

Background

- [2] The Black River High School Board of Management (The Board) received reports of misconduct on the part of a teacher, Mr. Verrol Smith. A hearing was conducted, and he was found guilty of professional misconduct. The decision was taken by The Board to terminate his employment with the school. He filed an appeal with The Tribunal. His appeal was dismissed however the decision was taken to vary the sanction which was imposed.
- [3] It is the unchallenged evidence that subsequent to the hearing The Tribunal requested further information from the Board, specifically;
- a) last five performance reports for Mr. Smith,
 - b) job description for and the position held by Mr. Smith as at the date of his termination on August 1, 2017,
 - c) the position held by Mr. Smith immediately preceding the position he last held, example, was he a senior teacher, specialist teacher and if so, at what level, and
 - d) are there in existence any records of prior disciplinary proceedings against Mr. Smith, and if so with what result.¹

The Grounds for Judicial Review

- [4] Counsel relied on the following grounds to challenge the decision of the Tribunal;
- a) Ignoring the plethora of evidence which showed that Mr. Verrol Smith was not a suitable teacher for the Black River High School.
 - b) Made a decision against the weight of the evidence that they found proved having rejected all 7 grounds of the appeal as filed and argued.
 - c) Then to their grave detriment requested documents from the school after, the hearing of the Appeal, failed to require or request submissions on

¹ Paragraph 32 of The Record of Proceedings of The Teachers Appeal Tribunal held on April 10, 2019

what they requested, after the hearing and went on to state that they relied entirely on the material received after the hearing to come to the decision to vary the Board's ruling.

- d) The Tribunal failed to adhere to the principles of Natural Justice and did not allow the Board to respond or offer any submissions on the requested material which would have been done outside of the proceedings in contravention of s. 37 (4) of the Education Act. This was an unfair action by the Tribunal and procedurally improper.

Issues

- [5] Whether the Tribunal acted unreasonably or irrationally in coming to their decision.
- [6] Whether the Tribunal's decision to consider additional information without obtaining submissions from the Board was in breach of the principles of natural justice and thereby procedurally improper.

The Law

- [7] Rule 56. 2 (1) of the Civil Procedure Rules provides that an application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application. There is no doubt that The Board as the management body of the Black River High School has an interest in the decision of The Tribunal to reinstate a teacher in its employ.
- [8] It is also an accepted principle of law that the role of the court in proceedings of judicial review is limited. The function of the Judge is to review the procedure adopted to determine if there was a breach of any legal principles.
- [9] In the seminal case of **Council of Civil Service Unions v. Minister for the Civil Service**², Lord Diplock categorized the grounds for judicial review as follows;

² [1984] UKHL 9

- a) Illegality – where the decision is made which is ultra vires the law that regulates the decision making power, thereby rendering the decision to be unlawful.
- b) Irrationality – where the decision made defies logic. It has been known as the test of “Wednesbury Unreasonableness”.
- c) Procedural Impropriety – the failure to follow the rules of natural justice and procedural fairness as well as the failure of the decision maker to follow all the procedural steps required by the legislation which enables him to make the decision.

In summary, an application for judicial review is concerned with the legality of the decision-making process. It is not an appeal of the decision. This court cannot substitute its own finding for that of the Tribunal. The sole purpose of judicial review proceedings is to ensure that the decision maker has followed the correct procedure in the hearing of the complaint.

Analysis and Discussion

[10] There are certain facts which are not in dispute. Mr. Verrol Smith was a teacher employed to the Black River High School up to the date of his dismissal. He was employed by the Ministry of Education at the school since 1996. As of August 2017, he was the head of the Physical Education Department. The complaint against Mr. Smith arose out of a verbal altercation with the then Vice Principal. During that altercation, Mr. Smith was loud and verbally abusive as he resorted to expletives. The altercation was witnessed by teachers and students alike. Mr. Smith was eventually referred to the Personnel Committee of the Board and a hearing ensued.

Whether the Tribunal acted unreasonably or irrationally in coming to their decision.

[11] Counsel for the Claimant on the date of the hearing made oral submissions in support of the claim. She argued that the decision to vary the sanction was against the weight of the evidence as The Tribunal found that Mr. Smith’s conduct was *“entirely unacceptable and dismal (especially as displayed by one of our senior*

educators)”. It was contended that The Tribunal ignored the evidence before them that Mr. Smith was unsuited for the position.

[12] Counsel for the Defendants submitted that the decision of The Tribunal was rational and reasonable and consistent with the evidence.

[13] The Tribunal made the following factual findings at paragraph 29 of the record of proceedings:

- *The appellant has been a teacher since 1989.*
- *He had been (prior to his termination in 2017 a teacher at Black River High School since 1996.*
- *During his tenure he held senior positions including Acting Vice Principal and head of the physical education department (his substantive post at the time of his dismissal). He had also previously been seconded to take up the post of Dean of Discipline of the Sydney Pagon Agricultural High School (now STEM Academy).*
- *All the charges informing the disciplinary action stemmed from an altercation between the appellant and the Vice Principal.*
- *Three of the four charges were referable to the very same words used to and in reference to the vice principal during the said altercation.*
- *The charges with respect to irregular attendance were grounded in allegations of no more than two days of absence.*
- *It is alleged that the appellant’s outbursts were made in the presence and/or hearing of students of the institution.*
- *The appellant offered no apology during the course of the hearing.*
- *The appellant expressed during the course of the hearing that were he to be met with a similar situation at some future time, he is not sure that he would behave differently.*

[14] In rehearsing the submissions of Ms. Meyler on behalf of the Respondent in those proceedings, The Tribunal found that Ms. Meyler had conceded that the factual circumstances informing the disciplinary hearing did not necessitate three charges.

In fact, Ms. Meyler indicated that there could have been a single charge for professional misconduct as all the charges arose from the single altercation.

- [15] In analysing whether The Tribunal acted reasonably in coming to its decision I am guided by the dicta of Lord Greene MR in the case of **Associated Provincial Houses Ltd v Wednesbury Corporation**³:

“The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority has kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the powers which Parliament has confided in them”

- [16] I am therefore bound to ask the following questions. Did The Tribunal consider irrelevant considerations in coming to their findings? The answer to that is no. The record of proceedings outlines their findings which have been unchallenged by Counsel for the Claimant. Ms. Meyler conceded that the actions of the teacher stemmed from one incident even though there were several charges set out. They considered his years of service and the complaints made against him and came to their decision. There was no evidence that the teacher had behaved in a similar

³ [1978] 2 All ER 680 at p. 685

manner prior to the incident which gave rise to the hearing. Neither had he been sanctioned before. The Tribunal cannot be faulted for its findings which were based entirely on the evidence presented.

[17] Did they fail to consider relevant factors? The answer to that is also no. It is plain from the record of proceedings that The Tribunal considered all the relevant material that was before them. By virtue of Section 37 (4) of **The Education Act** the Tribunal had the authority to return the proceedings to the person or authority concerned with the making of the decision for further information. The request for further information could not therefore be considered as unreasonable. The reliance placed on that material in the decision-making process cannot therefore be faulted. They acted upon the information which was provided and nothing else.

[18] In the circumstances, I do not find that it was unreasonable or irrational for them to have concluded that the sanction ought to be varied. They weighed all the factors including the actions of Mr. Smith and compared them with his previous exemplary record and determined the appropriate sanction. I am therefore not of the view that The Tribunal acted unreasonably or irrationally in arriving at their decision to vary the sanction which was imposed by The Board.

Whether the Tribunal's decision to consider additional information without obtaining submissions from the Board was in breach of the principles of natural justice and thereby procedurally improper.

[19] In their findings the Tribunal stated.

"From the data supplied we were able to glean the following:

- *As at the date of his dismissal the appellant held positions of special responsibility in that he was Head of Physical Education department, sports coordinator, Head of Year Supervisor, Head Coach.*
- *His annual performance review for the year 2012 – the only one supplied – disclosed that he had "exceeded expectations".*

- *He has, between 2015 and the date of the subject complaint been the author of and recipient of a number of continuous exchanges with the then principal which tend to be suggestive of an inclination on his part to contend with his superiors.*
- *He was, in November 2015, summoned to a disciplinary hearing of the Personnel Committee following a complaint laid by that principal. However, the data supplied does not indicate the result of that hearing.*

*In light of this data the panel has considered the sanction imposed on the appellant and considers that the sanction prescribed at Regulation 57 (5) (b) (i) – that he be admonished and censured – would not be appropriate. That said, we are mindful of the fact that Mr. Smith, an educator of over twenty-eight years standing, though apparently (and sadly) somewhat bereft of the requisite stature and such measure of self-control as would entitle him to be permitted to continue in his prior positions of leadership and special responsibility, **seems (based on the one available performance report as well as the positions to which he had risen prior to the dismissal) to have executed his prescribed duties with more than sufficient creditability**".⁴*

[20] Ms. Meyler conceded that The Tribunal was well within its remit to request further information from The Board. Her contention was that this information was incomplete as it raised certain issues which could only have been explained by The Board upon further inquiry. The documents which she referred to in her argument were the performance evaluation report and the disciplinary hearing which was held without a result being indicated.

[21] Mrs. Rowe-Coke submitted that there was no need for The Tribunal to seek clarification on the information requested as this could not have assisted them in

⁴ Paragraphs 33 and 34 of the Record of Proceedings of the Teachers Appeal Tribunal held on April 10, 2019

their final determination of the matter. It was submitted that The Tribunal indicated in their findings that they considered the additional information and relied solely on the performance evaluation report in the final analysis. They made no reference to the disciplinary hearing.

[22] I do not find favour with the submissions of Ms. Meyler. The Tribunal did not rely on the additional information of the prior disciplinary hearing in coming to their decision. As there was no result of that hearing no adverse finding could have been made by them in respect of it.

[23] Additionally, the request was made for the last five performance reports. The Board provided a single report. If there were aborted evaluation reports or incomplete reports those ought to have been submitted as well. The Tribunal can only act on the information with which they were provided. To do otherwise would be improper. The Affidavit of Vincent Guthrie filed in support of the Fixed Date Claim form at paragraph 8 referred to the letter requesting information. It is noted that at the end of that letter, which was dated April 17, 2019, the following was stated:

This information is being sought pursuant to section 37 (4) of the Education Act. The Tribunal is requesting the information or explanation as to its unavailability on or before May 1, 2019.

[24] The Board was in fact given the opportunity to provide explanations as to the reason for the absence of any of the documents requested. They were essentially given an opportunity to be heard on that issue. Having provided only one report The Board, by way of inference, made it clear that this was the only document they had in respect of Mr. Smith. Without more, this was all that The Tribunal had to consider.

[25] There was no basis therefore for further interrogatories as the single performance evaluation report was unchallenged. I do not find that there was a breach of the principles of natural justice in circumstances where the very document being challenged by the Claimant is the document which they provided.

Disposition

[26] The claim for judicial review is without merit. The Tribunal was reasonable and rational and acted within the confines of the law and the principles of natural justice.

Order

1. The orders sought in the Fixed Date Claim Form are refused.
2. Each party is to bear their own costs.