



[2026] JMSC Civ 05

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2021HCV04146

BETWEEN	JOSEPH PAUL WILLIAMS	CLAIMANT
AND	COMMISSIONER OF POLICE	DEFENDANT

IN OPEN COURT

Ms Althea Grant instructed by the Law Firm of Althea G.M. Grant for the Claimant

Mr Robert Clarke instructed by the Director of State Proceedings for the Defendant

Heard: March 4 2025 & January 12, 2026

**JUDICIAL REVIEW – Refusal of Commissioner of Police to re-enlist Constable –
Whether the Commissioner erred by considering Orderly Room convictions –
Whether there was a failure to disclose adverse reports – Whether procedural
fairness was denied by issuing a notice of refusal to re-enlist before the in-person
hearing – Whether the Commissioner exceeded his jurisdiction by dismissing the
claimant without an enquiry under Regulation 47 into alleged absence from duty**

**Constabulary Force Act, section 3, Police Service Regulations 1961, Regulation 27,
46, 47**

WINT-BLAIR J

- [1] The claimant is Joseph Paul Williams, a Constable of Police, then assigned to the St. James Operations Support Team. He applied for re-enlistment on or about August 4, 2020, and the application was refused.
- [2] The defendant is Major General Antony Anderson, the Commissioner of Police at the time of the claimant's application for re-enlistment.
- [3] By way of Fixed Date Claim Form¹, the claimant seeks the following relief on an application for judicial review:
1. An Order of Certiorari to quash the decision of The Commissioner of Police not to approve the Claimant's Application for re-enlistment in the Jamaica Constabulary Force for a further term of Five (5) Years as communicated to the Claimant via the letter dated the 18th day of May 2021 which was served on the Claimant on the 9th day of June 2021 and published in The Force Orders dated the 8th day of July 2021 Serial Number 3866, under Dismissal whereby it was ordered by The Commissioner of Police inter alia that the Applicant be dismissed from and/or not permitted to re-enlist in The Jamaica Constabulary Force.
 2. An Order of Mandamus to command or compel the Commissioner of Police to re- instate the Claimant, Joseph Paul Williams, in the Jamaica Constabulary Force.
 3. Costs to the Claimant
 4. Such further and other relief as this Honourable Court may deem just.
- [4] The grounds relied on in support of the claim arose on June 9, 2021, and on which the claimant is seeking the aforementioned orders are:
1. That the decision of the Commissioner of Police not to approve the Claimant's Application for re-enlistment in the Jamaica Constabulary Force was unlawful and in breach of the Police Service Regulations of 1961 and The Book of Rules for Guidance and General Direction of the Jamaica Constabulary Force dated

¹ Filed on July 18, 2023

the 7th day of September 1988 and/or in breach of the principles of Natural Justice, the Constitution of Jamaica and the rule of law.

2. That the decision of the Commissioner of Police not to approve the Claimant's Application for re-enlistment in the Jamaica Constabulary Force is unjust, capricious, arbitrary, null and void.
3. That the Decision and/or Order of the Commissioner of Police not to approve the Claimant's Application for re-enlistment in the Jamaica Constabulary Force is unreasonable and/or irrational and or without foundation.
4. The Commissioner of Police acted without or in excess of his jurisdiction when he did not approve the Claimant's Application for re-enlistment in the Jamaica Constabulary Force.
5. The Commissioner of Police is in breach of The Police Service Regulations of 1961 because he failed to approve the Claimant's Application for re-enlistment in the Jamaica Constabulary Force.
6. That the Commissioner of Police failed to take into account relevant matters in arriving at his decision.
7. That the Commissioner of Police considered irrelevant material which caused him to arrive at the decision not to re-enlist the Claimant in the Jamaica Constabulary Force.
8. That no alternative form of redress remains for the Claimant, seeing that the Claimant has exhausted all other remedies before making the Application for Judicial Review.

The Claimant's case

- [5] On November 20, 2020, he was served with a 'Notice Re Non-Recommendation of Re-Enlistment' dated November 10, 2020, issued by the Assistant Commissioner of Police in Charge of Administration ("ACP"), Andrew Lewis by Deputy Superintendent ("DSP") Pheonia Watson at the Barrett Town Police Station.
- [6] The claimant said the notice set out two main reasons for the non-recommendation of re-enlistment. The first was twenty spent orderly room convictions listed in ground one, and in ground two, an allegation that he was absent from Emergency Special Measures ("ESM") duty on September 9, 2020, from 7:00 am to 7:00 pm.

- [7] On November 28, 2020, Mr Williams wrote to the DSP in charge of Administration in St James, requesting “personal dialogue” with the Commissioner of Police (“CP”). On December 4, 2020, his attorney, Mr Michael Hemmings, wrote to the CP, requesting a formal hearing if Mr Williams’ application for re-enlistment was refused. In his response, Mr Hemmings argued that the spent convictions should not have been grounds for denying re-enlistment as Chapter 1 of The Book of Rules For Guidance and Direction of The Jamaica Constabulary Force (“the Book of Rules”) states that records of disciplinary breaches on a member's Divisional Record Sheet must be expunged after seven years.
- [8] It was averred by the claimant that the said convictions had all been dealt with by his commanding officer under Regulation 46 of the Police Service Regulations of 1961 (“the Regulations”). These disciplinary proceedings are summary offences that do not warrant dismissal from the JCF. Upon conviction for the specified orderly room offences, the commanding officer imposed a penalty or sentence for each offence. Having been punished by the commanding officer, to use these orderly room convictions as grounds for not recommending him for re-enlistment in the JCF is a breach of law, due process, procedure, and natural justice on the part of the ACP.
- [9] Ground two of the Notice claims that Mr Williams was absent from ESM duty on Wednesday, September 9, 2020, from 7:00 am to 7:00 pm. On September 1, 2020, his brother, Albert Thompson, informed the claimant that USCIS had sent a letter by mail regarding the claimant’s application for United States residency for himself and his children.
- [10] The letter was addressed to the claimant at a United States address, and it notified the claimant of the family’s ASC Immigration Appointment on September 10, 2020, at 11:00 am. That appointment required them to undergo biometric screening to support their application. The claimant said he attempted to reschedule the appointment but was unsuccessful because of the pandemic and none of the

officials could specify a new date. He was therefore advised to keep his original appointment date.

- [11]** The letter made it clear that if he failed to appear as scheduled, his application would be considered abandoned. He had no choice but to travel to the United States on September 6, 2020. Bearing in mind his inability to reschedule the appointment, he applied for fourteen days' emergency departmental leave, to be spent locally and abroad, via an application dated September 1, 2020.
- [12]** In his application, he requested emergency departmental leave from September 7, 2020, 8:00 am to September 25, 2020, 8:00 am, to handle urgent family matters. His local and international contact numbers and addresses were provided. Attached to this application was a copy of the ASC Appointment Notice, with the immigration appointment for biometric collection on September 10, 2020, at 11:00 am.
- [13]** On September 4, 2020, at approximately 7:40 pm, shortly after his briefing at the Freeport Police Station, the claimant submitted his emergency departmental leave application to the Sub-Officer in Charge of Operations for St James, Detective Inspector C. Lewis, who did not accept it, citing Mr Williams' failure to include the court declaration.
- [14]** The claimant said he completed the court declaration and handed his application for emergency departmental leave to Constable F. Reid, the Station Guard, ESM Guardroom (Operations) at the Freeport police station, on September 5, 2020. Detective Inspector A. Lewis did not need to take any further steps to contact him after receiving the application and the ASC Appointment Notice, as it was evident that urgent travel to the U.S. was required by September 6. Since Inspector Lewis had been informed of Mr Williams' urgent travel plans on September 4, it was expected that Mr Williams would be unable to perform duties on September 9. There was no need for Inspector Lewis to alarm others about Mr Williams'

absence. After submitting the application on September 5, 2020, he cannot explain why Inspector Lewis did not receive it until September 12, 2020.

- [15]** On September 19, 2020, Mr Williams returned to the island aboard the earliest available flight. Upon arrival in Jamaica, a representative from the Ministry of Health and Wellness issued a Home Quarantine Order for him, in accordance with established protocols due to SARS-CoV-2. The Quarantine Order required him to be quarantined at his home for a period of fourteen days. After his quarantine period ended, he received a Quarantine Release from a medical officer for Trelawny, dated October 6, 2020.
- [16]** Mr Williams completed the JCF COVID-19 Declaration Form and dated it on September 19, 2020, and emailed it to the ACP at COVID19PANDEMIC@JCF.GOV on September 21, 2020. After his quarantine was completed, Mr Williams returned to work on October 8, 2020.
- [17]** On February 6, 2021, the claimant was served with a 'Notice of Refusal of Re-enlistment in the JCF' dated February 1, 2021, which included a final paragraph urging him to respond and show cause why he should not be discharged. Mr Williams viewed this as indicating the CP had not made a final decision on re-enlistment; the Notice mirrored the grounds in the Notice Re Non-Recommendation. Mr Williams replied to this notice in a letter dated February 12, 2021, in which he reiterated his reasons concerning the points outlined in the Notice of Refusal.
- [18]** The claimant completed his Attestation Sheet on September 5, 2020 and took the oath of office on November 21, 2020. By letter² On May 18, 2021, the ACP advised Mr Williams that the CP had directed him to inform Mr Williams that his application for a further term of five years was not approved.

² The letter dated the 18th day of May 2021 was served on Mr Williams by DSP Brenton Rhodes at the Falmouth Police Station on Wednesday, June 9, 2021.

- [19] Mr Williams served Jamaica for 22 years, working in challenging communities across West Kingston, Kingston East, Kingston Central, Saint Catherine South, and Saint James. Despite disciplinary offences and punishments, none warranted his removal as a Constable. He stated that disciplinary actions were taken in accordance with Regulation 46 and that he always complied.
- [20] Regarding the allegations of an absence from ESM duty in the Notice of Refusal, Mr Williams stated that these claims are false, unverified and should not have been considered by the CP in deciding his re-enlistment application.
- [21] The CP exceeded the powers granted to him by law, as he failed to initiate and conduct a proper investigation into the allegations that Mr Williams had absented himself from the ESM duty. After an investigation, if dismissal proceedings were deemed necessary, they should have been commenced under Regulation 47. Mr Williams contends that natural justice required that he be afforded an opportunity to confront his accusers, who would primarily have been police witnesses.
- [22] Mr Williams said he was dismissed from the JCF, without due regard for his twenty-two years of service to the nation, nor to the law, rules and procedures that should govern his continued employment in the JCF.
- [23] In accordance with Chapter 1.14 of The Book of Rules *'when a Member has been discharged, dismissed or retires from the Force, The Commissioner of Police will issue a Certificate of Discharge or a Certificate of Service, signed by him or any person so deputed on his behalf.'* The Certificate of Service shall state rank at the time of dismissal, total service, assessment of conduct whilst serving, reason or cause for discontinuation of service, police courses, qualification, and special areas served during tenure.
- [24] After being informed that the CP had dismissed him from the JCF, he did not receive a Certificate of Service from a Sub-Officer of the St James Division. Having waited several weeks without receiving it, he sought legal advice and retained Miss Althea G. M. Grant, attorney-at-law.

- [25]** A JCF member is entitled to twenty-eight days' sick leave annually. If injured on duty, leave extends per Chapter 4 (4.20) of The Book of Rules. On May 21, 2007, Mr. Williams, while investigating a sudden death case at Hannah Town police station in Kingston Western Division, was injured in a motor vehicle accident. He was admitted to Kingston Public Hospital (KPH) ICU from May 21 to June 2, 2007, then transported home by police vehicle from Denham Town station. The accident caused head injuries, requiring outpatient treatment and physical therapy. This was documented in the diary at Hannah Town Police Station.
- [26]** While at the Central Village police station in the Saint Catherine South Division, Mr Williams requested that all his medical records, including the details of his 2007 accident, be added to his JCF medical file. He submitted this request to the sub-officer at the station, who annotated it and then forwarded it to DSP Albert Dyer, the officer-in-charge. After submitting the request, Mr Williams recorded the entry in the station diary to document it and had no reason to believe that the JCF administration was unaware that he had been working while experiencing the effects of the accident. He is saddened to see that the fact of his accident is missing from the ACP's affidavit.
- [27]** Mr Williams denies ever receiving counsel, intervention, or guidance from the Commanding Officer ("CO"), administrative officers, or supervisors regarding his work, worth, or conduct. If such intervention had occurred under the Early Intervention Policy, it would be in his personnel file. The only disciplinary action was through Orderly Room proceedings, for which he was penalised.
- [28]** Mr Williams averred that he had never absented himself from duty without lawful cause or excuse, and that if he had been unable to report to his scheduled duty on time, he had followed the accepted practices and notified his superiors that he would be late for duty.
- [29]** He further stated that it was untrue that he was confined to the State of Emergency Detention Area due to poor customer service. He requested a transfer from mobile

patrol to DSP Dwight Powell due to a foot condition known as plantar fasciitis. His transfer resulted from that medical condition.

- [30]** The circumstances of his travel to the United States of America were investigated, and the recommendation of the Senior Superintendent of Police (“SSP”) for the Saint James Division was for the matter to be dealt with in a Court of Enquiry via Regulation 47.
- [31]** The notification that he was to have a hearing with the CP occurred after he had already received the Notice of Refusal dated February 1, 2020. The hearing took place on April 1, 2021, approximately two months after his re-enlistment application had been refused. At the hearing, Mr Williams’ representative from the Police Federation was Corporal Rohan James. The hearing lasted for fifteen minutes.
- [32]** The reports dated August 25, 2019, by the SSP, St James, August 20, 2020, by DSP Dwight Powell, August 23, 2020, by Detective Inspector Anthony Lewis, and November 3, 2020, by the SSP, St James, were not served on him. Additionally, at the hearing, the CP did not mention any of these reports. Mr Williams first saw these reports when his attorney sent him a copy of the ACP’s affidavit for his perusal.
- [33]** Further, the ACP was not present at the hearing; therefore, he cannot speak to what took place, what records the CP reviewed, or why the claimant was not allowed to re-enlist. The affidavit in response to his Fixed Date Claim Form should have been given by the CP as he is the only authorised officer under section 3 of the Constabulary Force Act and it was his decision to refuse the application for re-enlistment as set out in the Notice of Refusal dated February 1, 2021, before he had held a hearing with the claimant on April 1, 2021.

The Defendant's case

[34] ACP Andrew Lewis averred that he was familiar with the claimant's case from reviewing the administration file and is authorised by the CP to swear to his affidavit.

[35] The SSP, Saint James Division, forwarded the claimant's re-enlistment application, records, and comments to the Office of the Commissioner of Police. His report states the following relevant points:

'...Constable Williams is currently assigned duties at the St. James Operations Support Team, Saint James Division.

He is described by his Sub-Officer as a Constable who performs his duties below average. His supervisor and his peers have no confidence in his leadership and do not want to work with him. He is habitually late for duty, and whenever he is absent, action is taken.

Constable Williams' contribution to the Jamaica Constabulary Force is not of any great benefit. He has been on thirty-two (32) days sick leave since the start of the year due to his habitual tendency to report sick. Intervention has been done to ascertain if he has any serious medical condition, but none was uncovered.

Despite having been enlisted in the Jamaica Constabulary Force for the past twenty-two years, he demonstrates a lack of interest in his job. He has been counselled by the Commanding Officer, Administrative Officer and his immediate supervisor on several occasions, however it has not resonated with Constable Williams to change or improve his behaviour and attitude towards his job.

He has amassed a total of eleven (11) Orderly Room charges where five (5) were disposed of three (3) withdrawn and has three (3) matters pending for being absent from parade and briefing. He was last before the Orderly Room on June 7, 2020.

...

His work, worth and conduct is very poor.

It is recommended that Constable Williams be given a Notice of Non-Re-enlistment... '

[36] DSP Dwight G. Powell's report to SSP, St James, dated August 20, 2020, noted the claimant had accumulated 32 sick days since 2020, exceeding the 28-day

annual allotment as of August 11, 2020. It included the claimant's re-enlistment application. A section of the report states:

'... Constable Williams continues to display a disappointing level of profligacy towards his job. He regularly absents himself from duty without permission or lawful excuse, reports for duty late, displays poor customer service resulting in him being confined to the State of Emergency detention area for the last six months, and his department is generally below the accepted standard... '

[37] Also submitted for the CP's review was a report by Detective Inspector Anthony Lewis, St. James Division, dated August 23, 2020, titled 'Work, Worth and Conduct of #8624 J. Williams.' It states:

'... [The Claimant] continues to work below average and one who needs to exhibit some leadership qualities at this stage of his career. He is basically only available for work. He is habitually late for duty and has been reported on and charged on several occasions for these breaches; he has reported sick thirty-two (32) times since the start of the year. He has been counselled by me on several occasions, but this does not seem to have any impact on his behaviour.

His work worth and conduct is considered poor and only continues to demotivate the members who has to performs [sic] duties with him on a daily basis ... At this time he doesn't have much positive to offer to this noble organisation ... '

[38] Additionally, the SSP, St. James, submitted a report titled "Comprehensive Report treating on the Absence of No.8624 Constable Joseph Williams - Saint James Division," dated October 23, 2020. It states the claimant left the station without permission or lawful orders. A portion of that report states:

'... Constable Williams who was detailed to perform Enhanced Security Measures (ESM) duties on Wednesday September 9, 2020, between the hours of 7:00am did not report for and perform this duty as detailed.

Efforts were made to contact him via cellphone which was unsuccessful. He was eventually contacted by his immediate Sub-Officer Detective Inspector A. Lewis via WhatsApp Messaging to which he responded that he was in the United States of America as he had to leave the Island quickly due to an emergency regarding his immigration status.

As a result, on Wednesday September 9, 2020, NIB Headquarters was contacted and it was confirmed that Cons Williams left the island on Sunday September 6, 2020 about 2:20pm via Sangster International Airport, Montego Bay on United Airline flight #1628 to Newark, USA.

...

on Saturday September 12, 2020, Detective Inspector A. Lewis submitted an application for fourteen (14) day emergency departmental leave for Constable Williams to be [sic] spent locally and abroad to be effective on Monday September 7, 2020. However, he left the island before the date he applied for."

- [39] The report also indicated that the claimant returned to work on October 8, 2020, and was summoned to a meeting with his superiors. During the meeting, he was asked to submit a written explanation of his absence. He was given a letter instructing him not to perform any duties until the investigation was complete. The claimant responded by sending a written account via email on October 11, 2020. After reviewing his account and completing the investigation, it was determined that he should resume his duties while the disciplinary process proceeded.
- [40] A recommendation was made by the SSP, St James, for the claimant to be brought before a Court of Enquiry on charges of "Leaving the Island of Jamaica without the permission of the Commissioner of Police" and "being absent from station and duty without lawful permission contrary to Book of Rules Chapter 4 at paragraphs 4.2 and 4.11."
- [41] A further report was submitted by the SSP dated November 3, 2020, entitled "Orderly Room convictions levied against no. 8624 Constabulary Joseph Williams - Saint James Division." It outlined that the claimant had been convicted of fifteen Orderly Room counts whilst serving in the Kingston West, Kingston East and St. Catherine Division. He was also convicted on five occasions for Orderly Room offences committed in 2018 and 2019.
- [42] After reviewing the claimant's application and records, the CP lost confidence in the claimant's ability to serve as a constable, resulting in a denial of the application

for re-enlistment. A notice titled 'Notice re Non-recommendation of re-enlistment - No.8624 Constable Joseph Williams,' dated November 10, 2020, was served on November 20, 2020.

- [43] The claimant contested the notice in letters dated November 28 and December 4, 2020. The latter was written by his attorney, Mr Michael Hemmings, who requested a hearing with the CP.
- [44] Upon receiving those letters, the CP, in a letter dated March 8, 2021, invited the claimant to a hearing scheduled for April 1, 2021. The hearing took place at the Commissioner's office, with Corporal Rohan James, Chairman of the Police Federation, representing the claimant. Both the claimant and his representative presented their cases to the Commissioner. After reviewing the claimant's records and considering the arguments, the Commissioner found no reason to reverse his decision not to re-enlist the claimant. Consequently, the claimant's discharge for non-reenlistment in the JCF remained in effect.

Submissions

- [45] Ms Grant submits that there are procedures that govern the JCF and its members, which address a member's failings in their work, conduct, discipline, and/or general conduct deemed unbecoming of a member of the JCF. The CP unlawfully relied on the orderly room convictions as they were spent, contrary to Regulation 46 and the Book of Rules. He failed to follow due process and procedure and to ensure that the principles of fairness and natural justice were applied.
- [46] According to Chapter 1 of The Book of Rules, after seven years, the record of defaults and/or breach of discipline recorded on a Member's Divisional Record Sheet should be expunged. The Orderly Room convictions were all dealt with summarily by the claimant's Commanding Officer under Regulation 46 and are summary offences that do not warrant dismissal. The claimant was punished at the time of conviction and ought not to be punished again.

- [47] Counsel argued that the allegation of absence from duty was unfounded, as the claimant had applied for leave and provided all the relevant documentation. She further contended that the refusal notice preceded the hearing, rendering the hearing a mere formality, and that the many adverse reports were not disclosed to the claimant but had been attached to the affidavit of ACP Lewis. Additionally the affidavit filed by ACP Lewis ought to have been from the defendant, as he is the decision-maker under section 3 of the Constabulary Force Act. She emphasised the claimant's long service, injury on duty, commitment and dedication to the Constabulary to submit that his dismissal was irrational and arbitrary.
- [48] Mr Clarke submits that the CP acted within the ambit of the law when he arrived at the decision not to recommend the Claimant for re-enlistment, having provided his reasons and afforded the claimant the opportunity to make representations regarding those reasons. This was an opportunity for the claimant to cause the CP to review his decision, in light of the submissions made by the claimant and/or his representative. Those submissions must answer the reasons outlined in the notice of non-recommendation for re-enlistment. The onus is on the claimant to show cause why he should be allowed to re-enlist. It is undisputed that all of that was done.
- [49] Mr Clarke argued that the claimant's performance and conduct were consistently poor, as evidenced by reports from his superiors. The claimant admittedly left Jamaica without permission, failed to report for duty, and submitted his leave application after departure. He emphasised the claimant's disciplinary record, including fifteen convictions and pending charges. He contended that the CP acted within the statutory jurisdiction under section 3 of the Constabulary Force Act and considered all relevant material.
- [50] Due process and fairness were afforded to the claimant as the Commissioner held an in-person hearing at which the claimant was represented, and thereafter rationally concluded that the claimant should not be re-enlisted.

Issues

[51] The issues raised on the evidence for determination are:

- i. Whether the Commissioner erred in law by considering spent convictions.
- ii. Whether there was a failure to disclose adverse reports.
- iii. Whether procedural fairness was denied by issuing a notice of refusal before the date of the hearing.
- iv. Whether the Commissioner exceeded his jurisdiction by dismissing the claimant without an enquiry into the alleged absence from duty under Regulation 47.

The Decision

[52] The claimant is aggrieved by the CP's decision to refuse re-enlistment. He contends that the decision was based on an accumulated twenty orderly room convictions and the allegation that he absented himself from ESM duty. Efforts to contact him were said to be unsuccessful. The claimant said that when he was contacted, he informed Detective Inspector Lewis that he was in the USA because he had to leave the island due to an emergency regarding his immigration status.

[53] The Notice of non-recommendation said in part:

“Checks made with National Intelligence Bureau confirmed that you departed the island on September 6, 2020 via the Sangster International Airport destined to Newark, United States of America and returned on September 19, 2020.

On Saturday, September 12, 2020, Detective Inspector A. Lewis submitted an application for fourteen (14) days emergency departmental leave for you to be spent locally and abroad with effect from Monday, September 7, 2020 which was handed to him on Saturday, September 5, 2020 without court declaration.

You were granted abbreviated re-enlistment in 2018 and 2019 to monitor your overall performance. However, you have shown no improvement. Your

continued disregard for force policies and your general indiscipline have caused you to lose the respect and confidence of your juniors and seniors. You have failed to demonstrate any serious effort to reform and as such the Commissioner of Police has lost confidence in your ability to perform in the office of constable.

You will therefore cease to perform duties with effect from Saturday, November 21, 2020 until the issue of your re-enlistment has been resolved by the Commissioner of Police.

You may respond to this notice within fourteen (14) days of the receipt of same to show cause why your discharge from the Jamaica Constabulary Force should not be pursued.

You are also to indicate if you are desirous of appearing before the Commissioner of Police for a hearing should the Commissioner of Police direct that your application for re-enlistment be refused.”

- [54]** On February 6, 2021, the claimant was served with a Notice of Refusal of Re-Enlistment in the Jamaica Constabulary Force dated February 1, 2021. The letter commenced as follows:

“Take note that you enlisted the Jamaica Constabulary Force on November 23, 1998 and consequently were due for re-enlistment on November 21, 2020.

You were served with a notice on November 20, 2020 advising you of the intention not to recommend your re-enlistment to the Commissioner or Police. You responded to the notice vide letter dated November 28, 2020. The Commissioner of Police having reviewed the recommendation and your response has refused your application for re- enlistment in the Jamaica Constabulary Force on the grounds outlined below...”

...

“You may, if you so desire respond to this notice within fourteen (14) days of the receipt through the Senior Superintendent of Police, St. James Division showing cause why you should not be discharged from the Jamaica Constabulary Force. In addition, you may indicate if you are desirous of appearing before the Commissioner of Police either alone or accompanied by your Attorney or Representative for a hearing within the fourteen days of this notice.”

- [55] On April 1, 2021, the Commissioner held a hearing at which the claimant was invited and attended to show cause why his re-enlistment should be approved. On June 9, 2021, the claimant was served with a letter dated May 18, 2021, advising him that, based on the direction of the CP, his application for re- re-enlistment was refused and that his discharge from the JCF took effect on November 21, 2020. The letter also noted that the Notice dated February 1, 2021, was relevant.

Discussion

The Judicial Review Exercise

- [56] The process of judicial review is the basis on which courts exercise supervisory jurisdiction over inferior bodies or tribunals that exercise judicial or quasi-judicial functions or make administrative decisions affecting the public. It is trite that judicial review is concerned only with the decision-making process of a tribunal, not with the decision itself.
- [57] *Lord Hailsham of St. Marylebone L.C. expressed in **Chief Constable of the North Wales Police v Evans**³ that the purpose is to ensure that the individual receives fair treatment and not to ensure that the authority which is authorised by law to decide for itself reaches a conclusion which is correct in the eyes of the court, he also identified the scope and purpose of judicial review proceedings and stated as follows at page 1160F-G:*

“But it is important to remember in every case that the purpose of the remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by

³ [1982] 1 WLR 1155 at page 1161a

unfair treatment and not to attempt itself the task entrusted to that authority by the law.”

[58] The role of this court in determining this claim is to exercise its supervisory jurisdiction over the decision-making process, not to decide whether the decision is correct or not.

[59] In the case of **Council of Civil Service Unions and others v Minister for the Civil Service** (“CCSU”)⁴, the heads of judicial review were set out as follows:

“The process of judicial review is the basis on which courts exercise supervisory jurisdiction in relation to inferior bodies or tribunals exercising judicial or quasi-judicial functions or making administrative decisions affecting the public. It is trite that judicial review is concerned only with the decision making process of a tribunal and not with the decision itself. Lord Hailsham of St. Marylebone L.C. expressed in Chief Constable of the North Wales Police v Evans [1982] 1 WLR 1155 at page 1161a that the purpose is to ensure that the individual receives fair treatment and not to ensure that the authority which is authorised by law to decide for itself reaches a conclusion which is correct in the eyes of the court. Lord Diplock in Council of Civil Service Unions v Minister for the Civil Services [1985] AC 374 at page 410 F-H, discussed the principle of judicial review in relation to decision making powers and spoke to three heads -- illegality, irrationality and procedural impropriety:

By illegality as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

⁴ [1985] AC 374

By irrationality I mean what can now be succinctly referred to as 'Wednesbury unreasonableness' (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it...

I have described the third head as —procedural impropriety rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

The balancing and weighing of relevant considerations is primarily a matter for the public authority, not the courts (per Lord Green MR in Wednesbury, at page 231; and per Lord Hailsham in Chief Constable of the North Wales Police at page 1160 H). However, if there has been an improper exercise of power, it will be viewed as unreasonable, irrational or an abuse."

- [60]** According to section 3(2)(a) of the Constabulary Force Act ("the Act"), the Commissioner shall have the sole operational command and superintendence of the Force. Section 5 of the Act further states that sub-officers and constables of the Force may be enlisted for a term of five years. Sub-Officers and Constables desiring to be re-enlisted for a further term of five years must make an application at least fourteen weeks before the expiration of the current term and must be medically examined at least twelve weeks before the current term expires. The Act and the Book of Rules require members to apply for re-enlistment every five years and, upon approval, to be re-enlisted for another five-year term.

[61] In the case of **Glenroy Clarke v Commissioner of Police and Another**,⁵ the appellant was a Corporal of police in the Jamaica Constabulary Force (“JCF”). He first enlisted in 1978 and successfully applied for re-enlistment in 1983 and in 1988. In 1993, when he applied for re-enlistment, he was advised on the orders of the CP that his application would not be approved, and he was apprised of the reasons for that decision. Subsequently, the appellant sought and obtained an interview with the CP at which he was represented by counsel, who made submissions on his behalf. Prior to this event, the Chairman of the Police Federation had intervened, making representations on his behalf to the CP. The decision stood. A Force Order dated November 18, 1993, proclaimed his exit at that date.

[62] The appellant felt aggrieved at this treatment. He had received several commendations for his efforts over the years and was appointed corporal in 1992 and acting Sergeant of police in May 1993. He acknowledged that, save for being fined ten days’ pay at a police court of inquiry, he was unaware of any other act of wrongdoing on his part that warranted the refusal of his application. He had entertained a reasonable expectation that he would be re-enlisted in the JCF. He obtained leave to apply for a writ of certiorari to quash the CP’s decision. The motion was dismissed by the Full Court. On appeal, it was argued that the appellant had not been afforded a fair hearing, the CP having predetermined the matter, and that this demonstrated bias.

[63] Carey, JA (as he then was), set out the process of re-enlistment:

“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 current 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...”

It seems to me that in the present case the commissioner was not sitting as a judge, who must of course divorce from his mind all he may have heard of the matter before undertaking the trial. The commissioner could properly take a decision not to approve re-enlistment of any member, even before an

⁵ (1996) 52 WIR 306

application to re-enlist is made. There is no question of hearing the member when that decision is taken because the member is not on trial for any charge. The conduct of the officer over the various terms of his enlistment would necessarily be the basis of the commissioner's decision. The officer may have been charged previously and disciplined therefor. That previous misconduct can properly be taken into account in determining whether he is a fit and proper person to remain a guardian and preserver of the peace. There is no such thing as an automatic right to re-enlistment. Approval should be and doubtless is granted where the conduct of the member is satisfactory. The level of conduct or performance is to be determined by the commissioner and the court has no power to set the standard of acceptable conduct in the force.

Where the commissioner has taken a decision not to approve re-enlistment, then, upon any application by the member for re-enlistment the Commissioner is obliged in fairness, to supply the reasons for his decision and to 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. The opportunity afforded to the appellant to be heard allowed the commissioner to review his decision in light of any submissions made to him by the officer or his attorney. The reasons having been supplied, must then be answered by the attorney. Consequently, the exercise is akin to an appeal process than to a trial process. The onus is thus on the officer to show cause why he should be allowed to re-enlist."

[64] In **Berrington Gordon v Commissioner of Police**,⁶ Sykes, J (as he then was) applied the reasoning from **Glenroy Clarke** as follows:

*"[18] All this learning from the four cases cited is reflected in the case of **Clarke v Commissioner of Police** (1996) 52 WIR 306, a decision of the Court of Appeal of Jamaica dealing specifically with the re-enlistment of police officers. What was said by Dyson LJ in paragraph [14] in the AMEC explains why the court in **Clarke** held that whenever the CP makes the decision not to re-enlist a police officer, the affected officer must be informed of the decision and be supplied with the reasons. This is so because the decision may have been made before the affected person applied for re-enlistment in which case he would be adversely affected without having had the opportunity to make any representation. Thus while the Jamaican Court of Appeal endorsed the view that the CP has the power to decide not to re-enlist a police officer even before an application for re-enlistment has been made fairness demands that*

⁶ [2012] JMSC Civ 46

he be informed and given reasons so that he can decide whether to ask for a review.

[19] The Court of Appeal in Clarke set out, in detail, the process to be followed. In practical terms, the court supplemented the statute by stating what fairness demands in the context of an application for re-enlistment.

[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 re-enlist;

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 re-enlist 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.

[21] *It should be noted that the Clarke case did not decide what form the hearing should take and neither will this court. Whatever method or procedure the CP uses it must be fair.*

[22] *Carey JA indicated that even though there is no automatic right to re-enlistment '[a]pproval should be and doubtless is granted where the conduct of the member is satisfactory' (page 309).*

[23] ***Forte JA stated that '[t]here was no dispute that the appellant in the particular circumstances had a legitimate expectation that he would be re-enlisted, and consequently was entitled to the opportunity for a fair hearing' (page 313).***

[24] *Gordon JA stated, "A constable who has a history of aberrant behaviour cannot claim a legitimate expectation to re-enlistment" (page 314). This statement by Gordon JA is not to be understood as a disagreement with the other two Justices of Appeal. His Lordship was not purporting to reverse a specific finding of the Full Court from which the appeal came that Mr Clarke had a legitimate expectation, in light of his previous re-enlistments, that he would be re-enlisted this time round. All Gordon JA was saying was that a constable with a history of misbehaviour cannot claim that he has a legitimate expectation to re-enlist." (Emphasis added)*

1. Whether the Commissioner erred in law by considering spent convictions

[65] Conduct in the JCF is interpreted by this court to mean a record of behaviour authored by the member over the period of service. It is a writing by each member on each day of service, of a record he or she is creating to be read at the point of decision by the CP.

[66] Carey, JA made it clear in **Glenroy Clarke** that previous misconduct can properly be taken into account in determining whether a member is a fit and proper person

to “remain a guardian and preserver of the peace.” The Court of Appeal held that: “The level of conduct or performance is set by the Commissioner and the court has no jurisdiction in this area.” In **Berrington Gordon** Sykes, J reiterated and applied the law as set out in **Glenroy Clarke**, which is that it is the CP who determines the standard of conduct expected of police officers. The courts have no power to make this determination, and in considering whether to permit the officer to re-enlist, the CP can take into account the past conduct of the officer.

[67] The claimant’s contention that the CP cannot consider his orderly room convictions as they are spent is without merit based on the settled law in the **Clarke** and **Gordon** decisions. Conduct in this case includes any absence, whether unexplained, explained or absence without official leave.

[68] Carey, JA said:

“The conduct of the officer over the various terms of his enlistment would necessarily be the basis of the Commissioner’s decision. The officer may have been charged previously and disciplined therefor. That previous misconduct can properly be taken into account in determining whether he is a fit and proper person to remain a guardian and preserver of the peace...” (Emphasis added.)

[69] Further, since the law is that the decision is to be based on the record of the claimant over the period of service, then the CP is entitled to review the record created by the member for the entire period to determine suitability. A balance must be struck between the interests of the individual member and the national interest in having a disciplined and responsive police force.

[70] Ms Grant submits that The Book of Rules provide that after seven years the record of defaults and/or breach of discipline recorded on a member's divisional record sheet should be expunged thus it was a breach of law, due process, procedure and natural justice for the orderly room convictions from one (1) to fifteen (15) to have been relied upon in the Notice.

[71] Rule 1.5(c) states:

“(c) The Commanding Officer of a Branch, Division, or Section is authorized to make recommendations (through the Officer in charge of Areas in the case of Divisions) during January of each year, in favour of a member whose service in his opinion, prior to the year in which the application is being made has been meritorious and whose Divisional Record Sheet, for a period of seven (7) years, contains no record of any defaults, with a view of expunging previous defaults of the seven year period.”

[72] On a review of Rule 1.5(c) of the Book of Rules, an expungement is not automatic. The meaning of the rule above is that, each January, a member of the JCF may apply to have any disciplinary records erased. If the CO believes the member's prior service has been commendable and the member's Divisional Record Sheet shows no defaults for the past seven years, the CO may recommend the member's application. For the various Divisions, this recommendation must go through the Officer in charge of the Areas. The purpose of the recommendation is to expunge defaults recorded over the past seven years.

[73] In my view, the first step is for the member to apply to the CO for expungement. The second step is for the CO to form the opinion that there ought to be a recommendation for expungement. The claimant has shown no evidence that he first applied to have his record expunged, or that expungement is automatic or as of right.

[74] There is nothing in the evidence to suggest that the Commissioner breached the Constabulary Force Act, the Regulations, the Book of Rules, or natural justice by taking the Orderly Room convictions into account as they are relevant considerations on an application for re-enlistment.

2. Whether there was a failure to disclose adverse reports

[75] The claimant further argues that reports relied on by the CP were not served on him. He only discovered their existence as attachments to the affidavit of the ACP. The argument by the claimant is unsupported by the law.

[76] In the case of **R v The Commission of Police Ex parte Courtney Ellis**⁷, Sinclair-Haynes J stated that:

*“The question for this Court of Judicial Review is whether the Commissioner of Police, in considering Constable Ellis’ application for re-enlistment, followed the correct procedure. This Court’s remit is not the merits of the Commissioner’s decision. In the matter of **R. v Commissioner of Police, ex parte Clarke** (1994) 31 JLR 571 and **Corporal Glenroy Clarke v Commissioner of Police and the Attorney General of Jamaica** (1996) 33 JLR 50, neither the Full Court nor the Court of Appeal in dealing with the question of fairness and principles of natural justice, assessed the nature of the information considered by the Commissioner of Police. Those courts did not place stock on whether the incidents referred to were proved or not, or whether the applicant had had an opportunity to “defend” himself in relation to the reports made against him. Those courts assessed the fact that the confidential reports were made to the Commissioner of Police and determined that the Commissioner could take them into consideration.”*

[77]

[78] The Court of Appeal in **Corporal Glenroy Clarke** makes the point that the CP’s reasons, having been supplied, must then be answered by the attorney.’

[79] The claimant must be given the reasons for his non-re-enlistment, not all the material before the Commissioner, so that he can respond to each document. In the case at bar, the CP supplied his reasons to the claimant, and by law, that is what the CP is required to do. The claimant is then required having considered the CP’s reasons to ‘show cause’ why he should be re-enlisted. It is undisputed that this procedure was followed.

[80] This issue is also settled as indicated by the Court of Appeal in **Glenroy Clarke**, a case in which the Commissioner had considered ‘certain intelligence reports’ which had not been disclosed. Carey, JA said:

*“The Commissioner was obliged to consider the conduct of the appellant over the period of the appellant’s service. **The fact that he may have been***

⁷ 2010 HCV 01286; December 17, 2011

disciplined under previous administrations cannot be disregarded, as if it had been excused or removed from his record. Any résumé of his service must have included that conduct which the Commissioner was obliged to consider. He could not be regarded as a person with an unblemished record by any stretch of the imagination."

[81] The CP is entitled to review all reports and recommendations of the divisional and training officers under his command. On the authority of **Corporal Glenroy Clarke** and the Regulations, he may also consider intelligence and confidential reports without providing copies to the claimant. The claimant is not on trial. He is not the accused who must mount a defence; the CP is performing an administrative function and is entitled to conduct this review. This would imply that he need not refer to these reports in a hearing with the claimant.

[82] In fact, Carey, JA, went so far as to state that the failure to request copies of the reports when counsel became involved in the matter meant that the appellant and his attorney were not ignorant of any of the material contained in the reports. I would venture to adopt that statement and apply it to the evidence in the case at bar. This meant that the CP could not be said to have breached the law, rules of natural justice or fairness on these facts. This complaint is without merit.

3. Whether procedural fairness was denied by issuing a notice of refusal before the date of the hearing

[83] Sykes, J(as he then was), addressed this issue in the **Berrington Gordon** case, stating that the decision not to re-enlist may be made before the member applies for re-enlistment. In such cases, the member could be adversely affected without the chance to present their case. This means that since the CP has the authority to refuse re-enlistment before an application is made, no show-cause hearing between the CP and the claimant could have been held, as the decision to refuse can be made before an application for re-enlistment is made.

[84] Further, in the case of **Corporal Glenroy Clarke**, this was the procedure adopted, and no complaint was made, nor did the Court of Appeal indicate that there was

any procedural error on the part of the CP. That Court rejected counsel's argument, which is also being made in the instant case, that the CP had predetermined the matter by first notifying the appellant that the application was refused and then holding a hearing, after which the decision not to re-enlist was affirmed.

- [85] Fairness required that the claimant be informed of the reasons for the CP's decision on his application. Those reasons were provided to the claimant in the notice of non-refusal. The reasons for the decision enabled the claimant to decide whether to request a review.
- [86] The CP had decided, two months before the show-cause hearing, that re-enlistment would not be permitted. Through his attorney, the claimant requested a hearing, and in his own letter, he provided reasons why he should be re-enlisted. An in-person hearing was scheduled for April 1, 2020, at which the claimant and his representative presented his case. The complaint regarding that hearing was that it lasted fifteen minutes and that the CP did not refer to the reports set out in the various notices.
- [87] In the case at bar, the CP's decision was not communicated as a foregone conclusion. The claimant was afforded an opportunity to be heard and to show cause why he should be re-enlisted, based on the reasons for refusal which had been served on him. He was entitled to put his entire record of performance, years of service, medical status and commendations before the Commissioner.
- [88] To show cause means: *to produce a satisfactory explanation or excuse*.⁸ Carey, JA, stated in **Glenroy Clarke** that the process is a review, not a trial. Thus, there is no right to appear in person as the accused to answer charges as in a trial. No authority has been cited to this Court that speaks to the length of the show-cause hearing, nor what reports should be referred to by the CP.

⁸ Black's Law Dictionary, 10th ed.

- [89] The law is that there is no automatic re-enlistment for enlisted members of the JCF. An enlisted member has to produce a satisfactory explanation or excuse as to why he should be allowed to re-enlist, and the onus is on him to do so. The application to re-enlist, along with a report for non-recommendation, was sent to the ACP by the SSP of the St James division to which the claimant was assigned.
- [90] The reports noted that the claimant received four commendations & awards, but he faced eleven orderly room charges, five of which were disposed of, three withdrawn, and three pending. He was described as a Constable who performed his duties below average. It also stated, *inter alia*, that he was habitually late, demonstrated a lack of interest in his job, and habitually reported sick. He has received counselling, but there has been no change in his behaviour or attitude towards his job. After this report, there was a considerable amount of correspondence between the SSP and the ACP regarding the claimant's work, worth, and conduct being very poor, all of which were submitted for the Commissioner's consideration. It is against these factors that the claimant had to explain why he should be allowed to remain in the Force.
- [91] Further, the medical certificate required under the Act does not indicate that the claimant had been suffering from any medical condition which required the CP's attention. The claimant's letter to ACP Lewis makes no mention of medical issues or the need for any accommodation due to a disability from an accident, injury or condition, nor were any medical issues raised in Mr Hemmings' letter to the CP. The attestation sheet does not indicate that the claimant is unable to perform his duties or requires special accommodation due to any specific diagnosis. Glaucoma was referenced, but none of the other medical issues set out in the claimant's affidavit were identified by the doctor who completed the medical certification.
- [92] It is difficult to understand why the claimant did not disclose the medical issues raised in his affidavit before this Court in his application for re-enlistment, when it is not for this court to determine whether the CP made the correct decision. Nothing prevented the claimant from raising his medical issues as relevant considerations

in his application or at the hearing with the CP if those issues would affect, or had affected, his work, worth, or conduct.

[93] On November 10, 2020, the ACP wrote to the claimant regarding his application for re-enlistment and advised him that it had not been recommended to the Commissioner. The ACP listed twenty-one grounds for the non-recommendation. The CP also had the opportunity to consider the claimant's response to these grounds in writing and at the hearing.

[94] The procedure to be followed on an application for re-enlistment is now well settled. The Commissioner has exclusive discretion to determine whether a member should be re-enlisted. However, this discretion is not unfettered and must be exercised based on an assessment of the claimant's conduct and service within the Force. In the instant case, this was done.

4. Whether the Commissioner exceeded his jurisdiction by dismissing the claimant without an enquiry into the alleged absence from duty under Regulation 47

[95] Ms Grant argued that the unverified claim that the claimant was absent without official leave should not have been used as a basis for not recommending re-enlistment. She contended that the CP breached his duty by failing to exercise his statutory powers, as he declined to act on the recommendation made by SSP Ellis following investigations into the claimant's absence from ESM duty.

[96] In his October 23, 2020, report, the SSP recommended that a Court of Enquiry be convened under Regulation 47 regarding allegations of leaving Jamaica without permission and of being absent from duty without lawful permission, as set out in the Book of Rules, Chapter 4 on Leave, sections 4.2 and 4.11. These charges relate to ground two of the various notices.

[97] Ms Grant argues that SSP Ellis's recommendation was unreasonably ignored by the CP, as had Court of Enquiry proceedings been initiated against the Claimant

and the charges proven, then the CP would have been legally entitled to impose any penalties under the Regulations. Dismissal constitutes the maximum lawful penalty that could have been imposed to separate the claimant from the JCF.

[98] Mr Clarke submits that the case of **Glenroy Clarke** sets out the procedure for re-enlistment. The Act and the Regulations confer sole superintendency of the Jamaica Constabulary Force and the decision to re-enlist on the person who is serving as the CP; thus, the claim was brought against the Commissioner of Police.

[99] Counsel submitted that the first step is that the member must have been afforded the opportunity to apply for re-enlistment before the expiration of his current term. It is undisputed that the claimant in the case at bar was given the chance to apply to be re-enlisted before his term expired. The claimant submitted his application, and the Commissioner was bound to consider it, which he did. The CP did not find that suitable grounds had been established to permit re-enlistment; accordingly, the claimant's application was refused.

[100] Ms Grant also submitted that ACP Lewis cannot speak to the decision-making process of the competent authority during the re-enlistment process. In short, this submission is without any support, as an affidavit may contain statements of information and belief and must set out the sources and grounds. The affidavit of ACP Andrew Lewis, filed April 2, 2024, outlined the materials and documentation in the claimant's file. He deposed that he is in charge of Administration in the Jamaica Constabulary Force and was familiar with the claimant's file. No authority was cited to the court for the proposition, and, as such, the court declines to rule on this issue.

[101] By way of discussion, the claimant is bound by Rule 4.7 of the Book of Rules, which speaks to applications for leave. It states that members should submit applications in writing and allow sufficient time for a reply to the application. Also, Rule 4.9 provides that no application for leave may be made if the member is

required to appear as a witness in court. While the rules state that leave is a right, it is subject to the exigencies of the service and the rules.

- [102]** In this claim, the claimant submitted an incomplete application for leave; it was returned. He avers that it was completed and not resubmitted to the officer in charge, but left with the station guard, and an entry was made in the station diary. This court has no evidence to show that this is the procedure to be adopted. The claimant has not provided evidence as to why he did not submit it to Detective Inspector Lewis upon completion; therefore, he cannot explain to this Court, nor could he explain to the CP, why the officer in charge only received it on September 12, 2020.
- [103]** The claimant has not addressed the assertion in ACP Lewis's affidavit that the matter of absence from duty was investigated. In Regulation 46, the Authorised Officer is the CP or an officer not below the rank of ACP. In this case, SSP Ellis, from St James who is not the authorised officer, properly reported the matter to the CP pursuant to Regulation 46(2). Based on the evidence, the CP was not of the opinion that the misconduct alleged was not serious or a minor offence. The CP did not accept SSP Ellis's recommendation that the alleged misconduct be placed before a Court of Enquiry.
- [104]** More importantly, Regulation 27 states that, notwithstanding Regulation 47, any constable who absents himself from duty without leave for more than forty-eight hours, without a satisfactory explanation, shall be held automatically to have vacated his position and shall be liable to summary dismissal with effect from the first date of such absence.
- [105]** Regulation 27 signals that the usual disciplinary process does not obtain in the event of absence from duty which is not treated as a minor offence when the entire import of Regulations 27 and 47 are examined. These are separate provisions, each with distinct procedures.

[106] In any event, Carey, JA, addressed the fact that non-re-enlistment is not the same as dismissal. The CP took no steps to dismiss the claimant; he exercised an administrative function. The level of conduct or performance is determined by the CP, not by the Court.

[107] In the instant case, the claimant was aware of the basis for his non-recommendation for re-enlistment upon receipt of the notices of non-recommendation and refusal. The possibility of refusal of the application before a show cause hearing was clearly acknowledged by both the claimant and by Mr Hemmings, who wrote to the CP as follows: *“Should Mr Williams’ application for reenlistment be refused, this letter also serves as a formal request to have a hearing with the Commissioner of Police.”*

[108] The claimant also personally responded to the Notice of Refusal in a letter which read in part:

“By virtue of your letter dated 1st February 2021, I was given fourteen (14) days from Saturday, 6th February 2021, to show cause why my discharge from the Jamaica Constabulary Force ought not be pursued. This response serves to show cause.”

[109] In a letter dated March 8, 2021, the claimant was invited, upon his request, to attend a hearing scheduled for April 1, 2021. The hearing took place, with the claimant represented by the Chairman of the Police Federation. The Deputy Superintendent and the Director of the Legal Affairs Division also attended.

[110] The CP was the decision-maker. In his notes following the hearing, the Commissioner stated that:

“Having reviewed the records and listened to the arguments of Constable Williams and his representative, I found nothing to convince me to reverse the decision not to re- enlist him in the Jamaica Constabulary Force. His discharge stands.”

[111] As a matter of law, for this court to quash the Commissioner’s decision refusing to re-enlist the claimant on the basis that it was Wednesbury unreasonable, it must

be proven, on a balance of probabilities, that the Commissioner acted in a way that no reasonable Commissioner would have acted in the circumstances existing at the time the decision was made. (See **Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation**⁹).

[112] In the instant case, the claimant was not only invited to show cause why his re-enlistment should be approved, but he was also invited to a hearing. Based on his letters responding to various notices, it is clear that he was aware of the grounds for non-approval. He was duly informed. It was incumbent upon him to present credible and persuasive counterarguments to persuade the Commissioner of Police to exercise his discretion in his favour. Having failed to do so, the claimant cannot now challenge the manner in which that discretion was exercised.

[113] The CP's decision was based on the information presented concerning the claimant's conduct and integrity as a member of the JCF. After meeting with the claimant, the CP evidently concluded that he had not displayed the standard of conduct expected of a Constable in the Jamaica Constabulary Force and was therefore not a suitable candidate for re-enlistment.

[114] The CP's exercise of discretion was both reasonable and rational. His decision was grounded in the evidence presented in the reports provided to him and the claimant's responses. There is no evidence that the decision was based on irrelevant considerations. In making that determination, he was required to evaluate the information before him to assess whether the claimant continued to have the confidence of his colleagues, the public, and whether his re-enlistment would have any implications for national security.

[115] It cannot be said in all the circumstances that the Commissioner acted unreasonably in refusing the application. For the foregoing reasons, the court makes the orders below.

⁹ [1948] 1K.B. 223

[116] Orders

1. The orders sought in the Fixed Date Claim Form filed on July 18, 2023, are refused.
2. No order as to costs.

.....

Wint-Blair J