

Filing Cabinet

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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M107/2000

**IN THE MATTER OF THE APPEAL OF
EASTON GRANT AGAINST HIS
DISMISSAL FROM MONTEGO BAY
COMMUNITY COLLEGE.**

AND

**IN THE MATTER of the Education
Regulations 1980**

BETWEEN EASTON WILBERFORCE GRANT APPLICANT

**AND THE TEACHERS' APPEAL TRIBUNAL
THE ATTORNEY GENERAL RESPONDENTS**

The Applicant in Person.

***Catherine Francis and Monique Harrison instructed by Director of State
Proceedings for the respondents.***

Heard: 17th, 18th September, and 29th October, 2001

COOKE, J

The applicant Easton Wilberforce Grant appeared in person. He is a trained graduate teacher holding a M.Sc. degree in Economics from the Kiev Institute of Economics in the Ukraine. Between September 1992 and up to the 7th June 1999 he was employed at the Montego Bay Community College. On the latter date his employment was terminated subsequent to disciplinary

proceedings which were instituted against him. He now seeks an order to remove into Supreme Court:

1. *An Order of Certiorari to remove into the Supreme Court of Judicature of Jamaica and to quash the decision made by the Teachers Appeals Tribunal to uphold the dismissal of the Applicant from his job at Montego Bay Community College.*
2. *Such further relief as this Honourable Court shall deem just.*

The tenure of the Board of Management of the Montego Bay Community College (the old Board) expired on the 29th November 1997. A new Board was not appointed until the 1st of December 1998. During the hiatus the old Board continued to administer the institution. It is during this period that disciplinary action was initiated against the applicant. There was a complaint in writing in respect to the applicant by the Principal Dr. Lorna Nembhard. The charges lack discipline; unprofessional conduct and neglect of duty were duly communicated to the applicant. On the 7th October 1998 the personnel committee appointed by the old Board met and a hearing was conducted. The applicant participated fully in this hearing. The personnel committee did not come to any findings at this hearing. The penultimate sentence of the minutes of that hearing states:

“Dr. Clarke (Chairman of the Board) explained to Mr. Grant (the applicant) that based on the findings, he would be informed accordingly, as it was his concern that equity was maintained on both sides.”

It would appear that after this hearing it was realized that there was no valid Board in existence. There is no record of the personnel committee making any findings or of communicating its recommendation to the Board as is required by section 57(5) of the Education Regulations 1980 (the Regulations).

By letter dated March 17th 1999 the Chairman of the now properly constituted Board wrote to the applicant as hereunder.

March 17, 1999

*Mr. Easton Grant
Montego Bay Community College
Alice Eldermire Drive
Montego Bay
St. James*

RE: DR. LORNA NEMBHARD/ MR. EASTON GRANT

This letter serves to advise that the enquiry concerning the above caption which commenced on October 7, 1998 will have to be reinitiated, owing to the fact that on that date, contrary to the knowledge of the Board, the National Council on Education had not completed all the requirements demanded by the code in respect of the Board's tenure. The enquiry therefore, had to be suspended pending the appointment of the new Board.

The new Board has now been formally appointed and consequently the enquiry can be reinitiated. The Board, which was informed of the status of the situation at its recent meeting wishes to record its regret at this inconvenience, but

anticipates that you, like all members of the Board will want to uphold the integrity of certainty which the code imposes on all persons who are embraced by the Education System.

In accordance with the code, the duly appointed Board of Management and its Committees will communicate with you in respect to the date of the new hearing.

Yours sincerely,

*Chairman,
BOARD OF MANAGEMENT*

The promised communication to the applicant was fulfilled. The letter dated April 12, 1999 to the applicant is now reproduced.

April 12, 1999

*Mr. Easton Grant
Lecturer
Montego Bay Community College
P.O. Box 626
Montego Bay #2
ST. JAMES*

Dear Mr. Grant

The Board of Management is in receipt of correspondence from the Principal, Dr. Lorna Nembhard, charging you with lack of discipline, unprofessional conduct, and neglect of your duty, the nature of which she has outlined to you in correspondence dated September 8, 1998, September 10, 1998 and September 16, 1998. Copies of these documents have been forwarded to the Board. Dr. Nembhard has also stated that you have publicly made certain serious allegations which she has outlined to you in her letters of September 8, 1998 and September 10, 1998 and she is requesting you to prove these by specific examples. The Personnel

Committee of the Board of Management finds it necessary to conduct an enquiry into this matter.

You are hereby invited to attend a meeting of the Personnel Committee of the Board of Management on April 30, 1999 at 10:00 a.m. in the conference room at the college.

Please be advised, that under the Education Act, 1980, if these charges are proven, the committee may recommend

- i) that you are to be admonished or censured; or*
- ii) in the case of charges relating to a second or subsequent breach of discipline, that subject to the approval of the Minister, a sum not exceeding fifty dollars be deducted from your salary; or*
- iii) that you be demoted if you hold a post of special responsibility; or*
- iv) that your appointment as a teacher with this institution be terminated.*

The Act also states that "The Board shall act on the recommendation as received from the Personnel Committee, or as varied or agreed at the discretion of the Board."

Please also note that you have the right to have a friend or your attorney appear and make representation on your behalf to the Committee at the hearing. If you intend to be represented by an attorney-at-law, you are required to give written notice of such intention to the Chairman or Secretary of the Board not less than seven days before the day of the hearing.

A photo static copy of Regulation 55 to 62 and 85 of the Education Act, 1980, is attached for your information.

Yours sincerely

Dr. Simon Clarke

Chairman,
Board of Management

The hearing took place on the 20th May 1999, as the applicant having submitted a medical certificate, this new date was scheduled. On that date the minutes of the hearing reveals that Dr. Lorna Nembhard extensively put forward what she considered to be the substance of her complaints. The applicant was invited to respond. At this stage this is what the minutes of the hearing records:

“ At this point the Chairman invited Mr. Easton Grant to respond to the charges and to present his side of the case. Mr. Grant openly refused to respond to the allegations and the charges laid against him. He went on to verbally accuse the Chairman and Vice Chairman of being incompetent to carry out the procedures of the meeting. He further accused them of being biased and lacking in integrity. He then stormed out of the meeting, in spite of the Chairman's repeated statements to him that he had the right to use the opportunity of the Personnel Committee hearing to defend himself.”

The said minutes records its findings and its proposed recommendation to the Board of Management. They are as follows:

FINDINGS

The findings of the Committee are as follows:

- **Unprofessional Conduct – Proved**

This action was displayed by Mr. Grant's by his abusive aggressive behaviour towards the principal in the General Staff meeting of 7th September 1998, when he made numerous and persistent outbursts in the meeting despite efforts made by the principal for him to desist. This action undermined the authority of the Principal (see JTA Code of Ethics Principle 2i,iv, v and vi and Principle 5cii) in the presence of some 39 members of staff, including new members of staff. His open defiance of the authority of the principal and his persistent insubordination and humiliation of the principal, continued to be displayed when he openly declared, in the staff meeting, that he had no intention to meet with the principal to discuss the poor examination performance of the students he was responsible for.

- **Neglect of Duty- Proved**

This was displayed by Mr. Grant, when he refused to meet with the principal and his head of department (as required by the Board and in compliance with the Ministry of Education Circular) to discuss possible measures for the improvement of examination results in those subjects that fell below the fifty percent (50%) level.

- **Insubordination – Proved**

This was displayed by Mr. Grant when he refused to attend meetings, called by the principal. Proof of this is out lined in his letter to the principal dated 4 September 199. Despite two memos written to him by the principal requesting him to meet with herself and the Head of Department, he made it clearly known in the presence of others that he had no intention to meet with anyone. And in fact has not attended any such meeting t o this day.

It is to be pointed out that although requested to do so in writing, Mr. Grant has not provided to the Board proof of his allegation that the principal had collected money and had made unilateral decisions about expenditure.

- **Penalty**

*The Personnel Committee is recommending to the Board of Management that based on the findings and having examined the approved minutes of the Staff Meeting of 7 September 1998, and based on the conduct of Mr. Grant at the hearing held on 20 May 1999, when he openly attacked the integrity and competency of the Board in general and of the Chairman and Vice Chairman, in particular, that his services as a lecturer of the Montego Bay Community College be **terminated** in the best interest of the institution.*

SIMON A. CLARKE
CHAIRMAN

The Board of Management accepted the recommendation that the applicant's services be terminated and communication to that effect was sent to him. The applicant then lodged an appeal against his dismissal to the Teachers' Appeal Tribunal. The grounds of appeal were:

1. *That an Enquiry was conducted on October 7, 1998 and May 20th, 1999. The Enquiry of October 7, 1998 was not concluded on the basis that the Board was not properly constituted.
That on May 20th, 1999 the enquiry was constituted by the same persons, there was no indication that the panel was properly constituted; there was no disclosure on the part of the Board of Enquiry.*
2. *That a fair and impartial hearing was not conducted.
And the Board acted arbitrarily.*

3. *That the decision reached was not based on the merits of the case, as Mr. Easton Grant was prevented from defending himself due to the absence of prove of a properly constituted Board of Enquiry.*
4. *Board of Enquiry breached the principles of Natural Justice.*
5. *The Appellant reserves the right to submit further Grounds of Appeal.*

The hearing of the appeal took place on the 30th June, 2001. At this hearing the applicant as represented by Attorney at law Ms. Kerry Brown. The applicant failed in his effort to overturn the decision of the Board. Hence these proceedings. The grounds on which the applicant sought relief are set out hereunder.

The grounds upon which the relief is sought are as follows:

- “3(1)*
- (i) *That the Teachers Appeals Tribunal erred in law when it accepted charges, statements, complaints and testimonies, based on what had been said in the staff meeting which took place at Montego Bay Community College on September 7, 1998. On that date the college was not administered by a Board of Management as required by Regulation 41. The life of the previous Board had expired several months before, and a new one had not yet been nominated.*
 - (ii) *That the Teachers Appeals Tribunal erred in law when it did not reinstate the Applicant under Regulations 54, in light of the evidence that Regulations 56 and 57 had been breached.*

Apart from the fact that the old Complaint was not submitted anew to the new Board under Regulation 56, there was no preliminary consideration by the Personnel Committee before

the May 20 enquiry, neither were the possible penalties communicated to the Applicant as required by Regulation 57 (1) b (iii).

(iii) That the said decision upheld a violation of the Applicant's constitutional right to freedom of expression guaranteed in section 3 of the Jamaican Constitution. The Applicant was victimized for expressing his opinions.

(iv) That the said decision breached vital principles of Natural Justice. For example, the tribunal allowed persons who had revealed in public that they were against the Applicant to sit in judgment of the Applicant on May 20, 1999. Secondly, the Tribunal used a double standard when it accepted the September 7, 1998 meeting at the college but rejected the October 7, 1998 meeting although there was no legally valid Board at the institution on any of those two dates.

(v) That the Tribunal revealed several traits of insobriety:

Firstly the Tribunal members were not very attentive during the Appeal hearing on June 30, 2000. They asked at some intervals for repetitions but mostly, they appeared either lost or disinterested. Secondly, the report which came from that body is punctuated with errors, some of which are very serious indeed. The report for example was not dated.

Thirdly, the Tribunal's ruling revealing its very illogical approach. It cancelled the October 7, 1998 meeting but not the September 7, 1998 meeting, although there was no Board at the college on either of those two dates. Fourthly, none of the grounds of the Appeal was addressed by the Tribunal.

Fifthly, the Tribunal's ruling has nothing to do with any evidence presented.

The contention in ground 3 (1) is founded on the erroneous view of the applicant that if there is no Board of Management, then in law the

Community College ceases to function as an educational institution. Interestingly, the applicant declined to return the salary he had been paid during the period when there was no legally constituted Board of Management. Obviously there is a distinction between the role of the Board in the overall administration of the Community College and the day to day management of that institution. The holding of staff meetings is a normal and a necessary incident in the operation of any educational institution such as the Community College. Accordingly, there is no merit in this ground.

The complaint in ground 3(ii) is that Dr. Lorna Nembhard should have written anew to the then properly constituted Board and thereafter the requisite procedure as outlined in Regulation 57 be followed. The applicant cannot deny that at the first hearing by the personnel committee the requisite procedural requirements were faithfully followed. He says that there should have been another subsequent communication to him albeit such communication would be on the same terms as hitherto. In respect of the second hearing the applicant was told that the enquiry would be "reinitiated" (see letter of March 17th, 1999). It is therefore certain that the applicant was in no way prejudiced. The assertion that Dr. Lorna Nembhard had to write the board anew is without merit as such a proposition would mean that the properly constituted Board is precluded from dealing with correspondence

addressed to it before its tenure came into being. Further under this ground it was said that there was “no preliminary consideration by the personnel committee before the May 20 enquiry.” The preliminary consideration of which he speaks is to be found at Regulation 57 (1) (a). It is necessary to set out part of Regulation 57 to understand this complaint.

“57(1)

The personnel committee shall consider the complaint Referred to it under regulation 56 and –

- (a) *if it finds that the complaint is trivial and that a hearing is unnecessary, report such finding to the Board forthwith, or*
- (b) *if it finds that a hearing should be held, notify the complainant in writing of the date, time and place of the hearing and give written notice within a period of not less than fourteen days before such date to the person complained against of –... ”*
 - (i) *the charge or charges in respect of which the hearing is proposed to be held;*
 - (ii) *the date, time and place of the hearing;*
 - (iii) *the penalties that may be imposed under the Regulations if the charges are proven against such person; and*
 - (iv) *the right of the person complained against and a friend or his attorney to appear and make representations to the committee at the hearing.*

It would seem that the applicant demands that a formal record of the consideration of the complaint should be in evidence. I do not agree. The

fact the applicant was summoned indicates that there was a “preliminary consideration.”

Grounds 3 (i) and 3(iv) can substantially be dealt with together in that there is no evidence to suggest either that the applicant was “victimised for expressing his opinions” or that “persons who had revealed in public that there were against the applicant” sat on the personnel committee.

Ground 3(v) is without merit and is not worthy of comment.

The composition of the personnel committee at the first hearing was identical to that of the second hearing. With the assistance of the court the issue was raised as to whether this was fair to the applicant. The letter of March 17, 1999 to the applicant informed him “that the enquiry therefore, had to be suspended pending the appointment of a new Board.” Further “The new Board has now been formally appointed and consequently the inquiry can be reinitiated.”

Those two statements extracted from that letter could give the impression that the hearing of the personnel committee May 20th 1999 was a continuation of that of October 7, 1998. However this is not so. What took place at the second hearing was an entirely new hearing despite the fact the substance of the allegations against the applicant were the same. There was no finding in respect of the first hearing. At that time there was no

personnel committee in place. Having realized the mistake a new hearing was convened. Here the applicant was given every opportunity to respond to the charges. He refused to be persuaded so to do. In these particular circumstances the fact that the composition of the personnel committee was identical did not make the second hearing unfair. In *Ridge v Baldwin* Lord Reid said [1964] A.C. at p.79:

“I do not doubt that if an officer or body realizes that it has acted hastily and reconsiders the whole matter afresh, after affording the person affected a proper opportunity to present his case, then the later decision will be valid. An example is *De Nertenil v Knaggs* [1918] A.C. 557.

Before departing from this application, perhaps I should add that the remedy of certiorari is discretionary. In this matter the behaviour of the applicant was so unmeritorious, that even if there had been a failing in any aspect of the proceedings I doubt that I would grant the relief sought. See *R v. Secretary of State for Home Department ex parte Hosenbull* [1977] 1 W.L.R. 766.

It is only left for me to say that the application for certiorari is refused. The respondents shall have their costs.