[2023] JMSC Civ 234

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV05047

BETWEEN	**LEON EDWARDS**	**CLAIMANT**
AND	**COMMISSIONER OF POLICE**	**1ST DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**2ND DEFENDANT**

IN CHAMBERS IN OPEN COURT

Mr. Glenroy Mellish instructed by Byfield, Mellish and Campbell for Claimant

Ms. Kamau Ruddock instructed by the Director of State Proceedings for.

Heard: November 17, 18, 20 & 29, 2023

Re-enlistment in Police Force is not automatic, Failure to re-enlist results in the removal of an officer from further service in the Force, it Is not a dismissal.

O. SMITH, (AG.)

INTRODUCTION

[1] The Claimant, Leon Edwards, filed a Fixed Date Claim Form (FDCF) on November 30, 2021, seeking the following declarations against the first defendant, the Commissioner of Police. The second defendant is the Attorney General of Jamaica.

[2] The declarations sought are:

1. A declaration that the claimant was lawfully re-enlisted in the Jamaica Constabulary Force for a period of five years on July 18, 2013.

2. A declaration that the claimant's employment as a Corporal of Police was in force on July 17, 2014, the date when he was verbally ordered not to return to his duties by Superintendent Green, an agent of the 1st defendant.

3. A declaration that there was no lawful termination of the services of the Claimant subsequent to his re-enlistment on July 18, 2013.

4. A declaration that the claimant's employment as a Corporal of Police or such higher rank as he should have attained, continued until October 7th, 2021, his due date of retirement.

5. That the claimant is entitled to all emoluments and perquisites, including pension rights attached to his rank as Corporal of Police from the date of his termination until October 7, 2021, the date of his intended retirement.

6. Cost

7. Interest

8. Such other orders as the Court deems fit and just.

[3] The claimant has based his claim, in part, on the grounds that, at all material times, he was employed as a constable and thus entitled to the rights, protection and privileges enjoyed by a constable pursuant to Police Services Regulations and the Constabulary Force Act. His purported suspension, layoff or dismissal in or around 17, 2014 was unlawful and of no effect as he had relisted on July 18, 2013, in compliance with the procedures of the Jamaica Constabulary Force and further, there were no disciplinary charges instituted against him pursuant to Part V of the Police Services Regulations, 1961. Finally, as a consequence of the failure to effect a lawful termination of the claimant, he remains a member of the Jamaica Constabulary Force.

CLAIMANTS CASE

[4] Mr. Edwards joined the Force on July 18, 1983, at the age of 21. In July 2014 he was a Corporal of Police serving in the Kingston Eastern Division.

[5] On April 3, 2013, he received a reminder to re-enlist, Exhibit LE1. His term at that time would have ended on July 17, 2014. On July 17, 2013, he signed an application to re-enlist for five years before a Justice of the Peace. Copy Attestation Sheet, Exhibit LE2.

[6] On July 25, 2014, Inspector Francis served him with a notice of failure to re-enlist. This followed on the heels of a call from Sergent Green a week earlier in which he was advised that he should not report to duty any longer.

[7] Thereafter, he had three meetings with the Commissioner of Police. According to him, coming out of the second meeting in 2016, the Commissioner advised him that there was no need for him to return to see him and that he could resume duties. However, thereafter, he heard nothing until seven months later when, yet another meeting was convened. At that meeting he was offered retirement.

DEFENDANT'S CASE

[8] The Defendants case came from the sole affidavit of Assistant Commissioner of Police, Andrew Lewis. The information came from the personnel file of Edwards.

[9] On January 8, 2011, while Edwards was on duty, an accident involving a car owned by Island Car Rentals was reported to him. However, he did not collect any statements or visit the scene.

[10] In September 2011 Island Car Rentals contacted one Superintendent Bailey in relation to the difficulty they were experiencing obtaining a report of the accident. This was relayed to Edwards to did not produce a report.

[11] In March 2012, Superintendent Bailey gave Edwards instructions to complete investigation in the matter, however, he merely submitted a short report a few days later. This report was considered incomplete as it lacked what they referred to as "the necessary details". Further, it was stated that he was resentful of being spoken to regarding the report. This was regarded as conduct unbecoming of a member. Three charges were preferred against him.

[12] Arising from this a Court of Enquiry was convened to hear the three charges. The Court of Enquiry concluded in February 2013. All three charges were proven. It is their case that as a result of the pending charges the claimant was granted a term of one year's re-enlistment.

[13] Edwards was informed of this by letter in July 2013. This meant that he would have to apply for re-enlistment in 2014. He failed to do so and as such he was served a Notice of failure to Re-enlist. This failure meant that he was no longer a member of the Jamaica Constabulary Force.

[14] The issues that arise for determination are:

1. **Whether an applicant is entitled to be re-enlisted for five years.**
2. **Whether in July 2013, the Claimant was re-enlisted for a term of five years or a shorter term.**

THE LAW

[15] Case Law in relation to re-enlistment in the Jamaica Constabulary Force is quite settled. A look at the legislation governing re-enlistment is a useful place to start.

[16] Section 5 of the Constabulary Force Act (CFA) states:

> Sub-Officers and Constables of the Force may be enlisted for a term of five years and no Sub-Officer or Constable of the Force, so enlisted, shall be at liberty to withdraw himself from the Force until the expiration of that term; and no Sub-Officer or Constable of the Force who has not been enlisted for a term shall be at liberty to withdraw himself from the Force until the expiration of six, months from the time he shall have given notice in writing of his intention so to do to the Officer under whose immediate orders he shall be; and of any Sub-Officer or Constable shall so resign or withdraw himself before the expiration of such term, without the permission of the Commissioner or without such previous notice, he commits an offence and

is liable on summary conviction in a Parish Court to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding three months.

[17] Rule 1.10 of the Book of Rules for the Guidance and General Direction of the Jamaica Constabulary Force reads:

(a) Sub-Officers and Constables may be enlisted for a term of five (5) years and no Sub-Officer or Constable so enlisted shall be at liberty to withdraw himself from the Force until the expiration of that term, and no Sub-Officer or Constable who has not enlisted for a term shall be at liberty to withdraw himself from the force until the expiration of six (6) months from the time he shall have given in writing of is intention so to do to the Commanding Officer.

(b) Sub-Officers and Constables desiring to be re-enlisted for a further term of five years must make an application at least fourteen (14) weeks before the expiration f the current term and must be medically examined at least twelve (12) weeks before the current term expires."

[18] On a reading of both the Act and the Book of Rules, a member may apply for re-enlistment every five years. If successful, the member should be re-enlisted for a term of five years.

[19] In **Corporal Glenroy Clarke v The Commissioner of Police and the Attorney General,** SCCA No. 84/94, Carey JA beginning on page 3 stated:

> "As indicated earlier, a member of the force is enlisted for terms of five years and when he wishes to re-enlist, he must make an application before the expiration of the term. It follows that if there is no application, a member's tenure comes to an end. When an application is made, it is considered by the Commissioner who makes a determination. The Constabulary Force Act confers on the Commissioner sole command and superintendence of the Force [section 3(2)(a)] and I would add, the Force is to be regarded as partially under military organization and discipline (section 3(1)). Although the non-approval by the commissioner of a member of the Force for

reenlistment, removes that member from further service in the Force, it is not a dismissal."

[20] Carey JA also expressed the view, which is now accepted, that there is no automatic right to re-enlistment in the JCF. He explained in great detail the framework within which applications for re-enlistment are considered. This is to be found on pages 5 to 6 of his judgment. His judgment was adopted and succinctly restated by Sykes J, as he then was, in **Berrington Gordon v Commissioner of Police** [2012] JMSC Civ 46,

[21] In that case, Sykes J, as he then was, had before him an application for Judicial Review which arose out of the decision of the Commissioner of Police in May 2009, not to approve the re-enlistment of Corporal Gordon who had been a member of the Jamaica Constabulary Force, (JCF) since August 1994. At paragraph 20 he stated:

> [20] **Clarke** established the following propositions:
>
> a. no police officer who must apply for re-enlistment has an automatic right of re-enlistment;
>
> b. the police officer has to apply for re-enlistment in accordance with the relevant or extant rules and regulations;
>
> c. the power to decide whether the officer will be re-enlisted, according to the Act, lies solely with the CP;
>
> d. it is the CP who determines the standard of conduct expected of police officers. The courts have no power to make this determination;
>
> e. the CP can properly determine that a particular officer won't be allowed to re-enlist even before that officer makes an application for re-enlistment;

f. if the CP decides that a particular officer won't be re-enlisted before he makes such an application, fairness does not require that such an officer be heard before the CP makes that decision;

g. if the officer does not apply for re-enlistment then his time in the police force comes to an end and no right has been breached even if, unknown to the officer, the CP had decided that he would not be permitted to reenlist;

h. however, if the CP has decided that the particular officer will not be allowed to re-enlist, whether before or after such an application, and such an application is in fact made, fairness demands the CP must (not may) notify the officer of his decision and the decision must be accompanied by reasons;

i. the officer must (not may) be allowed to make representations to the CP;

j. the right to be heard can only arise if and only if (i) the officer applies for re-enlistment; (ii) the CP informs him that he will not be permitted to reenlist and (iii) he has been given the reasons for the decision;

k. it is for the CP to decide what form the hearing should take and whether there will be written as well as oral submissions but whatever form the hearing takes, it must be fair;

l. the hearing before the CP is a review where the onus is then placed on the officer to make his case for re-enlistment;

m. the decision not to permit re-enlistment is not a dismissal;

n. in considering whether to permit the officer to re-enlist the CP can take into account the past conduct of the officer.

[22] He went on to point at paragraph 22:

> "Carey JA indicated that even though there is no automatic right to re-enlistment approval should be and doubtless is granted where the conduct of the member is satisfactory' (page 309")

[23] The Commissioner of Police by virtue of the Jamaica Constabulary Force Act, and attendant Rules and Regulations has the sole discretion whether to re-enlist a member. The authority to do so however, is not at large and must be based on an assessment of the members' conduct in the JCF.

[24] The previous cases that considered the re-enlistment of police officers all hold that a police officer has a legitimate expectation to be re-enlisted. However, that statement is not absolute. A police officer can only properly have a legitimate expectation to be re-enlisted if his conduct over the years warrants it. In **Berrington Gordon,** Corporal Gordon had sought the following declarations:

> "a. a declaration that the decision not to permit him to re-enlist is void and in breach of the principles of natural justice and his legitimate expectation to be re-enlisted;
>
> b. certiorari to quash the decision of the Commissioner of Police not to permit him to re-enlist;
>
> c. an order that a hearing be held for him to be heard regarding the decision of the Commissioner of Police not to allow his re-enlistment;
>
> d. damages;
>
> e. costs
>
> f. such further or other relief as the court thinks fit.

[25] Sykes J opined that the issue of legitimate expectation arose in that case because Corporal Gordon had been successfully re-enlisted on two previous occasions. He however, qualified that statement at paragraph 41, when he said:

> "The first two remedies sought by the Corporal cannot be granted as framed. They are premised on a right to re-enlist and there is no such automatic right. The legitimate expectation to be re-enlisted can only arise if, on a review of the Corporal's work, he has met the standards of conduct set down by the CP. If the CP has reason (not intuition or speculation, conjecture, suspicion and unsubstantiated rumours) to believe that the Corporal has not met the standards and therefore will not be re-enlisted then the CP, as a responsible person, should take steps to see that he is not re-enlisted but must do so fairly."

[26] Fairness dictates that if the Commissioner makes the decision not to re-enlist a member that decision must be communicated to the member in writing along with the reasons for his rejection. In **Glenroy Clarke**, Carey J at page 5 opined that:

> "Where the Commissioner has taken a decision not to approve re-enlistment, then, upon any application of the member for re-enlistment the Commissioner is obliged, in fairness, to supply the reasons for his decision and allow the officer affected, an opportunity to be heard in relation to that material if the officer requests it. Any right which the appellant had to be heard, could only arise after the appellant had been advised of the decision not to approve and the reasons therefor."

[27] By extension, I am of the view, that where the Commissioner intends to approve re-enlistment for a term of less than 5 years, fairness dictates that his decision should be communicated to the member in writing accompanied by reasons. I make this statement in the context of the case before me because I am not convinced, based on the legislation, rules, regulations and authorities that I have examined, that the Commissioner of Police has the authority to approve reenlistment for a period less than five years.

ANALYSIS AND DISCUSSION

[28] This case in my view turns on whether it is borne out that Edwards was served with the July 23, 2013, letter informing him that his re-enlistment had been approved for one year. Edwards was enlisted in the Force on July 18, 1983. Therefore, in 2013 when he applied for re-enlistment, he had been through the process several times. I take it as a given therefore that he was well acquainted

with the procedure to be followed to ensure that his application was successful. He would also by extension, be aware of the procedure that obtained if his application was successful or not.

[29] Edwards is saying that he filled out the application and took the oath of Office on July 17, 2013. He did not receive any notification form the Commissioner's Office or otherwise that approval had been granted for only one year.

[30] The defendant has countered this by saying that at the relevant time the claimant was the subject of an enquiry. The enquiry resulted from a course of conduct which led to him being charged. Consequently, pending the outcome of the Court of Enquiry the Commissioner approved re-enlistment for one year. (Exhibit 9, letter dated July 23, 2013). This meant that fourteen weeks before July 18, 2014, Edwards was required to submit another application. Having so failed to do, he, on July 25, 2014, was notified that as a consequence of his failure to apply for re-enlistment he could no longer perform the duties of a Constable.

[31] Counsel representing Edwards suggested to ACP Lewis that there was no one year re-enlistment because in April 2013 there were no pending charges against his client.

Pending Charges

[32] The following are the agreed facts surrounding the Court of Enquiry:

[33] A Court of Enquiry was convened to hear the charges brought against Edwards commencing on Monday January 7, 2013. It ended on Monday February 25, 2013, after five hearing dates. Although the Court of Enquiry concluded on February 25, 2013 and all charges were found to be proven, no ruling/decision had as yet been made by Commissioner. A copy of the ruling of the Court of Enquiry and notes of evidence dated February 28, 2013, were sent to the Commissioner. There is no indication of the exact date this was done, however, ACP Lewis averred that the results were communicated to the Commissioner by the President in a report dated

February 25, 2013. (This must be an error.) Be that as it may, the Commissioner did not hand down his decision until April 17, 2015 and when he did, the penalty was two days' pay per charge. This meant in total that 6 days' pay was levied. I interpret that to mean that the commissioner made the decision that the infraction did not rise to a level to warrant dismissal or not to approve re-enlistment.

[34] Regulation 40 of the Police Service Regulations provides that the Commissioner is authorised to impose penalties for any offence that a police officer below the rank of inspector has been found guilty of. In addition, it is trite law that a trial or hearing is not at an end until after the sentence has been imposed. A Court of Enquiry operates like a court of law. The principles are therefore applicable.

[35] Consequently, at the time when the July 23, 2013, letter was sent, although all charges had been proven the Court of Enquiry had not been determined. The Commissioner however, had all the information before him to make an informed decision in relation to re-enlistment, the only thing outstanding was his punishment.

Whether an applicant is entitled to be re-enlisted for five years

[36] In his second affidavit Edwards observed that the July 23, 2013, letter was drafted after he had sworn on July 17, 2013 "and been re-enlisted for a further 5 years." I interpreted this to mean that any subsequent letter purporting to indicate a shorter period was unacceptable. It demonstrates that he was of the view that once he signed the Oath of Office on the Attestation Form, he was entitled to be re-enlisted for a term of five years.

[37] It has long been established that a police officer does not have an automatic right of re-enlistment. The rule is this, where an officer has had prior successful re-enlistments, he has a legitimate expectation to be re-enlisted. However, if a member's record and course of conduct in the JCF has been unbecoming of a police officer then he cannot shield himself with the cloak of legitimate expectation. See **Glenroy Clarke**.

[38] The cases of **Glenroy Clarke** and **Berrington Gordon** establish that a member ought not to entertain a legitimate expectation to be re-enlisted if his conduct has been "aberrant". Conduct in those cases embodied a course of conduct over a period of time. Carey JA at page 5 of his judgment in **Glenroy Clarke** said in relation to the Commissioner's exercise of his power to re-enlist:

> "The conduct of the officer over various terms of his enlistment would necessarily be the basis of the Commissioner's decision."

[39] Unlike the police officers in the other cases, the evidence indicates that this was the first complaint lodged against Edwards. While I appreciate that the "level of conduct or performance" is the sole determination of the Commissioner of Police, it does not seem that the charges levelled against Edwards in this case rose to a level of conduct that called for punishment beyond 6 days' pay.

Whether in July 2013, the Claimant was re-enlisted for a term of five years or a term.

The Issue of Service

[40] Edwards in his second affidavit, filed on April 12, 2022, averred that,

> "In my 30 years in the JCF I came to know, the procedure for communication by the Commissioner with sub-officers of the force. The order/directive would be channeled through the Assistant Commissioner for Area 4, then to, Superintendent Brown who would then communicate with the inspector in charge of the Rollington Town Police Station where I was stationed. The inspector would show me the communication. The document would have the referrals, signatures and dates of acknowledgement of the Inspector and myself. She would then refer back the communication to Superintendent Brown, again affixing her signature and. The date."

[41] To that end, he deponed that the first time he saw the July 23, 2013, letter was in the affidavit of ACP Lewis. In other words, he was never served with this letter.

Had he been served, it would have been by way of the protocol described at paragraph 34 above.

[42] In support of his assertion that he was never served, Edwards referred to Exhibit AL1, Notice-Failure to Re-Enlist, dated July 17, 2014, which was served on him on July 25, 2014. The service of the document is endorsed on the face of the Notice. No such endorsement is on the July 23, 2013, letter.

[43] Under cross-examination, ACP Lewis was also shown Exhibit LE5, the January 20, 2017, letter. That letter has provision for an endorsement albeit, it was not used. In those circumstances the claimant argued that the defendant had no proof of service as he had not adopted the correct method of service.

[44] Interestingly, the letter dated April 3, 2013, does not have an endorsement on it or provision for an endorsement. However, the claimant does not dispute receipt of that letter. Although the burden of proof lies with the claimant, in the circumstances of this case, I am of the view that it was incumbent on the Defendant to demonstrate that the July 23, 2013, letter was served or had come to the attention of Edwards.

[45] I note that ACP Lewis did not agree that the endorsement method was the proper manner of service in the Force. He indicated that there was no one way to effect service in the Force. However, notably, he agreed that the endorsement method is a best practice.

[46] That being said, careful attention must be given to the evidence of ACP Lewis. His evidence is based on the contents of the claimants Personnel File held at the Administration of Police. It has not gone unnoticed that ACP Lewis did not give evidence, whether in his affidavit or under cross examination that Edwards had been served with the July 23, 2013, letter. His evidence is, that the records show that Edwards faced charges arising out of a report he received on January 8, 2011. Based on the pending charges he was granted a term of one year's re-enlistment. His affidavit evidence goes onto state that Edwards was advised by way of letter

dated July 23, 2013. His evidence does not explain what he meant by "advised". Under cross examination, the highest he took the issue is that the decision to approve re-enlistment for one year was communicated to Edwards via the July 23, 2013, letter.

[47] Edwards relied on two affidavits in support of his case. In his first affidavit he outlined the two documents that he received, the April 3, 2013, letter and the July 25, 2014, letter. In his second affidavit, he denied receiving the July 23, 2013, letter. Despite this he was never cross examined in relation to this denial and it was never suggested to him that he was served with the document. In fact, no questions were put to him under cross examination.

[48] In the Court of Appeal decision of **Browne v Dunn** (1893) 6 R. 67, the court held that if you intend to call evidence to contradict a witness you must put your case to the witness during cross examination so that the witness has an opportunity to respond. It is important to note that this rule applies both in criminal and civil proceedings. Lord Herschell LC at page 70 stated;

> "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case; but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue; but it seems to me that a cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without

> cross-examination, and afterwards to suggest that he is not a witness of truth…"

[49] The principle behind this rule is one of fairness. That is, a witness should be given the opportunity to explain or address any issue that may later be used against them. In the reverse, it should be noted that Lord Herschell made a qualification that it would not be fair to impeach the credibility of a witness on matters for which he had no notice. However, when Edwards filed his second affidavit in 2022, he flatly denied that he received the July 23, 2013, letter. The defendant therefore had ample opportunity to put evidence before the court to counter this assertion. Any assertion that the Claimant failed to re-enlist in July 2014 is an assertion that he was infact served with the July 23, 2013, letter and by extension is being untruthful when he says he did not receive it. That being the case Edwards was never given the opportunity to admit, deny or explain his claim that he did not receive it. I find that he was not served with the July 23, 2013, letter.

[50] I accept that if a party chooses not to cross examine a witness on an issue it does not automatically mean that the court will accept the evidence of that witness. The court must still ensure that the evidence is cogent. If it is not, it is open to the judge to reject it. **In Paric v John Holland Constructions Pty Ltd** [1984] 2 NSWLR 5O5, Samuels JA at page 507 said:

> "While I do not think that it would be right to conclude that the absence of cross examination entails the acceptance of the evidence given it certainly enables that evidence to be regarded by any tribunal or fact with a greater degree of assurance than might otherwise have been the case."

[51] I am fortified in my finding at paragraph 43 when I examine Exhibit 4, the Personnel For Re-enlistment in 2014 – Kingston Eastern Division. This list is dated August 27, 2013, a little over a month after Edwards took the Oath of Office and after the July 23, 2013, letter. The claimant's name is missing from the document. A close examination of the document also discloses that it contains the names of those police officers who had been granted approval for one year. It is also signed by a Deputy Superintendent of Police for the Kingston Eastern Division. ACP Lewis's

response that he was seeing the document for the first time in the witness box and that he does not know who prepared it is unacceptable, in fact I reject it. Exhibit 4 was filed and served by way of affidavit in 2022. If indeed he had never seen the document before, ACP Lewis had more than enough opportunity to investigate the genesis of the document and did not, neither did he file a further affidavit refuting the authenticity of the document.

[52] In April 2013, Edwards was sent a Reminder for Personnel to be re-enlisted. There is no evidence before this court that a reminder was sent in 2014.

[53] In those circumstances, the furthest that I can take ACP Lewis's evidence is that the July 23, 2013, letter was on Edwards's Personnel file.

[54] On my review of the evidence after November 18, 2023, I found myself at an impasse because of the state of the evidence. I brought this to the attention of both attorneys and sought their consent to put questions to both parties. This took place on November 20, 2023. Edwards clarified that the date of the medical certificate on the Attestation Form is October 4, 2013. This could only mean that when the July 23, 2013, was allegedly written, the commissioner did not have the Attestation Form with the Oath at hand. ACP Lewis at first indicated that the approval for one year was based on the Attestation Form. However, when the October 2013 date was pointed out to him, he indicated that sometimes the Commissioner makes the decision before receiving the Attestation Form. No clarity was brought to this issue.

[55] On my reading of **Glenroy Clarke** and **Berrington Gordon** the Commissioner of Police can make the determination that a member will not be allowed to re-enlist even before he receives the application. If that is accepted and it is, then the converse is also true, the Commissioner of Police may decide to approve a particular officer for re-enlistment even before the application is received.

Subsequent Dialogue

[56] The claimant tendered into evidence a chain of communication between his then attorney and the Commissioner of Police which commenced in 2016. The first letter dated March 11, 2016, is signed by the claimant, he referenced a meeting at which he, his attorney, Superintendent Ramsay and the Commissioner were present on March 3, 2016. According to the letter he accepted an offer that he would apply for retirement. This letter was followed by a letter from his then Attorney, Mr. Sylvester Hemmings, acknowledging the offer, however in the letter Mr. Hemmings requested "evidence supporting the breach he committed". He went on to list what he considered this evidence to be:

> "a) Evidence that he was granted one (1) year re-enlistment instead of 5 years…
>
> b) that Notification of the above was served on him
>
> c) Copy of the notice informing him to reenlist…
>
> d) …"

[57] The information was not provided to Mr. Hemmings or Mr. Edwards, instead the Commissioner replied by letter dated May 4, 2016, that if Edwards did not submit the application for retirement by May 16, 2016, he would consider the agreement repudiated.

[58] On April 25, 2022, the claimant filed a Request for Further Information requesting when the one year re-enlistment was served, a copy of the communication by the Commissioner restricting re-enlistment to one year and proof of service of the July 23, 2013 letter. I have taken the time to outline the chronology of events because this is a case where the Defendant is contending that Edwards failed to re-enlist in circumstances where Edwards is insisting, he was not served with the one year notice. Credibility, therefore, is in issue. The history of the requests by the claimant for evidence that he was granted a one year re-enlistment and proof of service in

my view supports his assertion that he did not receive the letter. To date no proof has been provided of service of the July 23, 2013, letter. I prefer the evidence of the claimant in this regard.

DISPOSITION

[59] In the circumstances the declarations sought at 1 to 3 and 5 of the Fixed Date Claim Form filed on November 30, 2021, are granted as prayed.

[60] In relation to the declaration sought at number 4, it is ordered that the claimant's employment as a Corporal of Police continued until October 7, 2021, his due date of retirement.

[61] Costs to the claimant to be taxed if not agreed.

……..…….
Opal Smith
Puisne Judge (Acting)