



THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE Submitted Date:26/03/2024 19:07

(CIVIL)

Filed Date:27/03/2024 08:30

BRITISH VIRGIN ISLANDS

Fees Paid:139.79

Claim No: BVIHCV/2024/

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW PURSUANT TO PART 56 OF THE Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023

AND

IN THE MATTER OF THE POLICE ACT, 2013

AND

IN THE MATTER OF DISCIPLINARY OFFENCES PROCEDURES FORCE STANDING ORDER M13

AND

IN THE MATTER OF THE DECISION OF THE COMMISSIONER OF POLICE TO INITIATE AND PERSIST WITH DISCIPLINARY INVESTIGATIONS AGAINST THE CLAIMANT.

AND

IN THE MATTER OF THE DECISION OF THE COMMISSIONER OF POLICE TO CONTINUE THE INTERDICTION OF THE CLAIMANT

BETWEEN:

SEAN McCALL

CLAIMANT

AND

COMMISSIONER OF POLICE

1st DEFENDANT

ROYAL VIRGIN ISLANDS POLICE FORCE

2nd DEFENDANT

FIXED DATE CLAIM

- I. The Claimant, Sean McCall, of Hodge’s Creek, Tortola claims against the 1st Defendant, The Commissioner of Police of the Royal Virgin Islands Police Force

and the 2nd Defendant the Royal Virgin Islands Police Force (RVIPF), both of 33 Admin Drive, Wickhams Cay 1, Road Town, Tortola, the following:

- 1) The Claimant was at all material times a Sergeant of the Royal Virgin Islands Police Force (RVIPF).
- 2) The Claimant is an executive member of the Police Welfare Association (hereafter “PWA”), a body formed under s. 81 of the Police Act, holding the positions of Chairman between February 20022 to the end of March 2023 and thereafter Secretary from March 2023.
- 3) From May 2023 the Claimant is also serving as the President of the Caribbean Federation of Police Welfare Association. On the 19 March 2024 the Claimant resigned this position as the continued interdiction made his chairmanship untenable.
- 4) In his office as an executive member of the PWA the Claimant was required to confront the 1st Defendant with, and make reports on complaints, and allegations that the 1st Defendant’s decisions and actions may be improper and suspected to be unlawful that affected the general welfare and efficiency of the RVIPF. In January of 2023, in response to the Claimant raising with the 1st Defendant such issues of complaint, the 1st Defendant threatened the Claimant that he would make a ‘final decision’ regarding the Claimant.
- 5) On or about the 3 March 2023 the 1st Defendant caused or directed that the Claimant be arrested on suspicion of the criminal offence of Breach of Trust. The Claimant was thereafter questioned, released, and placed on interdiction. The Defendants purport that the Claimant has remained on continuous interdiction ever since. The Claimant has been barred from the RVIPF intranet. This interdiction included an order that the Claimant not visit any RVIPF facility without the 1st Defendant’s instruction.
- 6) Since March of 2023 the Defendant has prevented or impeded the Claimant’s participation in, and performance of duties with, the Police

Welfare Association and the Caribbean Federation of Police Welfare Association.

- 7) In September 2023 the Claimant was advised by a servant and/or agent of the Defendants that the Director of Public Prosecutions had ruled in May of 2023 that no criminal charges must be laid against the Claimant regarding the investigation of Breach of Trust.
- 8) On October 11, 2023, the 1st Defendant caused or directed that Inspector Antoine serve the Claimant with a notice of investigation into Royal Virgin Island Police Force disciplinary charges related to the allegations put before the DPP. The Claimant's interdiction continued.
- 9) Insp. Antoine had been instructed on March 3rd, 2023, to conduct a disciplinary investigation but did not inform the Claimant until October 11, 2023.
- 10) The notice required that the Claimant answer the allegations and represents that should the Claimant fail to answer that disciplinary action may be taken against him without considering any statement that he would like to make. The Claimant did not comply with this request.
- 11) The Defendants, despite the Claimant's requests, did not furnish the Claimant with any sufficient details of the allegations against him.
- 12) On January 22, 2024, the Defendants caused a notice of further investigations to be served on the Claimant.
- 13) The notices of investigation:
 - a) fail to disclose sufficient details of offending conduct;
 - b) omit any reference to provisions of the law and regulations breached;
 - c) concern matters not germane to the RVIPF;
 - d) reveal in their expression no breach of any law or regulation; and

- e) purport to include investigations of conduct that would be consistent with the Claimant's duties as an executive member of the PWA.

14) On January 30, 2024, the Claimant wrote to the 1st Defendant requesting that the notices of investigation be rescinded.

15) During this period of interdiction, the actions of the Defendants and their servants and agents have prevented the Claimant from enjoying opportunities for promotion.

16) On February 15, 2024, the Defendants caused or directed that the Claimant be charged with five disciplinary charges.

17) The said disciplinary charges concern allegations of occurrences between May 2022 and December 2023.

18) The *Disciplinary Offences Procedures Force Standing Orders M13*, made under the *Police Act* provides that, when it is the intention to lay a disciplinary charge against an officer:

- a) the offender must be immediately informed, where the senior officer witnessed the incident, or as soon as possible after the senior officer has been advised, of the intention to prefer the charges;
- b) that the charges must be preferred as soon as possible;
- c) that within 24 hours of the preferment the offender must be served;
- d) the procedures of the Magistrates Court apply.

II. The Claimant therefore seeks the following Orders and Declarations:

1) An Order of Certiorari or quashing order, quashing the Defendant's decision made on or about the February 15, 2024, to prefer disciplinary charges against the Claimant.

- 2) An Order of Certiorari or quashing order quashing the 1st Defendant's decision to prevent the Claimant from attending RVIPF facilities without the 1st Defendant's permission.
- 3) An Order of Mandamus or mandatory order that the Claimant be returned to full duties.
- 4) An Order of Prohibition or order prohibiting the Defendants from conducting disciplinary proceedings or taking disciplinary action against the Claimant without hearing from the Claimant in such disciplinary proceedings as provided for in The Police Act, Regulations, and Standing Orders.
- 5) A Declaration that the Defendants had no authority to:
 - a) require the Claimant answer to the allegations during an investigation; and
 - b) should the Claimant fail to answer the allegations during an investigation, proceed to take disciplinary action without considering any statement that the Claimant would like to make in disciplinary proceedings.
- 6) A Declaration that the 1st Defendant acted irrationally or ultra vires in inhibiting the Claimant's performance of his duties as an executive member of the PWA by restricting his access to RVIPF facilities and seeking to edit or vet PWA correspondence.
- 7) A Declaration that the actions of the Defendants in failing to give the Claimant timely notice of promotion events have improperly denied the Claimant's opportunities for promotion.
- 8) A Declaration that the Defendants' decision to commence investigations and to interdict the Claimant was made pursuant to an improper purpose, in bad faith, and in abuse of office and are null and void.

- 9) A Declaration that the laying of the disciplinary charges was unlawful for delay.
- 10) A Declaration that the interdiction of the Claimant by the Defendants on March 3, 2023 was:
 - a. void and to no effect; and
 - b. terminated and of no effect beyond May of 2023.
- 11) Order of Prohibition, prohibiting the Defendants from pursuing, disciplinary proceedings against the Claimant.
- 12) Damages
- 13) Costs
- 14) Any other order, relief and/or direction this Honourable Court may determine to be appropriate and just.

III. The grounds on which the Claimant is seeking these orders and declarations are as follows:

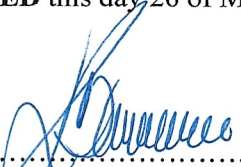
- 1) The First Defendant by virtue of s. 6 of the Police Act has command, superintendence, direction and control of the RVIPF.
- 2) The Claimant by virtue of s. 81 of the Police Act was required to represent and advocate the interest of members of the RVIPF of and below the rank of Chief Inspector including to the 1st Defendant and to HE the Governor.
- 3) The Claimant, as the holder of the office as constable, had a common law and statutory duty to report allegations of suspected criminal offences to, inter alia, justices of the peace which by virtue of s. 7(2) of the Magistrates Code includes Members of the House of Assembly.
- 4) There is no prohibition for members of the RVIPF to have discussions regarding the welfare and efficiency of the RVIPF.

- 5) The investigations, interdiction and charges were unlawful, irrational, an abuse of power and in bad faith.
- 6) The decision to lay of disciplinary charges was unlawful for delay.
- 7) The interdiction and charging of the Claimant were unlawful, unjustifiable, irrational, an abuse of power, and in pursuit of an improper motive.
- 8) The requirement that the Claimant answer to the allegations and the representation that should the Claimant fail to answer, that disciplinary action may be taken against him without considering any statement that he would like to make is unlawful, an abuse of power, ultra vires, and in breach of natural justice.
- 9) The Defendants' decisions to persist with the interdiction and investigations were unfair for delay, ultra vires, irrational, unlawful an abuse of power and in bad faith.
- 10) The order that the Claimant not visit any police facility without the Defendants' instruction is irrational, an abuse of power and in bad faith.
- 11) The Defendants' order of interdiction was made under s. 35 of the Police Act though s. 35 grants no such authority.
- 12) The Defendant's order of interdiction was conditioned on a criminal investigation which was terminated after the DPP's ruling in May of 2023.
- 13) The Claimant had a legitimate expectation that the Defendants would:
 - a) be made aware of opportunities for promotion in a manner that facilitates his participation;
 - b) permitted to conduct his duties as an executive member of the PWA without victimization; and
 - c) comply with the:
 - i. *Disciplinary Offences Procedures FSO M13* and inform the Claimant within a reasonable time of the commencement of investigation and that investigation into charges not be pursued after 6 months had elapsed;
 - ii. the *Code of Ethics and Standards of Professional Behaviour*; and
 - iii. the *Professional Standards (Complaints and Discipline) Policy*.

The Claimant estimates the length of hearing to be 1 1/2 hr hours.

The Claimant relies on the evidence.

DATED this day 26 of March, 2024


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Karlene Thomas-Lucien
Chase Law & Co.
Legal Practitioners for the Claimants

CERTIFICATE OF TRUTH

I, **SEAN MCCALL**, of Huntums Ghut, Tortola, British Virgin Islands, herein certify that the facts contained in this Originating Motion are true to the best of my information, knowledge and belief.


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SEAN MCCALL

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