[2015] JMCA Civ 70

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 64/2013

BEFORE: THE HON MR JUSTICE MORRISON P (AG)
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MR JUSTICE F WILLIAMS JA (AG)

BETWEEN	**ERLIN HALL**	**APPELLANT**
AND	**THE COMMISSIONER OF CORRECTIONS**	**1ST RESPONDENT**
AND	**THE ATTORNEY-GENERAL OF JAMAICA**	**2ND RESPONDENT**

Maurice Frankson instructed by Gaynair & Fraser for the appellant

Ms Marlene Chisholm instructed by the Director of State Proceedings for the respondents

28, 29 September and 18 December 2015

MORRISON P (AG)

[1] I have read in draft the judgment of F Williams JA (Ag) I agree with is reasoning and conclusion and have nothing to add.

MCDONALD-BISHOP JA

[2] I too have read the draft judgment of F Williams (Ag) and agree with his reasoning and conclusion. I have nothing to add.

F WILLIAMS JA (AG)

Background

[3] The facts of this appeal call to mind the adage that sometimes truth is stranger than fiction. They involve a remarkable interaction between (on the one hand), the appellant, who had been employed as a prison warder by the Correctional Services Department (the Department), headed by the 1st respondent; and (on the other hand), the Department and the Public Service Commission (the PSC). Though employed by the Department for a period of 37 years, as it turns out, the appellant actually performed his duties for only some 20 of those years, having been off the job, though still in the Department's employ for much of the remainder of the period of 17 years. Shortly to be related is a history of the interaction between the parties, marked by lengthy periods of inaction and incomplete attempts by the PSC to effect a separation between itself and the appellant.

Summary of the history of the matter

[4] The appellant commenced his employment to the Correctional Services Department on 10 April 1969, at age 23, (he having been born on 11 May 1946). On 27 September of 1969, he lost the second toe of his right foot when a rifle with which he was armed accidentally discharged. He claims that he was afflicted with back pains and

could not walk properly for some time thereafter. In any event, the amputation of his toe led to his being incapacitated for some 77 days (for which he got sick leave); and he resumed duties on 14 December 1969.

[5] Thereafter, he worked at various prisons up to 1985, having taken vacation leave of 105 days in 1982 and again in 1985. He resumed duties on 17 January 1986; worked until 31 March of that year; and from 1 April of the same year, applied for and was granted sick leave (a total of 85 days, all told), until he resumed duties on 25 June 1986. Later that same year, the appellant applied for and was granted five days' sick leave from November 28. The medical certificates that the appellant submitted over this period came from three different doctors (two of whom were based in New York, United States of America). One of these certificates spoke to a heart murmur that needed investigating.

The year 1987

[6] Between 3 March and 8 April 1987 (when he resumed work), the appellant was granted 32 days' sick leave due to what appears to have been injuries to his left hand, little finger and waist that he is said to have sustained during a clash with a prisoner. The appellant again applied for 30 days' sick leave from 23 June to 23 July 1987 and was granted one day's departmental leave and 29 days no-pay leave for the period.

[7] He thereafter applied for and was granted a total of 58 days' sick leave for periods extending from 23 July 23 to 19 September 1987.

[8] He was sent on interdiction and paid half his salary with effect from 19 September 1987, pending the outcome of disciplinary proceedings against him in relation to the escape of a prisoner.

The year 1988

[9] In February of 1988, the appellant sought and was granted permission to leave the island on the basis that he wished to keep a medical appointment. He made a similar application again in June.

[10] By way of letter dated 1 September 1988 the appellant was informed that the disciplinary proceedings against him had been resolved in his favour; that he was to resume duties with effect from 5 September and that the half pay that had been withheld from him for the period of his interdiction was to be paid to him.

[11] However, the appellant did not resume work on 5 September as directed. Instead, he applied for and was granted sick leave for four different periods that year, amounting in total to approximately 113 days from 5 September to 27 December 1988.

The year 1989

[12] The appellant's prolonged absence from work, now having become, at the very least, noticeable, was brought to the attention of the Chief Personnel Officer (the CPO) at the Office of the PSC, who interviewed the appellant on 3 January 1989 and recommended that he be placed before a medical board so that his fitness for further service could be determined.

[13] In furtherance of this, the Department requested (by letter dated 1 February 1989), a comprehensive medical report from Dr Madhu S Dagli, the doctor from whom most of the certificates had been received. However, there was no response to that request. The Department also requested a similar medical report from the appellant himself by letter of the same date. There was no immediate or timely response to this request.

[14] On 11 August 1989 the appellant was examined by the Department's medical officer, Dr Cyril Gray, who found the appellant to be physically fit and able to work. However, the appellant submitted medical certificates for most of 1989 into 1990.

The year 1990

[15] The Department, by letter dated 18 May 1990, referred the matter to the Chief Medical Officer (the CMO) in the Ministry of Health, who informed the Department by letter dated 4 June 1990 that the appellant was fit for work.

[16] By letter dated 28 September 1990, the Department (acting on advice from the CPO) summarily dismissed the appellant.

The period 1991-2004

Full Court proceedings

[17] The appellant challenged his dismissal by applying to the Full Court by way of an application for judicial review for an order of certiorari to quash the decision to dismiss him. On 5 July 1991, the Full Court quashed the decision on the basis that there had

been a breach by the PSC of the rules of natural justice. The written reasons for the decision were given on 29 September 1993 – reported as **Erlin Hall v Public Service Commission** (1993) 30 JLR 442.

[18] So far as is material to this matter, the relevant part of the Full Court's decision (per Langrin J (as he then was)), reads as follows (page 445, paragraphs D to E):

> "We now turn to the question of remedy. Since we were concerned not with the decision but the decision-making process we are content with quashing the decision thereby enabling the Commission to have the wrong put right. The order that Certiorari should go was in effect one which would require the respondent to deal with the matter de novo.
>
> Nothing that we did on July 5, 1991 reinstated the applicant in his former position as a senior warder."

[19] Not much, if anything, seems to have been done by either side between the date of delivery of the written reasons in 1993 and the year 1996. On 7 March 1996 an attempt was again made to place the appellant before a medical board to determine his fitness or otherwise for the job. However, this attempt was not successful.

[20] There then seems to have been an eight-year hiatus in activity in the matter by both sides, with the next action being taken on behalf of the appellant in 2004.

The period 2004-2008

[21] By letter dated 12 August 2004 the appellant's then attorney-at-law wrote to the PSC indicating the appellant's readiness to complete the hearing before the medical board. In order for this to be done, the Department requested an updated medical

report from the appellant. A reminder was sent by way of the Department's letter dated 2 October 2006, the response to which was a letter indicating that further instructions were being awaited from the appellant.

[22] It was not until May of 2008 that the Department received the updated medical report that it had requested of the appellant in February of 1989. On receipt of this report, the Department was instructed by the PSC to convene the medical board for the appellant's fitness for work to be assessed. Nothing further happened, however, until August 2011.

The year 2011

[23] By his fixed-date claim form filed 19 July 2011, the appellant sought the following relief:

> "1. A declaration that he was entitled to be retired from the public service at age sixty years.
>
> 2. A declaration that he is entitled to his salary, allowances and leave pay from October, 1987 to 2006 and his retirement benefits due from 2006.
>
> 3. An order that the 1st Defendant immediately retires [sic] the Claimant.
>
> 4. An order that the 1st Defendant pays to the Claimant all outstanding salaries, allowances and leave pay due to the Claimant for the period October, 1987 to October, 2006.
>
> 5. An order that the 1st Defendant pays or causes to be paid to the Claimant all his retirement benefits due from and since October, 2006.

6. Any other and/or further relief that to this Honourable Court seems just.

7. Costs."

[24] On 17 August 2011 the fixed-date claim form and the appellant's affidavit in support were served on the Department.

[25] In November 2011, the CPO informed the Department that the PSC had decided to retire the appellant from the public service. This, it was said, was being done in accordance with the provisions of section 6(1)(i) of the Pensions Act, with effect from 11 May 2008. He was to be paid only 50% of his pension on the 20 years that he actually worked, as his conduct over the last 17 years was deemed by the PSC to be an irregularity within the meaning of section 5 of the Pensions Act. The appellant was around 65 years of age at that time.

The judgment of the court below

[26] The matter came on for hearing on 1 May 2013 and on 5 July 2013 the court's decision was delivered. These were the orders made:

"i) The Fixed Date Claim Form dated July 18, 2011 is dismissed.

ii) No order as to cost."

[27] Among the findings of the learned trial judge that are relevant to this appeal are those contained in the following four paragraphs of the learned judge's judgment:

"[50] Whilst it may be true that the uncertainty surrounding his status was compounded by the judgment of the Full

Court, it would have been addressed if either the claimant had made the move to re-claim his position or the 1st defendant had taken the necessary steps to give him the fair hearing deemed necessary by that Court's decision. The Clamant however, had accepted that he was never officially re-instated in his position. No explanation is forthcoming as to why he did not see it necessary to report to his job. It might appear somewhat incongruous that he should in one breath argue that he had never been re-instated yet he was entitled to his salary and benefits.

…

[53] The term irregularity is not defined in the Act. However, the fact that the claimant did not report to work, and did not submit any medical certificates or attempt to explain his prolonged absence from work would to my mind constitute a form of behavior which would have to be addressed appropriately. The claim to be entitled to be paid for a time when he did not work does not prima facie, appear to be appropriate.

…

[57] The position therefore is that the claimant having never been re-instated after being summarily dismissed, was unavailable to complete his Medical Board for eight (8) years and then was unable to supply an update [sic] medical report for a further four (4) years. Whatever onus there was on the "OSC" to reconvene the Medical Board could only have been fulfilled if the claimant had made himself available or supplied the relevant information. The claim by the claimant that the fault or blame laid with his employers is to my mind without merit.

…

[59] In all the circumstances, there is no justification for rewarding the claimant by paying him for that time he was away from work. He cannot be deemed to be entitled to that which he has not earned. The decision to pay him fifty (50) percent on the twenty (20) years that he actually worked is to my mind eminently fair."

The appeal

[28] It is from these orders that the appellant has appealed. His grounds of appeal are set out in his notice and grounds of appeal filed 5 August 2013. The following are the grounds:

> "(1) That the verdict [sic] is manifestly unreasonable having regard to the evidence;
>
> (2) That the Learned Trial Judge erred in law when she found that the Claimant/Appellant failed to make himself available for the continuation of the medical board.
>
> (3) The Learned Trial Judge erred in law when she found that The Services Commission properly gave notice of the convening of a medical board in its letter to the Claimant/ Appellant by letter dated the 28th day of August, 1996."

[29] Although these were the written grounds, in the interest of bringing some finality to this long-outstanding matter, some latitude was allowed to both counsel to argue additional relevant matters, in particular, the matter concerning the reduction of the appellant's pension. That matter was in fact dealt with by the learned judge, although it was not formally addressed in the fixed-date claim form.

[30] The appellant asks this court to grant the orders and declarations that had been refused by the learned trial judge.

The issues on appeal

[31] These were the issues that arose for our determination:

i. Whether the decision of the lower court is reviewable by this court.

ii. Whether the appellant was reinstated following the Full Court decision and ought to be paid for the entire period of his employment.

iii. Whether it was fair to have reduced the appellant's pension by 50% or at all.

First issue: whether the decision is subject to review

[32] For the respondents, Ms Chisholm sought to limit the scope of the court's review of the learned judge's decision, citing the well-known decision of **Hadmor Productions Ltd and Others v Hamilton and Another** [1983] 1 AC 191. Specifically, she cited that part of the decision in which Lord Diplock is reported as having said:

> "The function of the appellate court… is not to exercise an independent discretion of its own. It must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that members of the appellate court would have exercised the discretion differently." (Page 220, B-C).

[33] While the court is aware of this oft-cited passage of the judgment and is mindful of the injunction contained therein, it seems that that injunction was meant to apply more to the kind of case that **Hadmor** was (an application for discretionary interlocutory relief). The difference between such a case and this is that this was a trial in chambers at the end of which a final judgment was delivered. The position therefore is that, even if the **Hadmor** principle were at all applicable to a case such as this,

(which, in the court's finding, it is not), it could never apply to this case with its full force and rigour, as it would to a case involving a question of whether discretionary interlocutory relief ought to be granted. It seems to me, therefore, that this court is at liberty to conduct a complete review of the findings and orders made in the court below. In this review the only limitations placed on this court would be those enunciated in **Watt v Thomas** [1947] AC 484, as to how an appellate court should approach the review of a trial judge's findings of fact.

The second issue: whether the appellant was re-instated etc

[34] It will be recalled that the learned judge's finding (at paragraph [50] of the judgment), was to the effect that the appellant was not reinstated. She also found that the judgment of the Full Court had introduced some uncertainty surrounding the whole issue. This uncertainty (the learned judge found) could have been addressed either by the appellant's taking steps to "re-claim his position"; or by the 1st respondent taking steps to give him a fair hearing that the Full Court indicated would have been necessary.

[35] For the appellant, Mr Frankson argued that in such circumstances, the onus lay on the respondents to have done what was necessary, either to have had a hearing with a view to terminating the services of the appellant (as the Full Court indicated), or to have told the appellant when and where to report for work. On behalf of the respondents, on the other hand, Ms Chisholm argued the opposite: that is, that the onus lay on the appellant to have reported for work.

Discussion

[36] In order to come to a proper understanding of the effect of the decision of the Full Court in this matter, it is important for us to go back, briefly, to first principles to remind ourselves of the nature and purpose of the remedy of certiorari.

[37] In De Smith's Judicial Review, 6th edition, page 895, 18-027 the effect of such an order is explained thus:

> "In relation to a void decision, a quashing order *in effect* declares that it was ineffective *ab initio*; in the case of a voidable decision a quashing order will deprive the decision of legal effect."

[38] So that the effect of granting the remedy of certiorari by the Full Court in this case was that the summary dismissal of the appellant was quashed; and he continued to be in the employment of the Department. Given the nature of the remedy, it is readily apparent that the clear result of the quashing of the dismissal by the Full Court was to have deprived the dismissal of any legal effect, in spite of the somewhat puzzling observation of that court, at page 445, D to the effect that:

> "Nothing that we did on July 5, 1991 reinstated the applicant in his former position."

[39] This might very well have caused the appellant not to have attempted to report for duty.

[40] That the quashing of the dismissal (and a return to the *status quo ante*) was the result is further borne out by the other explanatory words used by Langrin J (as he then was), in delivering the judgment of the court, where he stated (at page 445, D):

> "…we are content with quashing the decision thereby enabling the Commission to have the wrong put right. The order that Certiorari should go was in effect one which would require the respondent to deal with the matter de novo." (Emphasis added).

[41] To my mind, these words constituted the clearest signpost to the PSC and the respondents in this appeal as to the direction in which they were to have gone in seeking to effect a separation between themselves and the appellant. However, this clear signpost was apparently ignored; and, amazingly, no steps whatsoever were taken to see whether they should have brought about the separation until in 1996. At that time, rather than conducting a hearing with a view to dismissal, the PSC instead sought to take the route of the medical board, which was convened on 7 March 1996.

[42] In paragraph 33 of the affidavit of Eileen Gardner (the then Director of Personnel in the Department), sworn to on 26 April 2012, it is stated that, on her information, the claimant refused to attend that convening of the medical board, so that the proceedings of the board could have been completed. In contrast to this assertion, however, in paragraphs 11 and 14 of the appellant's affidavit sworn to on 22 May 2013, he addresses that issue by stating that that medical board was made up of one doctor only and so was improperly constituted. It was for that reason that it was adjourned. It is not true, therefore, to say that he failed to attend.

[43] In the Staff Orders for the Public Service, 1976, although the convening of a medical board is mentioned in Order 5.29, the manner of the composition of the board is not set out in those sections of the Order with which this court was provided. However, the wording speaks to a board being "convened".

[44] In their later iteration, however, (the Staff Orders dated 2004), at Order 7.13.10 (iv) it is specifically stated that any such board should be made up of "at least two (2) registered medical practitioners to be selected from a panel".

[45] It is acknowledged that these later rules would not have been in force in 1996 when the particular medical board was convened. However, even looking at the 1976 Orders, having regard to the use of the word "convene" (which would suggest some assembling or calling together); and the use of the very word "board", I would be prepared to find that the meaning that is conveyed suggests a requirement for the presence of a plurality of persons. So that, if the medical board that was convened in 1996 consisted of one person only, the appellant would be correct in his contention that it was improperly constituted.

[46] But, viewing the matter from another perspective, however, and accepting for the sake of argument that the 1996 medical board had been properly convened, but that the appellant absented himself from it, what would be the significance of this? There would be none for these purposes, as the PSC and the respondents did nothing further until the year 2004.

[47] In fact, it appears that it was a letter on the part of the appellant that precipitated the action that the Department finally took in requesting, by letter dated 3 November 2004, an updated medical report from the appellant. That letter was preceded by a letter from the applicant's attorney-at-law dated 12 August 2004, indicating the appellant's willingness to make himself available for the completion of the medical board.

[48] That medical report was not received until it was sent to the Department under cover of letter dated 9 April 2008. It is noteworthy that the Department took no steps while it waited the four years from 2004 to 2008 for that medical report. It is noteworthy as well that, even on receiving that medical report, neither the PSC nor the Department took any action whatsoever for the next three years or so. In fact, the next step was taken by the appellant in filing his claim in July 2011.

[49] Some time was spent questioning at whose feet the blame for the non-holding of the medical board should be laid. However, the conclusion to be derived from discussing this point is, to my mind, self-evident for the following reasons: if it was the Department's fault, then it must naturally stand the consequences. But even if it was the appellant's fault, the evidence clearly shows that the Department took no action against him at the time of his alleged non-compliance and, with the passage of time, could not do so now.

[50] There can be no doubt, after the foregoing review of the history of the matter, that, from the time of his employment in 1969 up to the time of his retirement, the

appellant properly remained "on the books" as an employee of the Department. As such, he must be entitled to the salary, allowances and benefits of an employee of the Department. In fact, one supposes that the decision to pay him a pension (albeit a reduced one), at all, is an indirect acknowledgement of this. It is to the matter of the pension reduction to which I will now turn.

The third issue: whether the reduction of the appellant's pension was fair

[51] It will be recalled that the PSC took a decision to reduce the appellant's pension by 50%, payable in respect of the 20 years for which he actually performed his duties as a warder.

[52] In doing so, the PSC, in making its recommendation to the Governor-General (with whom the decision ultimately lies), placed reliance on section 5 of the Pensions Act. That section reads as follows:

> "5. --- (1) No officer shall have an absolute right to compensation for past services or to pension, gratuity, or other allowance; nor shall anything in this Act affect the right of the Crown to dismiss any officer at any time and without compensation.
>
> (2) Where it is established to the satisfaction of the Governor-General that an officer has been guilty of negligence, irregularity, or misconduct, the pension, gratuity, or other allowance, may be reduced or altogether withheld."

[53] It may be useful to set out the terms of the letter from the CPO of the PSC dated 28 November 2011, sent to the Commissioner of Corrections. The letter (so far as is relevant), reads:

> "With reference to your memorandum No. PH/46 dated the 9th November, 2011, I am directed to inform you that approval has been given for **Mr Erlin Hall**, Senior Warder 3 (SSG/CS 3), Department of Correctional Services to be retired from the Public Service in accordance with the provisions of Section 6(1)(i) of the Pensions Act, with effect from the **11th May, 2006**.
>
> His pension particulars should be prepared and submitted to the Pensions Officer, Ministry of Finance and Planning, to enable the computation of his retiring benefits.
>
> Mr. Hall's date of birth which is the 11th May, 1946, has been verified by Birth Certificate No. FW 513.
>
> It is noted that the Public Service Commission at its meeting held on the 18th May, 2011, decided that Mr. Hall's pension should be reduced by fifty (50%) percent on the twenty (20) years that he actually worked in the Government Service, as his conduct over the past seventeen (17) years constituted an irregularity in the meaning of Section 5 of the Pensions Act."

[54] In relation to the final paragraph of the letter, which indicates that the PSC was considering the appellant's "conduct over the past seventeen (17) years" with possibly-adverse consequences, it appears to me that, in keeping with modern notions of fairness and the principles of natural justice, the appellant ought to have been allowed to make representations with a view to securing an outcome favourable to himself. In fact, the very use of the word "guilty" in section 5(2) would suggest that some sort of process giving the appellant an opportunity to be heard (even if not akin to a trial or enquiry in formality), would have been embarked on prior to any such finding (of guilty) being arrived at.

[55] Support for this approach and for the view that natural-justice considerations would have required some input from the appellant in the making of the decision negatively affecting his pension rights, is to be found in the following passages from De Smith (op. cit.)

[56] At paragraph 6-008 of De Smith, the reasons for and benefits of procedural fairness are discussed as follows:

> "The interest of individuals in participation in decisions by which they could be affected is obvious: they will wish to influence the outcome of the decision. Fairness requires that, in appropriate circumstances, they should have the opportunity of doing so. Among the reasons for this are: procedural fairness may improve the quality of the decision, serve the purpose of protecting human dignity and assist in achieving a sense that justice has both been done and seen to be done; it may promote objectivity and impartiality, or, as just noted, increase the likelihood of an accurate substantive outcome."

[57] Similarly, at paragraph 7-017, it is stated that:

> "There is a presumption that procedural fairness is required whenever the exercise of a power adversely affects an individual's rights protected by common law or created by statute. These include rights in property, personal liberty, status and immunity from penalties or other fiscal impositions."

[58] It seems to me that, procedural fairness apart, one arguable point that the appellant could have advanced is that, even if the PSC was minded to divide the period of his service between the 20 years and the 17 years, he should be paid the full pension for the 20 years that he was on the job and not 50%. It seems to me as well that it was also open to him to have argued that there was nothing untoward about his conduct

over the last 17 years at all; that he remained employed by the Department with the Department's full knowledge and acquiescence; and so he ought to be paid his full pension for the entire period of his employment. Clearly, therefore, the learned judge erred in finding that the reduction of the appellant's pension was eminently fair. It is apparent that the decision to reduce the appellant's pension, inasmuch as it was taken without his input, is in breach of the rules of procedural fairness and natural justice and cannot be allowed to stand.

Conclusion

[59] Having regard to the foregoing analysis, the judgment of the learned trial judge must be set aside and some of the orders sought by the appellant in his fixed-date claim form granted. There was agreement that he ought to have been retired at age 60 and he was in fact so retired, so that no order need be made in that regard. Apart from that agreement, the court was surprised to learn that, although the PSC took the decision to pay the appellant a reduced pension, no payments whatsoever have been made to him. One would have expected that the reduced pension would have been paid and, should the court make an order for the full amount of the pension to be paid, then the difference could be paid.

[60] As I understand it, the only "middle ground" between employment and dismissal would be, for example, suspension or interdiction. None of these middle-ground positions applied to the appellant during the 17 years; and the attempt summarily to dismiss him was quashed by the Full Court in 1991. He therefore remained employed to

the Department. In circumstances in particular in which the Full Court decision stated that he had not been reinstated, it would have been unreasonable to have expected him to have presented himself at the Department, reporting for work.

[61] Although the appellant could in no way be regarded as faultless in the events that unfolded throughout the history of his employment by the Department and, perhaps, at times, might even have manipulated the system to his advantage, it is clear that dilatory action or inaction and extreme laxity on the part of the Department and/or the PSC either encouraged, facilitated or contributed to it. Acts on the part of the appellant (such as failing to attend a medical board hearing), that, if true, could perhaps have been regarded as instances of repudiatory breach of the employment contract, were met with affirmation of the contract or acquiescence on the part of the Department and the PSC.

[62] There can be no denying that the facts and circumstances of this case are most unusual. This consideration, in the court's view, separates this case and makes it distinguishable from that of **Sykes v Minister of National Security and Justice and Another** (2000) 59 WIR 411, a decision of the Privy Council on appeal from Jamaica that was cited on behalf of the respondents. The head note sufficiently reflects the findings of the Board in that case and the essential facts on which the findings were based. It reads as follows:

> "The withholding of any part of remuneration attributable to a period in which, in breach of contract, no work has been done is in accordance with the common law and with the

> contract of employment between the parties. Where conditions of employment provide for the remuneration of employees participating in industrial action to be withheld in respect of any time during which they engage in industrial action they are merely expressive of the common law. Such deductions are not penalties and accordingly fall outside the scope of disciplinary procedures."

[63] So that, in **Sykes'** case, the employees were required and expected to work; but failed to do so, withholding their services as a form of industrial action. By doing so, they were found to be in breach of contract. But of what breach of contract has the appellant in this case been accused; or what breach has been established against him? None. If the finger of blame should be pointed at anyone in the history of this matter, it would have to be at the Department and the PSC for failing to hold the appellant strictly to the terms of his contract of employment.

[64] In these circumstances, I would allow the appeal and grant the orders that the appellant seeks (so far as they are still relevant).

ORDER

MORRISON P (AG)

1. Appeal allowed.

2. Judgment of the court below set aside.

3. It is hereby declared that the appellant is entitled to his salary, allowances and leave pay from October 1987 to 2006 and his full retirement benefits due from 2006.

4. The 1st respondent shall pay to the appellant all outstanding salaries, allowances and leave pay due to the appellant for the period October 1987 to October 2006.

5. The 1st respondent shall pay or cause to be paid to the appellant his full retirement benefits due from and since October 2006.

6. Costs to the appellant to be taxed, if not sooner agreed.