Engineering Watch Programme**. This decision was reached having regard to the claimant’s history of breaches of discipline including lying, conduct unbecoming of a cadet and disobeying a direct order, his anger management issues, his failure to develop or display the qualities of an officer and wilful failure to comply with previous and current situation. The disciplinary committee also found that the claimant was a habitual offender.
- [96] The decision of the disciplinary committee was sent to the claimant in the form of a memo which was read to the claimant and other cadets on formation. The Claimant was informed of his right of appeal to the Disciplinary Appeals Committee. To the best of my knowledge, information and belief the claimant did not appeal the decision of the disciplinary committee.
- [97] There is now shown to me marked ‘KM2’ a copy of that memo.
- [98] The Claimant was not dismissed or expelled from the Defendant Institute. He was given the option to remain and pursue a land based engineering programme as he did not possess the capacity to become an officer.

- [99] Prior to this hearing, there were other disciplinary hearings in respect of the claimant. For example, there were disciplinary hearings on March 22, 2011 and June 7, 2011. The hearing on March 22, 2011 was convened to investigate an allegation of giving false statement. The hearing on June 7, 2011 was in respect of an allegation of insubordination.
- [100] By letter dated March 24, 2011 from the claimant's mother, Miss Annmarie Vincent, to Captain Hibbert, Miss Annmarie Vincent requested an appeal hearing in respect of the disciplinary committee's decision handed down on March 22, 2011.
- [101] There is now shown to me marked "KM3" copies of the memos containing the charges, the sanctions imposed and the letter.
- [102] When the claimant was accepted to the Defendant Institute he had agreed to abide by its rules and regulations as contained in the **Cadet and Aspirant Programme – Discipline Regulations 2011/2012**. He agreed, inter alia, to comply with the internal rules of the defendant Institute, wear with pride his uniform within and outside Institute, follow the orders and commands of a superior officer without objection, and maintain respectful conduct to his superiors and subordinates.
- [103] The Claimant by being a habitual offender of the regulations has breached the terms and conditions under which he was admitted to the defendant Institute.
- [104] I reiterate, the claimant was dismissed or expelled from the Defendant Institute. He was separated from the **Officer in Charge of Engineering Watch, which is a officers** programme. The Institute has the responsibility to train and produce for the local and international maritime community officers possessing the highest qualities of honour, duty, loyalty, honesty, integrity and patriotism. These qualities the claimant did not possess."

Evidence at Trial-Claimant's Case

- [105] The Claimant testified that he was pursuing an Associate Degree in Office in Charge of the Engineering Watch Programme. As a result of a disciplinary

hearing, he was unlawfully excluded and separated from his course of study. He said that he learnt of this decision by letter dated 1 August 2011.

[106] By letter dated 29 May 2014, to the Claimant's attorneys-at-law, the Defendant offered the Claimant re-admission to the programme subject to certain conditions as per page 1 of Exhibits to Witness Statements. Under cross-examination, the Claimant agreed that the Defendant, on several disparate occasions, offered to re-admit him to the programme, which he rejected. The Claimant even conceded that on the day of trial, the Defendant again extended to him an offer of re-admission. The Claimant did not deny that on one occasion he was offered a full scholarship to pursue the Bachelor's Degree in the Officer in Charge of the Engineering Watch.

[107] The Claimant's case is that prior to being enrolled in the degree programme, he was a student in the Cadet Aspirant programme. While in that programme, he committed two disciplinary offences. He testified that the officer's programme exposed him to paramilitary training and that the Honour Code was important. Under cross-examination, he agreed that a cadet should not wear PT uniform with civilian clothes. He initially denied that he received a memo informing him that disciplinary charges would be instituted against him for wearing his PT uniform in an inappropriate manner, but when pressed he agreed. He denied calling Max Ciurlizza a liar, but when pressed he agreed he did so.

[108] The Claimant's contention is that he was not given an opportunity to make representations to the disciplinary committee before he was separated from the said programme. He claimed that no formal disciplinary hearing was convened. Instead, that it was an informal hearing in Captain Hibbert's office where he was asked to respond to certain allegations.

[109] The Claimant did not challenge the evidence of Miss McKenzie that a properly constituted hearing was convened and that the claimant was represented at the hearing. The claimant did not challenge the validity of the disciplinary panel as was constituted. The Claimant's only concern was whether or not there was a

quorum. Therefore, the entirety of Miss McKenzie's evidence remained unchallenged. According to Miss McKenzie, three or four persons could constitute a quorum.

[110] The Claimant testified that Captain Hibbert, in examination-in-chief uttered the following threats:

- "He (referring to Captain Hibbert) was going to use all his power against me", paragraph 44 of claimant witness statement;
- "A long time me want you out dis programme and mi a go destroy you career..."; and
- He threatened that he was going to bring down his power on me and that punishing me could affect my exam results..."paragraph 51 of claimant's witness statement.

Evaluation of the Evidence

[111] I shall here state how I propose to deal with the evidence given in this case. As noted by Baroness Hale of Richmond in *Re B Children* (Case Proceedings; Standard of Proof) [2005] UKHL 35, [2009], AC 11, at [32] the Judge is guided by any inherent probabilities, contemporaneous documentation or records, any circumstantial evidence tending to support one account or the other, and impressions made as to the character and motivation of the witness.

[112] Generally speaking, the Judge is obliged to have regard to the pleadings and must make decisions on the pleaded issues. A Judge should not be deterred to decide the case on the correct basis even if the underlying legal cause of action has not been identified: *Watson v Durham University* [2008] EUCA Civ 1266, LTL 24/10/2008.

[113] The Claimant has the burden of proof. He discharges this burden as a standard of a balance of probabilities or, on the basis of, which version of the facts is more

probable than not. Thus, if the party who bears the burden of proof fails to discharge it, the fact is treated as not having happened. On the other hand, if the burden of proof is discharged, the court treats the fact as having been proved.

[114] In deciding between witnesses the Court is guided by applying the guidance offered by Peter Smith J in *EPI Environmental Technologies Inc v Symphony Plastic Technologies plc* [2002] EWUC 2995 (CLO, [2005] J 1WLR 3456 at [74]. It is essential to conclude a witness's performance in the light of the entirety of that witness's evidence. Witnesses can regularly lie. The lies themselves do not necessarily mean that the entirety of the witness's evidence is rejected. A witness may lie out of stupidity but the case remains good in spite of this lie. However, a witness may lie because the case is a lie.

[115] Thirdly, it is essential that a witness is challenged with the other side's case.

[116] Having regard to the above stated principles, I find that the Claimant was unforthcoming about his disciplinary infractions. His evidence has failed to resonate with any semblance of truth. The Defendants witnesses, on the other hand, were forthright in their presentations. Their evidence was given with the highest commendation of truthfulness. Accordingly, the facts of the case are determined in favour of the Defendants. The Claimant was given the opportunity to be heard during the disciplinary hearing. The Claimant failed to avail himself of the procedures available under the law or indeed under the Regulations.

THE LAW AND ANALYSIS

[117] Under Section 28 of the Interpretation Act, the Caribbean Maritime Institute Act (the Act) which came into effect on 4/1/1993, has to be read subject thereto. The function of the Caribbean Maritime Institute shall be according to Section 4(1) (a):-

- a. to provide training for persons employed as officers and ratings in the shipping industry; and

- b. to provide training for persons employed in shorebased shipping industries and in industries allied thereto and in any other industry the training for which is similar to that of the foregoing industries;
- c. to hold examinations for persons pursuing courses of training at the institute.

[118] Under Section 17 “The institute with the approval may make regulations for the better carrying over of the purposes of the Act”.

Section 3 (1) deals with the establishment of the Institute.

[119] Section 28 (1) of the Interpretation Act says that subject to subsection (2) where an Act passed after the 1st April, 1968, contains words establishing, or providing for the establishment of, a body corporate and applying for this section to that body those words shall operate –

- a. to vest in that body when established –
 - (i) the power to sue in its corporate name;
 - (ii) the power to enter into contracts in its corporate name, and to do so that, as regards third parties, the body shall be deemed to have the same power to make contracts as an individual has;
 - (iii)
 - (iv)
 - (v) the right to regulate its own procedure and business; and
 - (vi)
- b.
- c.

d.

e.

(2) The application of this section to a body corporate shall not –

- (a) prevent the powers, rights and liabilities, conferred or imposed, as the case may be, by virtue of such application, being varied by any enactment; or
- (b) prejudice or affect any liability of any member of that body to be surcharged with the payment of any amount which may be disallowed, by an auditor acting in pursuance of any statutory provision, in the accounts of that body.

THE REGULATIONS

[120] The Caribbean Maritime Institute Regulations, according to Chapter one, has as its Purpose, “the mission to train potential officers for the Jamaican and International fleet with the knowledge and doctrines inherent to the maritime profession. Chapter three deals with the duties of the Dean of Discipline which includes his recommendations of merits/awards of distinction for cadets/aspirants performance; supervises/monitors the cadets/aspirants watch keeping duties; resolves in the interpretation and application of the present regulations as well as cases not stipulated; and, complies with his duties and obligations according to the corresponding administrative manuals, and the other responsibilities that the law, regulations and dispositions of the Executive Director confers upon him/her. Chapter four deals with the Internal regime of the Institute. In addressing “The Company of Cadets and Aspirants” they are expected to tell the truth and ensure that the full truth is known...” Also that “Cadets/aspirants do not lie...do not cheat or tolerate anyone who does; because of integrity and honour. Breach of the honour code will result in immediate expulsion.

[121] Under the caption of “Cadet & Aspirant Programme Internal Regulations”, chapter one, the purpose are as described therein. Their mission is to train potential officers for the Jamaican and International fleet with the knowledge and doctrines inherent to the maritime profession.

[122] The Objectives and Organization are, in relation to:

Competence, Functions, Dean of Discipline, Cadets uniform, Discipline,
Major offences, Points of Demerit and Responsibilities of the Cadet.

[123] The objectives are described as follows:-

1. Develop the Company of Cadets and Aspirants in the maritime profession as the officers who will operate and maintain the vessels from the Jamaican fleet and from the International Strategic Partnership fleets;
2. From the Company of Cadets and Aspirants in the technical and scientific research applied to the different environments of the maritime sciences;
3. Instil in the Company of Cadets and Aspirants the highest concepts of honour, duty, loyalty, honesty, integrity and discipline as supreme values for the maritime career;
4. Instil in the Company of Cadets and Aspirants the love of the sea, of the marine environment and the respect to the maritime resources;
5. Perform technical, scientific and pedagogical research activities in the different aspects of the maritime sciences which will allow cadets and aspirants to obtain academic excellence.

[124] The functions of the Director of Marine & Professional Studies are to:

1. Direct the evaluation and control of the “Cadet & Aspirant Programme” according to the present regulation and the corresponding administrative manuals.

2. Plan, organize and propose the educational activities of the Company of Cadets and Aspirants and the necessary teaching aids to achieve academic excellence for the Executive Director's approval.
3. He is responsible for the organization, training and equipment of the Company of Cadets and Aspirants in the best conditions of health for the sea service in the merchant marine fleet.
4. Maintains the unity of educational and disciplinary doctrines.
5. Chairman of the Disciplinary Appeals Committee.
6. Signs certificates of studies, professional exams and other documents pertinent to the maritime training.
7. Complies with his duties and obligations according to the corresponding administrative manuals, and the other responsibilities that the law, regulations and dispositions of the Executive Director confers upon him/her.

[125] The Dean of Discipline is a Senior Officer or equivalent who:

1. Exercises the command of the Company of Cadets and Aspirants instilling in them the maritime doctrine, the norms of personal/group actions, fortifying the spirit of corps, disposition of service, camaraderie and mutual respect.
2. Directs responsible for the discipline of the Company of Cadets and Aspirants, which includes exercise of command and obedience among the cadets.
3. Recommends merits/awards of distinction for cadet's/aspirant's performance.
4. Chairman of the Disciplinary Committee.
5. Maintains/updates all the various Flags within the Institute.

6. Supervises/Monitors the cadets/aspirant's watch keeping duties.
7. Resolves in the interpretation and application of the present regulations as well as the cases not stipulated.
8. Prepares and updates the procedure manuals of his competence.
9. Complies with his duties and obligations according to the corresponding administrative manuals, and the other responsibilities that the law, regulations and dispositions of the Executive Director confers upon him/her.

[126] In terms of Cadet/Aspirant Uniforms, the uniform and the respective insignias are design to identify the Caribbean Maritime Institute's Cadets and Aspirants showing the rank and the specialty to which they belong and the inherent authority and responsibilities imposed by the internal regulations.

[127] The cadets and aspirants must be proud of wearing the CMI uniforms decently, keeping them perfectly clean and tidy at all times, no objects should protrude from the pockets. The caps should not be used by the sides and must remain perfectly fitted on the head of the cadet/aspirant.

[128] As to personal appearance, **males** will keep their face clean-shaven. Mustaches are permitted; if worn, males will keep mustaches neatly trimmed, tapered, and tidy. No portion of the mustache will cover the upper lip line or extend sideways beyond a vertical line drawn upward from the corners of the mouth. If an appropriate medical authority prescribes beard growth, the length required for medical treatment must be specified. **Females** may wear braids and cornrows as long as the braided style is conservative, the braids and cornrows lie snugly on the head. Dreadlocks (unkempt, twisted, matted individual parts of hair) are prohibited.

[129] Company of cadets and aspirants are authorized to wear civilian clothes (shirt short/long sleeve, pants, not blue jeans, belt, socks and formal shoes); they must

be neat, clean and conservative. They must be properly fitting and not too revealing. No other civilian clothes are permitted and cannot mix with the uniform.

[130] As to wearing the cap, it must:

- (i) be worn in open places at all the times. When the navy cap is not being worn, it must be tucked in the left side of the trousers.
- (ii) when on watch, the cap must be worn at all times.

[131] The uniforms description must adhere to its basic uniform component of:

- (a) Ceremonial cap;
- (b) White shirt;
- (c) Black trousers;
- (d) Black belt navy style (canvas or nylon);
- (e) Black shoes;
- (f) Plain black socks;
- (g) Epaulettes worn according to the rank in which a cadet or aspirant is assigned.

[132] As to daily uniform the Basic Uniform components are:

- (a) Navy cap,
- (b) Khaki shirt,
- (c) Khaki trousers;
- (d) Khaki belt navy style (canvas or nylon),
- (e) Black shoes and
- (f) Plain black socks.

[133] According to Caribbean Maritime Institute Internal Regulations, discipline is the self appreciation, neatness in attire, good manners, aversion to the vices, exactness in the service, accuracy in obedience, respect to laws and regulations, austere dignity in the subordination and respect to the human rights.

[134] Discipline is the fundamental base of the operation and organization, for which the Company of Cadets and aspirants should hold its conduct to the observance of the laws, orders and hierarchies, as well as to the obedience and to the high concept of the honour, justice and ethics.

[135] The Disciplinary Committee's mission is to revise cases of conduct offences/conduct infractions perpetrated by the cadets and aspirants and apply a corrective sanction to them, as well as to study and to analyse the proposals by the educational and executive personnel for the improvement of the discipline. The committee comprises:

- | | |
|---------------------------|----------------|
| 1. Dean of Discipline; | Chairman |
| 2. Senior Safety Officer; | Honour member |
| 3. Training Instructor; | Honour member |
| 4. Cadet Company leaders; | Honour members |
| 5. Secretariat | |

[136] The disciplinary committee meetings will be performed all Tuesdays at 0830 hrs.

The authority given to the Disciplinary Committee is to;

- i Judge the conduct offences of the cadets and aspirants and determine if the defendant is guilty or innocent;
- ii Apply the corrective sanctions, according to the gravity of the offence;
- iii Inform immediately to the office of the Executive Director cases for expulsion of the offender; and,
- iv to apply the corrective sanctions predicted in the Section 2 at the completion of the corresponding meeting and it will be communicated through the respective conduct.

[137] In this respect, there is a meritocracy for breaches of prohibited behaviour that attract demerit points.

[138] The Major/"A" Class Offences are:-

1. Persistent repetition of the offences classified as minor offences.
2. Causing damage or destruction.
3. Fighting, physical assault or battery to anyone.
4. Lying, trying to cheat in examinations, cheating and/or stealing.
5. Disrespect to superiors, lecturers, staff members and/or subordinates.
6. Verbal threats or assaults to any person in the Institute.
7. Possession of dangerous weapons on Institute property.
8. Abuse of authority.
9. Disobeying a direct order, insubordination.
10. Verbal or physical abuse.
11. Verbal abuse against a superior when he/she is not present.
12. Impersonation or unauthorized possession of identification card.
13. Conduct offending the morale, inappropriate behaviour, gambling.
14. Discrimination on grounds of sex, race, religion, class.
15. Any form of intimidation or personal harassment.
16. Non complying the watch schedule. Abandon/neglecting the watch.
17. Falsification of reports, records, or any other document.
18. Assist to meetings which go against the moral and the good manners.
19. Unauthorized use or disclosure of confidential information.
20. Sexual harassment.
21. Commission or conviction of a criminal offence.
22. Unauthorized access to record of the Institute or any member of staff.
23. Non-compliance with sanctions made under Disciplinary Committee.
24. Absent from the School (Campus) for 48 hrs or more and no communicating to their superiors. These cases will be handled as Drop on Request (DOR) and the cadet/aspirant will be ousted from the Programme automatically.

[139] All offences go to the records via a system of demerit cards. The card is filled out in capital letters by the cadet who applies the corrective sanction, except when the demerit is applied by leaders or officers. In this case the offender has to complete

the card and present it to the Cadet in Charge of discipline before 1600 hrs. If the offence was noted after 1600 hrs, the demerit card must be presented before 1600 hrs next day.

[140] When a group of cadets/aspirants commit the same offence, one demerit card can be used with the names of the cadets listed in the back part.

[141] The Disciplinary Appeals Committee (DAC):

1. On receipt of the Disciplinary Committee's findings and decision, the cadet or aspirant if not in agreement with the decision, can within 05 working days, appeal the decision by writing to the Director of Marine and Professional Studies via Dean of Discipline.
2. The Director of Marine and Professional Studies may not call the Disciplinary Appeals Committee (DAC) if the allegation is not consistent.
3. The DAC members comprised by , the Chairman and two Honour Members from the Directors/Deans body.
4. The DAC meeting takes place no later than 7 calendar days after receipt of the appeal. A written response from the DAC is issued to the cadet or aspirant within 7 calendar days after the meeting with copy to the Disciplinary Committee.
5. The DAC may confirm, reverse or vary the recommendations of the DC.
6. The findings and decision of the DAC are final and shall be endorsed by the DC.

[142] The points of Merit system is to stimulate the Company of cadet and the aspirant's development. The Merit System is based on the idea that cadets and aspirants should be the most active and responsible participants in their own success.

[143] The merit system goals are achieved by participating in activities that help the cadet and aspirant academically, personally and pre-professionally.

[144] The Merit System is described as a two semester goal-oriented incentive program for the Cadets and Aspirants.

[145] The Designated Responsibilities for each officer cadet is, he/she will be appointed due to his/her specific skills and/or character to assume designated responsibilities. The Officer Cadet shall appoint one Phase III Cadet and if necessary one or more Phase 1 Cadet/aspirants to assist him/her in fulfilling his/her functions that include;

- a. Prepare the watch schedule and publish it in the Watch-Cabin and Class room.
- b. Verify the equipment for the watch personnel.
- c. Check that all cadets and aspirants sign the log books.
- d. Present the watch schedule to the Dean of Discipline for approval.
- e. Verify and prepare requirements for cabins and chalets.
- f. Prepare and update every two months the inventory of cabins and chalets.
- g. In charge of minor maintenance/inventory of tools received.
- h. Prepare the cleaning schedule/monitor cleanliness of accommodation areas.
- i. Prepare a list of cadets with blood type, weight and height.
- j. Monitor and record medical rest periods and hospitalizations for the company of cadets and aspirants.
- k. Escorts cadets on emergency to the hospital.
- l. Prepare a report of cadets requiring attention and being attended every month.
- m. Receive and apply the points of demerit according to the offence in the demerit cards.
- n. Keep the record of points weekly (from Monday to Friday)

- o. Revise the excuses for the offences daily and weekly.
- p. In charge of the sport activities internal and external.
- q. Keep the inventory of the sport material for the different activities.
- r. Keep the record of the monthly fitness assessment.
- s. Monitor the quality of meals and the distribution for the cadets and aspirants.
- t. Monitor that the cadets get the meals in authorized spaces.
- u. Enforce the schedule for the meals to the company of cadets and aspirants.
- v. Prepare the uniform requirements from the company of cadets and aspirants.
- w. Inventory of uniforms in stock.
- x. Delivery of uniforms against payment vouchers.
- y. Regular inspection and maintenance of boats and pumps in the Campus.
- z. Keep a record of inspection and maintenance performed.

[146] As is to be expected, this type of regimentation is reflected in how that objective is to be achieved. In speaking with a superior the cadet or aspirant must stand up and speak normally, never in a low voice. The salute is a show of courtesy and respect to the superiors, military, civilians, flags, national anthem and honour to authorities.

[147] The salute must not be performed when running, always on step to step and while standing. When indoors, the junior cadets will brace and show acknowledgement of the superior.

[148] In the classroom; the Cadets/Aspirants in charge of the classroom will be appointed every week by schedule. It will be 02 cadets or aspirants in charge every week in alphabetical order. They will be in charge of the proper order and cleanliness of the classroom as well as keeping the record of attendance at all time in the right corner of the whiteboard. The cadets/aspirants in charge a team leader will be appointed sequentially.

- [149]** On arrival of the lecturer, the first cadet/aspirant who sees him/her will give the command "SILENCE", all cadets will remain silent until the lecturer commands "TAKE A SIT" or equivalent.
- [150]** If after 10 min. the lecturer does not arrive to class, the cadet/aspirant in charge will report to the team leader, who immediately will report to the Dean of Marine Studies, requesting instructions.
- [151]** When the class is finished, the cadet/aspirant in charge will command 'ATTENTION" showing respect to the lecturer, and remain silent until the lecturer is out of classroom.
- [152]** On the street the cadets/aspirants will show restraint and seriousness imposed by the uniform they wear, so the education and training receiving in the Institute will be shown by their behaviours. They will wear the uniform perfectly clean and in the correct way. Avoid any kind of horse play, even if age appropriate. When in uniform, they may travel in public or private transportation, in spaces for passengers, never in the back of trucks or pickups. Always give the seat to the ladies, elderly persons and superiors. If they recognize a superior, the salute must be performed; even if the superior is wearing civilian clothes. In social acts, must be polite, respectful and moderate, trying not to call attention to oneself.
- [153]** If the cadet/aspirant is questioned on the street about a professional matter, he /she must answer only if he/she is sure. If not, it is better to say: "I do not know", or "I did not study it yet". During local parties or public events, the cadets/aspirants are prohibited to consume alcoholic beverages in excess.
- [154]** It will be appreciated that not all regulation are reflected here. I have sought to itemize those that are relevant to the case at hand. Also, I have essayed to show the regimented ethos of the Defendant steeped and highlighted in all-round comprehensive discipline. Clearly then, the Regulations do not support infractions of discipline on the part of the Claimant. Further and importantly, the Defendant's

mechanisms, as the following cases show, were invoked in dealing with the Claimant. This is consistent with its regulatory powers as given by the Act.

[155] I now enlarge on the subject of the cases that show that the relationship between the Claimant and the Defendant though contractual, involves as well a further contract that governs the Claimant's conduct/discipline both on campus as well as off-campus. The conduct/discipline contract incorporates its own binding procedure.

[156] In *Patel v University of Bradford Senate and Another* [1978] 3 All ER 841 is a statement of the law on the matter.

[157] From the headnote, in 1972, the plaintiff was admitted to the University of Bradford, a University incorporated by royal charter in 1966. He failed his examination at the end of the academic year and was permitted to sit it again in September 1973, when he again failed. The university authorities decided that the plaintiff should be required to withdraw from the university and notified him of the fact. The plaintiff requested the university authorities to permit him to re-enter but his request was refused. He brought an action against the university in which he sought (1) declaration that the university had arbitrarily, unreasonably and unlawfully refused his re-admission and lawful access to the university and (ii) an injunction and exemplary damages. The university contended that the exclusive jurisdiction to hear the matter was in the visitor of the university and not in the Courts. Although the charter establishing the university reserved to the Crown the right to appoint a visitor, no appointment had been made, the question arose whether the university had a visitor.

[158] It was held that:

- (i) Subject to any appointment that the Crown was pleased to make, the Crown was the visitor to the university, and the Lord Chancellor was the proper person to exercise the visitorial powers on behalf of the Crown.

- (ii) The jurisdiction of the visitor to a corporation, including a modern university, was sole and exclusive and extended as much as to whether any person lawfully had or ought to have become a member of it as to whether a member had or had not lawfully been removed, there being in each case a dispute as to membership which was a matter internal to the corporation. The Courts had no jurisdiction over matters within the visitor's jurisdiction, but would, in appropriate cases, exercise control over the visitor by issuing prohibition or mandamus.

[159] In the course of his Judgment, Sir Robert Megarry V-C, had this to say, "In *Rey v Dunheat, Ex parte Meredith* [1951] 2 K.B. 127, a Kings Bench Divisional Court refused to grant an order of mandamus directing the Chairman of Convocation of London University to summon an extraordinary meeting of convocation in accordance with one of the university statutes, on the ground that the proper remedy was to apply to the visitor. "The Court, said Lord Goddard C.J. at p. 132, will not interfere in the matter within the province of the visitor,..." Perhaps the strongest authority is *Thorne v University of London* [1966] 2 Q.B. 237. There an unsuccessful candidate for the London LLB sued the University of London for damages for negligently misjudging his examination papers, and for an order of mandamus requiring the university to award him the grade that his papers justified. The Court of Appeal refused leave to appeal from a decision which had struck out the merit and statement of Claim and dismissed the action. In the words of Diplock L.J. at p.242: 'actions of this kind relating to domestic disputes between members of the University of London (as is the case with other universities) are matters which are to be dealt with by the visitor, and the court has no jurisdiction to deal with them'. This case makes it plain that the system is not merely one of refusing discretionary remedies or requiring alternative forms of relief to be pursued first, but is only a matter of jurisdiction. Two interlocutory observations by Diplock L.J. on p. 240 emphasise that the visitor has the sole and exclusive jurisdiction, and that at common law the Court has no jurisdiction to deal with the internal affairs or

government of the university, because these have been confided by the law to the exclusive province of the visitor”.

[160] Also, in *Hines v Birkbeck College* [1985] 3 All ER 156, where there was a dispute over a contract of employment, the Court held that since the matters in dispute involved, among other things, complaints of defective procedure, lack of a fair hearing, and questions of membership of a college, they were domestic disputes and were within the exclusive jurisdiction of the college visitor. Lord Hoffman (as he then was) stated the law in this way: “The visitor is a domestic forum appointed by the founder for the purpose of regulating the foundation’s domestic affairs in accordance with its statutes, including determination of domestic disputes. As Megarry V.C. sued in *Patel v University of Bradford Senate*: ‘The visitor has a general jurisdiction over all matters in dispute relating to statutes of the foundation and its internal affairs and membership of the corporation’

[161] Here, I am now brought to a consideration of the jurisdiction of the visitor as compared to that of the courts in matters of this kind. Also, whether the nature of the course of action affected that issue.

[162] In *Thorne v University of London* [1966] 2 Q.B. 237. a dissatisfied candidate complained that his examination papers had been negligently marked. He framed his action as a common law claim in damages for negligence. His cause of action was struck out on the grounds that it related to a domestic dispute within the university. “The decision of the Court of Appeal makes it impossible to argue, at least in this court, that the nature of the cause of action determine whether the case falls within the visitors jurisdiction. The only plausible criterion is that the question is determined by the domesticity of the dispute “said Megarry VC. He continued, “The authorities also make it clear that, irrespective of whether the courts would be as well or better qualified to deal with the particular case, a dispute has the necessary domesticity if it involves members of the corporation and the interpretation or application of its internal rules, customs or procedures.

Further, as Sir Samuel Romily said in argument in *Ex parte Kirby Ravensworth Hospital* (1808) 15 VES.305, 311, 'A visitor is.....a Judge, not for the single purpose of interpreting laws, but also for the application of laws, that are perfectly clear, requiring no interpretation, and, further, for the interpretation of questions of fact...' In my Judgment the doctrine is no less domestic because the rules, customs or procedures in issue are alleged to constitute terms of a contract or because their construction or the question of fact involved in their application are equally conveniently justiciable in a court". See also Halsbury's Laws of England, 4th Edition, Re-Issue, Vol. 15(1) 995.

[163] Having regard to the above, I hold myself obliged to say that I labour under a degree where I cannot disagree. This, I find, is dispositive of the matter. Thus, in consequence of the above, the Claimant's case is rejected. Costs generated by this matter are to go to the Defendant.