

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM C.L. 2002/E020

BETWEEN EUGENNIE EBANKS CLAIMANT

AND BETTING GAMING AND
 LOTTERIES COMMISSION DEFENDANT

Mr. David Henry for the Claimant instructed by Mrs. Winsome Marsh.

Dr. Lloyd Barnett and Mr. Frank Williams for the Defendant.

HEARD: November 6 and 10, 2003

G. SMITH, J.

1. The Claimant, Miss Eugennie Ebanks was employed to the Defendant, the Betting, Gaming and Lotteries Commission, as Director of Administration from June 1, 1995 to February 19, 2001.
2. Her letter of appointment of May 22, 1995 sets out the terms and conditions of her employment. This letter was signed by the General Manager for and on behalf of the Betting, Gaming and Lotteries Commission.

3. The final paragraph of the letter of appointment states that the Claimant should signify her acceptance of the appointment on the foregoing terms and conditions by signing the attached copies of the letter. The Claimant signed and dated the copies on May 31, 1995.
4. On February 19, 2001, the Defendant terminated the services of the Claimant with immediate effect. The Claimant brought this action for among other remedies, that of wrongful dismissal.
5. At a Case Management Conference on June 12, 2003, the parties agreed and the Court ordered that the following issues be set down for a preliminary decision:
 - (a) Whether the defendant has any statutory powers to dismiss the Claimant; and
 - (b) Whether or not the Claimant has the status of a "Public Officer" within the terms of the Public Service Regulations.
6. QUESTION I: WHETHER THE DEFENDANT HAS ANY STATUTORY POWERS TO DISMISS THE CLAIMANT.
 - (i) It was argued on the Claimant's behalf that under Section 4(3) of the Betting, Gaming and Lotteries Act and Paragraph 25 of the

First Schedule to the Act that the Betting, Gaming and Lotteries Commission:

“May appoint and employ at such remuneration and on such terms and conditions as it thinks fit a Manager,^o a Secretary and such other officers, servants and agents as it thinks necessary for the proper carrying out of its functions:

Provided that no salary exceeding \$7500 per annum shall be assign (sic) to any post without prior approval of the Minister.”

That based on those provisions, the Commission has no power to dismiss any member of staff from his/her employment.

- (ii) The Commission cannot employ any member of staff on its own accord. The employment of staff is subject to the approval of the Minister of Finance. Formerly, the practice, was that appointments were subject to the approval of the Ministry of the Public Service. This Ministry no longer exists as it is subsumed under the Ministry of Finance as a Special Unit. That unit now has the responsibility to approve the employment of all Public Officers.

- (iii) That Section 28(1)(a)(ii) and (vi) of the Interpretation Act do not assist the defendant as they relate to the Power to terminate the Claimant services. Those powers are applicable only to employment and not to dismissal.
- (iv) Further that the general words of these sub-paragraphs cannot override the specific provisions of the Betting Gaming and Lotteries Act, which act restricts the Commission's right to employ staff.
- (v) The Interpretation Act cannot confer a power to terminate employment (as distinct from mere employment) which is not conferred by the statute creating the Public Authority, namely the Betting, Gaming and Lotteries Act.

7. The Defendant on the other hand contended that:

- (i) The Claimant was not a civil servant, and did not fall under the Civil service Regulations. She was a party to a contract of employment with the defendant and was governed by the terms and conditions of her letter of appointment.
- (ii) In that letter of appointment it was clearly stated that the Claimant's appointment would be "subject to the rules and regulations of the commission".

- (iii) The Defendant is established by Section 4(1) of the Betting, Gaming and Lotteries Act.

Section 4(2) provides that the Defendant shall be a body corporate and that the provisions of Section 28 of the Interpretation Act shall apply to it.

Section 4(3) states that the constitution and operation of the Defendant shall be governed by the First Schedule to the Act.

- (iv) Paragraph 25(1) of the First Schedule (supra) sets out the powers of appointment and employment of the defendant for the proper carrying out of its functions. The proviso it is contended places a restriction for the Minister to give his approval for salaries exceeding \$7500 per annum before such salaries are assigned to any post.

- (v) It was this provision which caused the Defendant to send the letter of June 2, 1995 to the Minister of Finance for his approval of the salaries of the 2 officers (including the claimant) as they both exceeded \$7500 per annum.

8. The Defendant further argued that Sections 28 and 35 of the Interpretation Act are of fundamental importance to the determination of the preliminary questions.

Sections 28(1)(a)(ii)(v) & (vi) are of special importance.

Sub-paragraph (vi) expressly empowers the defendant to employ staff.

The defendant states that it is a rule of Statutory Interpretation that where in a statute there is a provision empowering an entity to employ, it also carries with it a right to dismiss. This rule is expressly set out in Section 35 of the Interpretation Act. It was on the basis of the foregoing provision that the defendant employed the Claimant and also terminated her services.

9. The Public Services regulations apply only to persons who are appointed by the Governor General on the advice of the Public Service Commission. The power to dismiss proceeds from the same constituted authority as the power to appoint. A fortiori, a person who is not appointed by the Governor General on the advice of the Public Service Commission cannot demand that the procedures prescribed by the Public Service Regulation should apply to him/her.
10. Since the Claimant was not appointed by the Governor General on the advice of the Public Service Commission then it is argued by the

defendant that her employment was based on an ordinary contract of employment and she is subject to its terms and conditions. R v Binger, Vaughan and Scientific Research Council, Exparte Chris Bobo Squire (1984) 21 JLR 118 was cited in support of that proposition of Law.

11. CONCLUSION:

I find the following:

- (1) That the Claimant was employed to the defendant by letter of appointment of May 22, 1995.
- (2) That the letter of appointment clearly stated that her appointment was "subject to the Rules and Regulations of the Betting, Gaming and Lotteries Commission." The Claimant signed the copy letters signifying her agreement dated 31st May, 1995.
- (3) That the rules and regulations governing the Betting, Gaming and Lotteries Commission are primarily set out in:
 - (A) The Betting, Gaming and Lotteries Act, Sections 4(1) 4(2) & 4(3) and The First Schedule to the Act, particularly Section 25.
 - (B) The Interpretation Act Sections 28 and 35.

4. On an examination of the relevant sections of the Betting, Gaming and Lotteries Act and Section 25 of the First schedule to that Act I came to the conclusion that defendant did have the power to employ the Claimant, subject to the restriction that, the approval of the Minister of Finance was necessary for all salaries in excess of \$7500 per annum being assigned to the post. Consequently, I am of the opinion that it was on the basis of this provision that the defendant sent the letter dated June 2, 1995 to the Minister of Finance.
5. Under Section 28 of the Interpretation Act the defendant is given the power to employ such staff as is necessary to perform its functions. Section 35 of that same act provides that under any Act where a power to make an appointment is conferred, then the authority having been given that power to appoint also has the power to dismiss.

On the authority of the foregoing sections the defendant having employed the Claimant has the power to properly terminate her services.

12. Question 2:

WHETHER OR NOT THE CLAIMANT HAS THE STATUS OF A
"PUBLIC OFFICER" WITHIN THE TERMS OF THE PUBLIC
SERVICE REGULATION?

- (1) The Claimant contended that “a Public Officer” is defined by the Constitution as the holder of any office of emolument in the Public Service. “Public Service” is defined as “the service of the Crown in a civil capacity in respect of the Government of Jamaica.” The only Government service excluded from this definition is one in which the constituent statute (in this case the Betting, Gaming and Lotteries Act) provides that an office “shall not be a public office for purposes of Chapter V of the Constitution.”
- (2) Paragraph 12 of the First Schedule of the Betting, Gaming and Lotteries Act provides that the office of chairman or member of the Betting, Gaming and Lotteries Commission “shall not be a public office for purposes of Chapter V of the Constitution of Jamaica”. There being no such equivalent provision which relates to the employment of the staff of the Commission, the Claimant contended that she is a “Public Officer.”
- (3) In support of that contention it was further argued that
 - (a) The staff is paid with Public Funds from the Consolidated Fund.
 - (b) That the Commission’s Budget forms part of the National Budget. The Commission takes part in the preparation of the

National Budget exercise in the same way as all Government offices.

- (c) The Organizational Chart, Corporate structure and Salary Scales are all approved by the former Ministry of the Public Service (now a special division of the Ministry of Finance.)
- (d) That the Commission performs public duties as a Public Authority as prescribed by the Betting, Gaming and Lotteries Act.

13. The Defendant on the other hand submitted that you must look as a whole at the Statutory Provisions -

- 1. Section 25(2) of the First Schedule of the Betting, Gaming and Lotteries Act demonstrates the intention of Parliament. This provision makes a clear distinction between 2 categories of employees, "Public officers" who wish to gain employment with the Commission and still retain their public service entitlement and are regarded as continuing in the service of Government by special arrangement, and those who do not and therefore cease to be public officers on entering the employment of the Commission.

2. The terms “public office” “public officer” and “The Public Service” are defined in the Interpretation section of the Constitution of Jamaica. An examination of the definition of “the Public Service” is sufficient to demonstrate beyond doubt that this phrase is meant to cover persons employed in the Civil Service in the strict sense of the words, not to persons employed to a statutory body.
3. Under Section 125 of the Constitution a person can only be appointed to a “Public office” by the Governor General acting on the advice of the Public Service Commission, the Claimant was not so appointed to the office she held in the defendant Commission. Therefore she is not a “Public officer”.

14. CONCLUSION

I accept and adopt the submission of the Defendant that the Definition of “The Public Service” demonstrates beyond doubt that the phrase is meant to cover persons employed in the “Civil service” in the strict sense of the words and not to persons employed to a statutory body.

Secondly, under Section 125 of the Constitution of Jamaica a person can only be appointed to a "Public office" by the Governor General acting on the advice of the Public Service Commission. The Claimant was never appointed by the Governor General acting on the advice of the Public Service Commission, therefore the Public Service Regulations would not apply to her.

Thirdly, the Claimant's employment to the defendant in my opinion is based on an ordinary contract of service and is therefore subject to the terms and conditions of that contract. In the case of R v Binger, Vaughan and Scientific Research Council, Exparte Chris Bobo Squire 1984 21 JLR 118 where a similar question was determined by the Court of Appeal of Jamaica. Section 8(1) of the Scientific Research Council Act in that case is almost in identical terms to Section 25(1) of the First Schedule of the Betting, Gaming and Lotteries Act, the Court held that the Appellant was subject to an ordinary contract of service, his services were terminated pursuant to that contract and his action lie in damages. That case was accepted as authority for the view I expressed on that point.

Finally, based on the foregoing reasons my answer to question 2 is that the Claimant does not have the Status of a "Public Officer" within the terms of the Public Service Regulations.

15. On 10th November, 2003

Two Affidavits which formed part of the records in Suit No. M156 of 2002 Charles Ganga-Singh v Betting, Gaming and Lotteries Commission were brought to the attention of the Court for my consideration by the Claimant's Attorneys-at-Law. They specifically referred me to paragraph 4 of the affidavit of Courtney Williams sworn to on 22nd July 2003 and Paragraph 4 of the Affidavit of Vaughn Goodison sworn to on 22nd July 2003.

On a careful reading of Paragraph 4 of each affidavit I am of the opinion that what the deponents stated therein was a mere procedure which was adopted by the Commission and does not have the effect of law. Proceedings are sometimes used for the ease and convenience of the bodies concerned and are really nothing more than guidelines.