JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NOS: 52, 53 & 54/2001

COR: THE HON. MR. JUSTICE FORTE, P.
THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE SMITH, J.A. (AG.)

BETWEEN	LORNA ELAINE JACKSON MERLE O'BERON PALMER MARVA ELAINE PHILLIPS	APPELLANTS
AND	THE CHAIRMAN BOARD OF MANAGEMENT HAILE SELASSIE COMPREHENSIVE HIGH SCHOOL BELFIELD ALL AGE SCHOOL	1ST RESPONDENT
AND	THE MINISTRY OF EDUCATION & CULTURE	2ND RESPONDENT
AND	THE ATTORNEY GENERAL	3RD RESPONDENT

AND

SUPREME COURT CIVIL APPEAL NOS: 57, 59, 60, 61, & 63/2001

BETWEEN	HERMINE CAMPBELL CARLTON ROWE MILLICENT WILLIAMS MICHAEL BRADY KARINE MARTIN	APPELLANTS
AND	THE CHAIRMAN BOARD OF MANAGEMENT – EDITH DALTON JAMES HIGH SCHOOL	1ST RESPONDENT
AND	THE MINISTRY OF EDUCATION & CULTURE	2ND RESPONDENT
AND	THE ATTORNEY GENERAL	3RD RESPONDENT

Dr. Lloyd Barnett & Frank Williams for Appellants
Jackson, Palmer & Phillips

Leroy Equiano for Campbell, Rowe, Williams, Brady & Martin

Lackston Robinson (Actg.) Deputy Solicitor General and
Miss A. Lindsay instructed by the Director of State Proceedings
for the respondents

5th, 6th, 7th November & 20th December, 2001

FORTE, P

I agree with the reasoning and conclusion in the judgment of Smith, J.A. (Ag.) as well as the order proposed. I have nothing useful to add to his judgment which is thorough in its dealing with the important issues raised in these appeals.

PANTON, J.A.

Having read in draft the judgment of Smith, J.A. (Ag.) I agree that the appeals should be allowed. The dismissal of the appellants was not in keeping with the law of the land.

SMITH, J.A. (Ag.)

The appellants have appealed against the Orders made by Karl Harrison, J on April 6, 2001 whereby he refused their applications for judicial review.

Background

The appellants are registered teachers and were employed at the material time as teachers in public educational institutions. Mesdames Lorna Jackson and Marva Phillips had served as teachers at the Haile Selassie Comprehensive High School for 32 and 36 years respectively. Ms. Merle Palmer had served at the Belfield All Age School for 30 years. The appellants Martin, Brady, Williams, Rowe and Campbell served at the Edith Dalton James High School and had teaching experience of 6,12,15,21 and 4 years

respectively. They are highly qualified and no complaint has been made in relation to their competence or conduct.

During the months of October and November 2000 the appellants received letters from the Chairmen of their respective School Boards informing them of the termination of their employment as of the end of the vacation leave to which they were eligible. They were also asked not to resume duties on the 1st January 2001. The letters stated that the termination of their employment was as a result of the government commencing the implementation of a "restructuring policy to bring the staffing levels in line with the operating teacher pupil ratios and approved programme offerings".

In respect of appellants Jackson, Palmer and Phillips the letters stated that the period of 3 months commencing October 25, 2000 should be regarded as period of notice. The period December 1 to February 28, 2001 should be regarded as the period of notice for the others.

The letters were sent to each appellant without any prior opportunity being given to present their views on the matter.

The Letters

The letters to the teachers from the Board are vital to these proceedings. There are eight letters. They are in the following format:

> "Dear ...
>
> The Government has commenced implementation of a restructuring policy to bring the staffing levels in line with the operating teacher pupil ratios and approved programme offerings. As a result of this exercise your employment as a teacher will cease at the end of the vacation leave to which you may be eligible.
>
> The period December 1, 2000 to February 28, 2001 should be regarded as the period of notice.
>
> In view of the above you will be granted earned vacation leave immediately following the period of notice at the end of which your employment will cease.

> Notwithstanding the above you are kindly asked not to resume duties on January 1, 2001. Your salary will continue to be paid in the normal manner up to the expiration of the leave.
>
> You are encouraged to explore and accept alternative employment in a school where a suitable vacancy may exist. A list of these schools is available at the Regional Office.
>
> If a suitable placement has not been found at the end of the vacation leave you will be eligible for retirement in accordance with the Pensions (Teachers) Act. Your pension benefits will be determined as follows:
>
> > A gratuity if your service is a minimum of three (3) years but less than ten (10) years.
> >
> > A pension if your service is ten (10) or more years
>
> Should you choose to resign, you could give yourself the option to have previous teaching service linked to future service for pension purposes.
>
> I look forward to hearing from you on your decision at the earliest possible date.
>
> On behalf of the Board I wish to convey our appreciation for your years of service given to the field of education in Jamaica and wish for you success in your future endeavours.
>
> Yours faithfully
>
> Sgd.
> Chairman.

The contents of the letters are basically the same, save that the letters to Marva Phillips and Lorna Jackson begin with the words "As requested by the Ministry of Education and Culture we wish to inform you that ..." There are also variations between the letter to the appellant Jackson and those to the other appellants. The former contains the following paragraphs which are absent in the latter:

> "(i) The records indicate that you have already attained the age of Fifty-five years and in accordance with the Pensions Act you may be retired on the ground of age; and

> (ii) I look forward to hearing from you as early as possible in order to proceed with the processing of your pension benefits."

In (ii) only the words underlined are peculiar to the letter addressed to the appellant Jackson.

By Notices of Motion the appellants sought orders of certiorari and declarations pursuant to section 564A of the Judicature (Civil Procedure Code) (Amendment) (Judicial Review) Rules, 1998. The following Order and Declarations were sought:

> (i) An Order of Certiorari quashing the letter from the Chairman of the Board of Management of each school to the respective appellants, purporting to terminate their services.
> (ii) A Declaration that neither the Board of Management nor the Ministry of Education had the power or jurisdiction to decide that the applicants should go on pre-retirement leave or should be compulsorily retired.
>
> (iii) A Declaration that the period during which each applicant has been prevented from carrying out his/her duties at the school by the action of the first and/or second respondent should not be deducted from, or count against her leave entitlement.

These applications were heard by K. Harrison, J who refused the reliefs and declarations sought and dismissed the Motions.

On appeal Dr. Barnett and Mr. Equiano for the appellants argued some ten (10) grounds.

Grounds of Appeal

> "1. The learned judge erred in law (having regard to the applicable legislation and affidavit evidence) in holding that the relationship between the relevant Board of Management (the 2nd Respondent) and teacher (the Appellant/Applicant) is one of employer/employee, and is strictly one of contract.
>
> 2. The learned judge erred in law in holding that there was a statutory basis for the actions of the 1st and 2nd Respondents.

3. The learned judge erred in law in holding that the 1st and 2nd Respondents were not acting *ultra vires*.

4. The learned judge erred in law in holding that the Appellant/Applicant's letter of termination was not issued pursuant to the Pensions (Teachers) Act, and that any reference in the said letter to the said Act was only by way of advice to her of her eligibility for retirement in the event that she was unable to be relocated. He further erred in law in failing to find that the 1st and /or 2nd Respondent in issuing the Appellant/Applicant's letter of termination were purporting compulsorily to retire her.

5. The learned judge erred in law in holding that, on a proper construction of the letter purporting to terminate the Appellant/Applicant's services, there is nothing in it to suggest that the Board of Management (the 2nd Respondent) was acting pursuant to a directive by the Ministry (the 1st Respondent) to terminate the Appellant/Applicant's services. This is in direct conflict with his finding that the 2nd Respondent 'was required ... to carry out government's restructuring policy in order to bring staffing levels in line with established teacher/pupil ratios.'

6. The learned judge failed to have any or any sufficient regard to the affidavit evidence herein and to the letters dated December 7, 2000 and January 12, 2001 that were tendered into evidence by consent on behalf of the Appellant/Applicant, and further erred in law in holding that the Appellant/Applicant, by way of the 1st Respondent's programme of review, was given an opportunity for a hearing.

7. The learned judge erred in law in holding: (a) that Regulations 56-59 of the Education Regulations, 1980 ought not to be strictly followed in any attempt by the 1st and/or 2nd Respondents to reduce the number of teachers (and in doing so to terminate the Appellant/Applicant's employment) pursuant to the implementation of a pupil/teacher ratio by the said Respondents: and/or in failing to hold that it was not followed in substance or at all; and/or (b) that the 1st and 2nd Respondents had not acted in breach of the rules of natural justice.

8. The learned judge erred in holding that the 1st Respondent's programme of review (which was only implemented after a strong protest by the

> Appellant/Applicant, whose employment the 1st and/or 2nd Respondent had, with finality, purported to terminate) satisfied the natural-justice requirement of a fair hearing.
>
> 9. The learned judge erred in law in failing to hold that, in any event, the 1st Respondent's programme of review had no statutory basis or authorization and could not satisfy the requirements for a fair hearing by a competent tribunal.
>
> 10. The additional ground:
>
> The learned trial judge erred in law and on the facts in failing to hold that the decisions taken by the Respondents to terminate the Appellants' services were irrational and therefore invalid. The Appellants were selected for termination without any proper regard for their experience, qualifications, the schools' population, the assignment of responsibilities within the schools or their changing social circumstances."

Ground 1

The status of teachers was not an issue before the learned trial judge. However, the learned trial judge in dealing with the duties and responsibilities of the Board referred to regulation 89(1)(g) of the Education Regulations 1980 which provide:

> "89(1) The Board of Management is responsible to the Minister for the administration of the institution for which it has been appointed and in discharging its responsibilities the Board shall be responsible for -
> ...
>
> (g) dealing as prescribed in these Regulations with the appointment, termination of appointment, promotion, demotion, suspension from duty and other personal matters in relation to members of staff of the institution;...".

He then went on to consider Regulation 54 which deals with the termination of employment of teachers by notice given either by the teacher or the Board.

It was in this context that the learned trial judge made the impugned statement:

> "The relationship between the Board and teacher is therefore one of employer/employee and is strictly one of contract."

Dr. Barnett submitted that this "fundamental hypothesis" is flawed and affected the trial judge's approach to the entire case.

If the learned trial judge was saying that the relationship between the teacher and the Board was purely in the realm of private law and had nothing to do with public law, that would in my view be incorrect. However, the fact that the learned trial judge went on to consider the reliefs sought and his reference on many occasions to the Education Act and the Education Regulations 1980 clearly demonstrated that he was aware that a statutory scheme governed the employment and the termination of the employment of the appellants.

It seems to me that by the impugned statement the learned judge was stating no more than that there was a contractual relationship of employer/employee between the Board and the teachers. Consequently, it was the duty of the Board to appoint, discipline and to terminate the employment of a teacher within the ambit of the statutory scheme.

There can be no doubt that contract law plays a part in the legal relations between the Board and the teachers. But, this contract whether dealing with the initial employment or termination must conform to the Education Act and the Regulations made thereunder. To the extent that statute governs the relationship it is idle to enquire whether there is a contract which embodies its provisions – see ***Director General of Education and Others v. Suttling*** (1986) C.L.R. 427 at 437-8 (Australia).

The considerations which determine whether their services were lawfully terminated go beyond the mere contract of employment, though no doubt including it. The appellants are entitled to complain if, whether in procedure or substance, essential requirements appropriate to their situation in the teaching service have not been

observed, and in the case of non-observance, to come to the courts for redress – See ***Malloch v. Aberdeen Corporation*** [1971] 1 WLR 1578.

Ground 2, 3 4, & 5

Dr. Barnett submitted that the relevant School Boards did not have the power to issue the letters of termination as neither the Education Act and Regulations nor the Pensions (Teachers) Act conferred such powers on them. It is the contention of counsel for the appellants that the Boards acted ultra vires. Counsel further submitted that there had been no statutory abolition of the posts of the Appellants and the power of compulsory retirement is conferred by statute on the Governor General. These submissions were adopted by Mr. Equiano.

Mr. Robinson for the respondents submitted that by virtue of section 3 of the Education Act the Minister of Education and Culture (the "Minister") had the power to frame an educational policy and to execute that policy on behalf of the Government of Jamaica. He further submitted that section 4 empowers the Minister to take such steps as are necessary to ensure that the educational requirements are satisfied. He also referred to Regulations 42, 70-4, 89(1)(g) and submitted that these form the statutory basis for the action of the Minister and the Boards.

Termination of employment of teachers in Public educational institutions

As provided by Regulation 89 (1)(g) (supra) the Board is responsible for -

> "dealing as prescribed in these Regulations with the appointment, termination of appointment, promotion etc in relation to members of Staff of the institution." (emphasis supplied)

Regulation 43(4) states:

> "(4) Upon the appointment of every teacher in a public educational institution an agreement in writing in the form set out in Schedule C shall be executed ...".

Schedule C comprises the "Teacher Appointment Form." This Agreement must be signed by the Teacher, the Chairman of the School Board and the Permanent Secretary of the Ministry of Education.

Provision 11 of this "Agreement" reads:

> "11. The discipline of the teacher during his/her employment in the said institution and the termination of his/her employment under this Agreement shall be governed by Regulations made under the Education Act and for the time being in force." (Emphasis supplied)

To determine the extent of the power of the Board to terminate the appointment of a teacher one must examine the provisions of the Regulations.

In this regard Regulation 54 is important. It prescribes and governs such a power of the Board:

> "54 –(1) Subject to paragraph (2), the employment of a teacher in a public educational institution may be terminated –
>
> (a) in the case of a teacher who holds a temporary, acting or provisional appointment, by one month's notice given by either the teacher or the Board and, where the employment is terminated by the Board, stating the reasons for the termination, or by a payment to the teacher of a sum equal to one month's salary in lieu of notice by the Board and such payment shall be accompanied by a statement by the Board of the reasons for the termination; and
>
> (b) in any other case by three months' notice given by either the teacher or the Board or by the payment to the teacher of a sum equal to three months' salary in lieu of notice by the Board.
>
> (2) Where the Board of any public educational institution intends to terminate the employment of any teacher in that institution other than a teacher employed on a provisional, temporary or acting basis for less than one year, the termination shall not have effect unless the procedure set out in regulations 56 to 59 are followed.

> (3) The employment of a teacher may be terminated by the Board or the teacher at any time without notice or payment of salary, as the case may be, if there is an agreement in writing between the teacher and the Board to that effect.
>
> (4) A teacher –
>
> (a) who unilaterally terminates his appointment without due notice to, or the consent of, the Board of a public educational institution; or
>
> (b) who fails to take up duty in a public educational institution in violation of a written agreement, and without the consent of the Board,
>
> shall be liable to be charged with professional misconduct."

In this Regulation there are essential procedural requirements to be observed by the Board. Failure to observe them may result in a dismissal being declared void.

Paragraph (2) is of special importance. By this paragraph where the Board intends to terminate the services of teachers employed on a permanent basis the procedure set out in Regulations 56 to 59 must be followed:

Regulation 56 reads:

> "56. Where the Board of a public educational institution receives a complaint in writing that the conduct of a teacher employed by the Board is of such that disciplinary action ought to be taken against the teacher, it shall as soon as possible, refer the matter to its personnel committee for consideration pursuant to Regulation 85." (Emphasis supplied)

It should be noted that Regulation 55 provides that:

> "55. A teacher in a public educational institution may have disciplinary action taken against him for –
>
> (a) improper conduct while in school;
> (b) neglect of duty;
> (c) inefficiency;
> (d) irregular attendance;
> (e) persistent unpunctuality
> (f) lack of discipline;
> (g) such other conduct as may amount to professional

misconduct."

Regulation 57 deals with the conduct of the enquiry pursuant to Regulation 56. Regulation 58 provides for the lapse of the complaint if no decision is reached within nine months.

Regulation 59 speaks to the dismissal of the teacher by the Board on the completion of the inquiry.

It seems clear to me that Regulations 56 to 59 place a restriction as to the grounds on which the Board may dismiss a teacher. In my view by virtue of these Regulations (56-59) the Board acting under Regulation 54(2) cannot dismiss a permanent teacher unless there is something against him to warrant his dismissal. This must be so otherwise the words "the termination shall not have effect unless the procedure set out in Regulations 56 to 59 are followed" would not harmonize with the other regulations. A written complaint accusing the teacher of professional misconduct or inefficiency must be made to the Board before the Board may act against a permanent teacher under Regulation 54.

In the instant cases there is no question of misconduct or inefficiency.

The reason for the termination of the teachers' employment is stated in the first paragraph of each letter. For convenience I will restate it:

> "The Government has commenced implementation of a restructuring policy to bring the staffing levels in line with the operating teacher pupil ratios and approved programme offerings. As a result of this exercise your employment as a teacher will cease at the end of the vacation leave to which you may be eligible."

Thus the stated reason for the termination of the employment of the teachers was to bring the staffing levels in line with the operating teacher pupil ratios. As Ms. Doreen Faulkner, the Deputy Chief Education Officer in the Ministry of Education stated in her

affidavit "the process of rationalising the teacher supply in affected schools involves removing excess teachers from overstaffed schools."

The restructuring policy is no doubt necessary. However, the Board must "deal" with the termination of appointment as prescribed by the Regulations – See Regulation 89(1)(g) (supra). Only Regulations 54 to 59 of the Education Regulations, 1980 prescribe a regime for the termination of a teacher's appointment.

It seems to me that on a true construction of these regulations (54-59) the Board had no power to dismiss the teachers for the reason given. In issuing the letters to the teachers which purported to dismiss the teachers the Boards in my view were acting ultra vires.

I cannot accept the argument of Mr. Robinson that sections 3 and 4 of the Education Act, Regulations 42, 70-4 and 89(1)(g) provide the statutory basis for the action of the Minister and the School Boards.

Section 3(b)(c) of the Act empowers the Minister to frame and effectively execute an educational policy designed to provide a varied and comprehensive educational service in Jamaica.

Section 4(a)(f) empowers the Minister to establish schools and to provide subject to such conditions as may be prescribed, such number of places in public educational institutions as he may from time to time determine. It should be noted that these sections do not empower the Minister to terminate the employment of any teacher. Mr. Robinson argued that since the Minister has the power to establish schools, by extension he has the power to close them and by extension to abolish posts. But even if this is so, and I am not saying it is, there is no evidence to indicate an abolition of any office. On that, too, I express no opinion, save to say that in my view there must be clear legislative authority for the Minister to abolish the post of a permanent teacher –

see ***Perinchief v. Governor of Bermuda*** (1997) 1 LRC 171 and ***Director General of Education v. Suttling*** (supra) at 442-3.

Regulation 42 empowers the Minister to specify in writing the ratio of teachers to students in relation to any category of public educational institution. Regulations 70 to 74 confer power on the Minister to appoint Boards to administer the various public or government owned or government aided educational institutions. They also deal with the constitution, quorum etc of the various Boards.

As stated before, Regulation 89 deals with the duties and responsibilities of a Board. It provides that the Board is responsible to the Minister for the administration of the institution it is appointed to manage. Of course, paragraph 89(1)(g), to which I have already on more than one occasion referred, is of particular importance.

The question is, do these provisions form a statutory basis, which justifies the actions of the Minister and the School Boards as Mr. Robinson contends?

Mr. Robinson referred to the affidavit evidence of Ms. Doreen Faulkner. Her evidence is to the effect that the process of rationalization began with the release of teachers already over the age of retirement. Pre-trained teachers whose period of registration had expired and who had not acquired the necessary qualification were released. Teachers in overstaffed schools were encouraged to voluntarily relocate to schools that were understaffed. These steps, she said, did not achieve the desired results in a number of overstaffed schools. Consequently, the Boards of Management of the overstaffed schools were advised by the Ministry to implement the compulsory retirement programme. Mr. Robinson's submissions in supporting this course of action were couched in this way "If nothing can be done to improve the student population then in the absence of relocation, the teachers' services must be terminated and the only body to do so is the Board of each school and not the Governor General as contended by Dr. Barnett."

I can see nothing in the Regulations which empowers the Board to dismiss a teacher who has refused to relocate. Certainly, it cannot be seriously argued that such refusal amounts to professional misconduct as contemplated by Regulation 55(g).

The proper course might well be to implement the compulsory retirement programme as provided for in the Pensions (Teachers) Act.

Section 7 thereof reads:

> "7-(1) If the Governor-General is satisfied, having regard to the conditions of the teaching service, the usefulness of the teacher thereto and all the other circumstances of the case, that it is desirable in the public interest so to do, he may require any teacher in teaching service in this Island to retire from such teaching service.
>
> (2) ..."

Section 18 of the said Act reads:

> "Where, under the provisions of this Act, any authority or power is vested in the Governor-General such authority or power shall be exercised by him after consultation with the Public Service Commission:
> Provided that the Governor-General may, in his discretion, by notification in the *Gazette*, declare that, from and after such date as may be specified in the notification, he will consult such Committee or other advisory body on educational matters as may be specified in the notification and thereupon any authority or power vested in the Governor-General under the provisions of this Act shall be exercised by him after consultation with the Committee or other advisory body specified as aforesaid instead of after consultation with the Public Service Commission and the Governor-General shall not be obliged to consult the Cabinet in regard to the exercise of such authority or power."

The indubitable effect of the provisions of this Act is that any determination that a teacher should be retired in the public interest which includes the facilitating of improvement and efficiency and economy in the teaching service, can only be taken by the Governor-General in consultation with the Public Service Commission or a Committee or other advisory body on educational matters.

Neither the Minister nor the School Board has any right or power to make that determination. The intention of Parliament it seems, is to make such a decision demonstrably free from political or sectarian consideration. I may add that by virtue of sections 3, 6 and 7(2), the Governor-General after consultation may grant a pension or gratuity to a teacher whose service has been terminated pursuant to section 7(1). The decisions leading to compulsory retirement must conform to the rules of natural justice – per Lord Denning M.R. in ***Regina v. Kent Police Authority Ex Parte Godden*** (1971) 3 W.L.R. 416.

Grounds 7, 8, 9 & 10

In light of my conclusion that the Boards had no jurisdiction to terminate the employment of the appellants it is not necessary to deal with these grounds.

In any event counsel on both sides are at one that in the circumstances of the purported termination of the appellants' services the rules of natural justice must apply and the appellants were entitled, to a hearing before the determination. Where they differ is as to whether the opportunity given to the appellants to avail themselves of a "hearing" subsequent to the decision to dismiss satisfied the requirement of natural justice. The question is: were they given such an opportunity? To address this issue it is necessary to refer again to the affidavit evidence of Ms. Faulkner. Following the issuing of letters to the teachers, meetings were convened between the Jamaica Teachers' Association (JTA) and officials from the Ministry of Education and Culture at which the letters and the programme were discussed (I should add here that these discussions were as a result of letters of protest sent to the Boards by the disgruntled teachers.)

A process of review was implemented after the discussions. The Jamaica Teachers' Association made six recommendations on the Review Process to the Ministry. Two of these were accepted by the Ministry. The third recommendation, which

was accepted, was that "in case of the teachers who received letters the review should be to determine whether the boards acted objectively and without malice." On the 29th of January 2001 the Jamaica Teachers' Association wrote to the Ministry stating that any action contemplated should await the outcome of the review.

On the 9th of February 2001, the Ministry wrote to the Jamaica Teachers' Association with a view to finalizing the review process. The contents of this letter are important:

> "Dr. Adolph Cameron
> Secretary General
> Jamaica Teachers Association
> 97 Church Street
> Kingston, Jamaica
>
> Dear Dr. Cameron:
>
> Re: Teaching Staff Rationalization Programme
>
> I write to confirm the Ministry's position on the points that were discussed with representatives of the Executive of the Jamaica Teachers Association at a meeting on January 15, 2001. The points discussed were first outlined in your letter of January 12, 2001 stating issues concerning the teachers who had received letters of notice.
>
> It was agreed at the meeting on January 15, that:
>
> 1. The Ministry had no objection to these teachers being on school premises, but would prefer that they remain at home to facilitate the smooth operations of the school.
> 2. the Jamaica Teachers' Association would submit recommendations on the specific principles and procedures that should guide the review process. The Ministry has since responded to your letter of January 25, 2001 with these recommendations.
> 3. The Jamaica Teachers Association would not be represented on the review team and that the review team would be internal to the Ministry of Education and Culture.
>
> However, there was no agreement on the issues of teacher representation and notices being held in abeyance.

> The Ministry cannot agree that the notices be held in abeyance or withdrawn until the end of the internal review. However, if any notice is withdrawn as a result of the review the teacher could be granted special leave for any period of leave utilized in relation to the time taken for the internal review of the matter.
>
> On the matter of the teacher being represented at the hearing, I would wish further dialogue on the matter since the review team will be internal to the Ministry.
>
> The Ministry looks forward to continued dialogue on this matter.
>
> Yours sincerely
>
> M.E. Bowie
> Permanent Secretary

An Internal Review Team comprising members of the Ministry was established and the "hearings" commenced on the 2nd March 2001. The affected teachers, representatives from the relevant school management and a member of the Jamaica Teachers' Association representing the teachers attended the hearings. At the end of the hearings the Internal Review Team made recommendations to the Minister as to whether the School Boards' decision should be upheld.

I proceed now to consider whether the teachers were given a hearing. The first observation I wish to make is that the purpose of the review process was not to give the teachers an opportunity to be heard in defence of their right to retain their jobs. There can be no doubt that the Internal Review Team conducted an appellate or review process for the purpose of determining whether the Boards acted objectively and without malice in the termination of the teachers' services. The Review Team had no statutory jurisdiction so to do. As Dr. Barnett submitted the review process had no legitimacy.

Regulation 61 gives an aggrieved teacher a right to appeal to the Appeals Tribunal.

Section 37 of the Education Act makes provision for the establishment of an Appeals Tribunal with the jurisdiction to hear appeals from any disciplinary decision taken by a Board of Management of any public educational institution. The Appeals Tribunal shall consist of a chairman and two other members, one of whom shall be an attorney-at-law appointed by the Minister and the other a representative of the Jamaica Teachers' Association. See Fourth Schedule, the Education Act.

Obviously the Review Team had no statutory authority within this legislative scheme.

In any event only the Board has the power to terminate the teachers' services and therefore the Board itself must give them the opportunity to be heard in compliance with the rules of natural justice. The unauthorized review process established by the Ministry cannot take the place of a "hearing" conducted by the Board which made the decision. Indeed the Board cannot delegate its powers or duties to another body – delegatus non potest delegare: See ***Barnard and Others v. National Dock Labour Board and Another*** (1953) 1 All E.R. 1113.

It cannot therefore be seriously argued that by means of the review process the appellants were afforded a "hearing" by the Board in accordance with the principles of natural justice.

By virtue of the statutory provisions already referred to, the appellants are holders of office ad vitam aut culpam under the School Boards. They can therefore only be dismissed by "the Boards" if found guilty of professional misconduct as prescribed by Regulations 55 to 59. Further their purported dismissals by the Boards without a hearing are null and void.

Conclusion

1. For the reasons that I have endeavoured to give I hold that the Boards acted ultra vires in sending the letters in question to the

appellants purporting to terminate their services. Accordingly their dismissals are null and void.

2. Neither the Boards of Management nor the Ministry has the power or jurisdiction to order that the appellants be compulsorily retired.

3. I cannot accept the submissions of counsel for the respondents that because the appellants through the Jamaica Teachers' Association agreed to and participated in the setting up of the review process they are not entitled to the discretionary remedy.

As I have said before the Internal Review Team was without legal authority. It had no power to reverse the decisions of the Boards. The Boards were not obliged to accept its decision.

4. The appellant Ms. Lorna Jackson, was reinstated on the 21st August 2001. The period of leave from the notice period to the date of reinstatement was regarded as special leave with full pay. Counsel for the respondents contends that in the circumstances there is now no basis for granting the declarations of rights. The principle which I think is applicable was stated in ***Malloch v. Aberdeen Corporation*** (1971) 1 W.L.R. 1578 at 1595B by Lord Wilberforce as:

> "A breach of procedure whether called a failure of natural justice or an essential administrative fault cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."

I accept that the declarations of rights would not now be necessary. However, the appellant's (Jackson's) reinstatement was effected some four (4) months after the judgment of the Court

below was delivered. Costs were awarded against her by the trial judge. Surely she must be entitled to have the decision made against her set aside and to obtain the costs in the court below.

4. Accordingly –

   (i) I would allow the appeals of all the appellants and set aside the orders of the court below with costs in this Court and the Court below to the appellants to be taxed if not agreed.

   (ii) Certiorari should go to quash the decision of the School Boards dismissing the appellants Palmer, Phillips, Campbell, Rowe, William, Brady and Martin.

   (iii) I would grant the declarations sought by the appellants named in (ii) above.