



[2020] JMSC Civ 225

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE CIVIL DIVISION  
CLAIM NO. SU2019CV02213**

<b>BETWEEN</b>	<b>LLOYD JOHNSON</b>	<b>CLAIMANT</b>
	<b>(As a representative on behalf of himself and 13 members of the Jamaica Fire Brigade)</b>	
<b>AND</b>	<b>ATTORNEY GENERAL OF JAMAICA</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>COMMISSIONER OF THE JAMAICA FIRE BRIGADE</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN CHAMBERS**

Mr. Gavin Goffe and Mr. Jahmar Clarke instructed by Myers, Fletcher and Gordon for the Claimants.

Ms. Faith Hall instructed by the Director of State Proceedings for the Defendants.

Heard: October 8 and 26, and November 12, 2020.

**Administrative orders – Whether a Commissioner of the Jamaica Fire Brigade can promote officers without the approval of the Fire Brigade Board – What is the effect of General Orders – Whether the claimants reasonably held an expectation that they had been promoted by the publication of General Orders, when there was no evidence that the requirements for promotion had been complied with – Whether the failure of the Fire Brigade Board to promote the claimants in the circumstances amounted to an abuse of power, or whether there was an overriding public interest in not honouring the communication made in General Orders – Part 56 of the Civil Procedure Rules, 2002, as amended.**

## **N. HART-HINES, J (Ag.)**

[1] On November 12, 2020 I delivered an oral judgment in this matter and promised to put my reasons in writing. I now do so.

### **BACKGROUND**

[2] The Jamaica Fire Brigade (“the Brigade”) is a statutory body. The **Fire Brigade Act** (“the Act”) provides for the establishment of the Fire Brigade Board (“the Board”) and the Brigade, which consists of the Commissioner of the Brigade and such number of firemen and officers as the Board may determine. The Board has responsibility for the command, discipline and administration of the Brigade<sup>1</sup>, while the Commissioner has the sole operational command and superintendence of the Brigade, subject to the general order and direction of the Board<sup>2</sup>. Section 8A(1)(a) of the Act provides that the Board may appoint and employ the Commissioner and other members of the Brigade on such terms and conditions as it may determine. The **Fire Brigade Regulations 1993** (“the Regulations”) generally specifies the role of the Board and the Commissioner in respect of the appointment and promotion of firemen and officers. As part of its function in the administration of the Brigade, the Board developed and introduced a document titled “Terms and Conditions Manual” in 1994, which is allegedly akin to the Jamaica Staff Order for Public Service, and sets out policy guidelines and employment practices and procedures.

[3] This case concerns the powers of the Commissioner and the Board to promote and appoint firemen and officers of the Brigade, and the mechanism by which such promotions and appointments are lawfully effected.

### **THE CLAIM**

[4] The claim arises from the decision of the previous Commissioner, Mr. Raymond Spencer, to promote 14 firefighters, allegedly without the approval of the Board. That decision was published in General Order No. 03/2018, dated

---

<sup>1</sup> Section 5A(1) and section 8 of the **Fire Brigade Act**.

<sup>2</sup> Section 7(1) of the Act.

April 6, 2018, which was issued by Retired Commissioner Spencer and which alleged that the promotions and appointments indicated, were “*approved by the Jamaica Fire Brigade Board of Directors*”. Four days later, General Order No. 04/2018 was issued by the Chairman of the Board, Mr. Russell Hadeed, and that document stated that “*with immediate effect, General Order Serial No. 03/2018, dated 06 April, 2018 has been withdrawn pending further review*”. The Board failed to promote the 14 firefighters. It is alleged that, by issuing General Order No. 04/2018, the Board Chairman withdrew the promotions in respect of the 14 claimants and effectively demoted them, thereby causing them public embarrassment and humiliation.

[5] Claimant Lloyd Johnson is a member of the Brigade. He was appointed a representative claimant on June 10, 2019, pursuant to court order made under rule 21.1 of the Civil Procedure Rules, 2002, as amended (“the CPR”). Mr. Johnson represents himself and the 13 other members of the Brigade of varying ranks, on the basis that he has the same interest in the proceedings, as the group he represents. Their interest is to have promotions and appointments, which were allegedly granted to them and subsequently withdrawn, reinstated. The claim is brought against the 1<sup>st</sup> defendant, pursuant to the **Crown Proceedings Act**, and against the 2<sup>nd</sup> defendant, who has operational command of the Brigade.

[6] The Fixed Date Claim Form was filed on July 8, 2019. The claimants allege that they had a legitimate expectation that their promotions would be honoured by the Board and the current Commissioner of the Brigade, and that the claimants acted in reliance on the communication in General Order No. 3/2018. The claimants seek declarations that General Order No. 03/2018 is valid, and, that General Order No. 04/2018 is invalid on the basis that the Board Chairman did not have authority to revoke General Order No. 3/2018. As a corollary, an order is sought that they be awarded damages for breach of contract representing retroactive salaries and benefits from the date of their promotions on April 6, 2018 to the date of judgment.

## **THE DEFENCE**

**[7]** In response to the claim, two affidavits were filed, one sworn by Board Chairman, Mr. Russell Hadeed, and one sworn by the 2<sup>nd</sup> defendant, the Commissioner of the Brigade, Mr. Stewart Beckford. It is the defendants' position that there are procedures to be followed before officers of the Brigade may be appointed and promoted, and that it is not within the purview of a Commissioner of the Brigade to simply issue a General Order stating that persons had been promoted, when the persons had not complied with the requisite procedures. Additionally, the defendants allege that a Commissioner of the Brigade may only make recommendations for persons to be appointed and promoted, and such persons may only be appointed and promoted following the Board's approval of the Commissioner's recommendations.

## **THE ISSUES**

**[8]** The primary issues for the determination of this court are:

1. What is the purpose and effect of a General Order?
2. Was General Order No. 03/2018 valid insofar as it related to the claimants?
3. Does a Commissioner have actual or ostensible authority to promote officers without the approval of the Board?
4. Having regard to the circumstances, did the claimants reasonably hold an expectation that their promotions were valid?
5. Was there is detrimental reliance by the claimants?
6. Was General Order No. 04/2018 void and of no legal effect?
7. Does the failure of the Fire Brigade Board to promote the claimants in the circumstances amount to an abuse of power, or was there was an overriding public interest in not honouring the promise or communication made in General Order No. 03/2018?

## **THE EVIDENCE**

**[9]** The affidavit of Lloyd Johnson refers in general terms to the circumstances of the 14 firefighters, namely, that pursuant to General Order No. 03/2018, they were notified on April 6, 2018 that they were given promotions and appointments. Mr. Johnson stated that shortly after General Order No. 03/2018 was issued, he and the 13 other claimants made arrangements to purchase

new regalia to reflect their promoted status. He further stated that thereafter, some of the claimants began to wear promoted ranks on their uniforms.

- [10]** Mr. Johnson stated that General Order No. 04/2018 was issued by the Chairman of the Board and this withdrew the promotions pending further review. No further communication was received regarding whether or not that review was conducted and what was the outcome of that review. Consequently, the claimants instructed their Attorneys-at-Law to write to the Chairman and the Commissioner of the Brigade, and to request that their promotions be confirmed with full retroactive pay from April 6, 2018. Following correspondence between the claimants' Attorneys-at-Law and the Commissioner, a meeting was convened on April 17, 2019. Present at that meeting were the Commissioner and Deputy Commissioner, Legal Officers at the Ministry of Local Government and Community Development, and the claimants' Attorneys-at-Law. In essence, the claimants were notified that the promotions and appointments indicated in General Order No. 03/2018 were not in keeping with the Jamaica Fire Brigade's Terms and Conditions, and that there was no record of a recommendation ever being made to the Board for the claimants to be promoted.
- [11]** The claimants commenced these proceedings as a result of the belief that their promotions and appointments were made effective when General Order No. 03/2018 was issued, and that the Board Chairman did not have the power to revoke promotions and appointments.
- [12]** However, Mr. Johnson's affidavit contains no details regarding whether or not any of the claimants applied for promotions, sat exams, completed assessments or attended interviews. Also, the affidavit does not name the other officers and does not identify their substantive ranks, any ranks they were acting in, or the ranks to which they were allegedly promoted and appointed. Instead, the claimants allege that General Order No. 03/2018 encouraged a legitimate expectation of a promotion, and that they relied on what they perceived as a promise of a promotion, to their detriment. They also allege that

it would be unfair to deprive them of this expectation of a promotion, and that the withdrawal of the promotion amounts to an abuse of power.

- [13] In his affidavit filed on February 14, 2020, Mr. Russell Hadeed stated that he was the Chairman of the Board in April 2018 and that prior to General Order No. 03/2018 being issued, the Board received Board Submissions for the period August 2017 and March 2018 for seven parish divisions. These Board Submissions were the Commissioner's recommendations to the Board regarding promotions of individual members. Mr. Hadeed stated that pursuant to the Act and the Regulations, firemen and officers of the Brigade may only be appointed and promoted following the Board's approval of the Commissioner's recommendations. Mr. Hadeed further stated that he reviewed all the Board Submissions received over the period in question, and Retired Commissioner Spencer did not submit recommendations for promotion for Mr. Johnson and the other 13 members who Mr. Johnson represents. Consequently, the Board did not approve any recommendation for appointment for these persons. Mr. Hadeed also stated that no submissions were received from the Portland Division, where Mr. Johnson is assigned.
- [14] Further, Mr. Hadeed stated that Retired Commissioner Spencer was directed to withdraw the General Order which had not been authorised, but he failed to do so. Consequently, the Board issued General Order 04/2018 withdrawing General Order 03/2018, as it included the names of members that were not a part of any Board Submissions, and *"the issuance of such a General Orders was in direct contravention of the provisions of the Act and Regulations"*.
- [15] Mr. Hadeed stated that by issuing the General Order No. 04/2018, the Board did not cancel the promotions of the 14 firefighters or demote them, as these persons had never been promoted to begin with. The Board having not approved their promotions, they could not have been demoted.
- [16] Commissioner of the Brigade, Mr. Stewart Beckford, averred that from his review of the relevant files, the claimants did not apply for the posts to which

they had been promoted, as alleged by General Order No. 03/2018. Further, he said that the claimants were not successful in any promotional exams to move to a higher rank. During cross-examination and in his answers to questions asked by the court, he explained that he checked the files for five of the claimants, including Mr. Johnson, as well as the files of the Human Resources Subcommittee ("HR Subcommittee") and Board Submissions prepared by the former Commissioner. From his evidence, it is clear that Commissioner Beckford did not know the names of the other nine claimants. This might be due to the fact that all the claimants were not identified in the Fixed Date Claim Form or in the affidavit in support. Notwithstanding, his evidence is clear that the established procedures were not followed in respect of five of the claimants, since Retired Commissioner Spencer did not send Board Submissions to the Board recommending their promotion and appointments before inserting their names in General Order No. 03/2018.

**[17]** Commissioner Beckford explained that when members are considered for promotion, the members must first have met certain established criteria before a Commissioner can recommend them to the Board for promotion. He averred that for positions above the rank of District Officer, there must first be a clear vacancy, which must be advertised by way of a General Order, requesting qualified persons to apply. Once those applications were received, a written assessment is done and those who successfully complete the assessment are invited to attend an interview. Thereafter, the interview panel then makes a recommendation to the Commissioner regarding the successful candidate.

**[18]** The Commissioner explained that the procedure for promotion for sub-officers is different from that which is observed for persons to be promoted to the officer rank. He further averred that for a member of staff to be promoted into a sub-officer rank, that is, Sergeant, Corporal or Lance Corporal, they would have to pass a written examination along with a practical examination. If they were successful, their Divisional Commander would then make a recommendation to management for the persons to be promoted. This recommendation would

then form the basis of a Board Submission, made by the Commissioner, recommending that the relevant person to be promoted.

**[19]** In response to questions from the court, the Commissioner stated that the HR Subcommittee would review the Board Submission coming from the Commissioner and then forward its decision to the Board. Although the Commissioner has operational command of the Brigade, and is an ex officio member of the Board, he is not a member of the HR Subcommittee. He therefore would not be privy to what that Subcommittee provided to the Board, unless he checked their files. Following the receipt of the recommendations, the Board would review these and, if satisfied, approve the promotions on such terms and conditions as they deem necessary. The Board would then communicate their decision to the Commissioner who would inform the members of the Board's decisions through the issuance of General Orders.

**[20]** The Commissioner further stated that based on his review of records in this case, there was a "*blatant disregard for the procedures stipulated by the Regulations*" and any attempt to promote persons without the Board's approval could not be honoured as "*members would no longer have confidence in the procedures*" governing how persons are promoted. The Commissioner therefore seemed to agree with the issuing of General Order No. 04/2018, in order to restore confidence in the integrity of the promotions and appointments process within the Brigade.

## **SUBMISSIONS**

### **Submissions on behalf of the claimants**

**[21]** Counsel Mr. Goffe submitted that General Orders were not merely a tool for communicating with the Brigade, but instead, have the effect of conferring promotions of the members of the Brigade. Mr. Goffe further submitted that Retired Commissioner Spencer had actual authority to issue General Orders and any defect in the process of appointments and promotions did not invalidate General Order No. 03/2018.



- [22] Mr. Goffe submitted that if Retired Commissioner Spencer did not have actual authority to issue General Orders conferring promotions, he had ostensible authority to do so. Counsel relied on dictum in *Lexton Ltd v RBTT Bank et al* [2014] JMSC Civ 45 where Simmons J (as she then was) explained at paragraph 109 that where a person by deeds, words or conduct represents, or permits it to be represented, that another person has authority to act on his behalf, he is bound by the acts of that person. Counsel opined that, historically, the Board permitted the Commissioner to represent that he had authority to act on their behalf. Counsel submitted that as the claimants understood that promotions and issuing General Orders were within the ambit of the Commissioner, they did not have to inquire whether General Order No 03/2018 was authorised by the Board. It was further submitted that if Commissioner's recommendations had not been submitted to the Board, the Board ought to have requested the recommendations in order to ratify the promotions.
- [23] Citing *Freeman & Lockyer v Buckhurst Park Properties* [1964] 2 WLR 618, counsel submitted that the Board was estopped from revoking General Order No. 03/2018 after the claimants relied on it. Further, Mr. Goffe submitted that the Board Chairman, as a civilian, could not issue a General Order. Counsel opined that General Order No. 04/2018 was invalid as it did not purport to be authorised or issued by the Board.
- [24] Counsel Mr. Goffe further submitted that before the promotions and appointments could be revoked, the claimants ought to have been given an opportunity to be heard. Further, it was submitted that General Order No. 04/2018 had the effect of demoting the claimants.
- [25] Mr. Goffe further submitted that there was no reference to a need for advertisements in **Regulation 6(1)** or **6(2)**. Likewise, the **Regulations** did not refer to the need for recommendations for promotions to be in writing. Counsel submitted that the absence of a record indicating the recommendation for promotion did not mean that Retired Commissioner Spencer did not recommend the claimants for promotion, and there was no evidence of a

breach of the **Regulations** by him. Finally, Mr. Goffe submitted that the Commissioner and the Board are bound by the **Act** and **Regulations**. While the “Terms and Conditions Manual” might set out practices, these are not prescribed by law, and it is the **Act** and **Regulations** which must be followed.

### **Submissions on behalf of the defendants**

[26] Counsel Ms. Hall opined that General Orders do not promote, appoint or confirm appointments, but instead, are a means of reporting the decisions of the Board. Ms. Hall submitted that appointments, promotions and confirmation of appointments are only effected on the approval of the Board after it has considered the Commissioner's recommendations, which are presented to the Board by way of a formal submission. Counsel submitted that, as the claimants' names did not appear on the Board Submissions which were considered and approved by the Board, the Commissioner did not have the authority to include the claimants' names in General Orders No. 03/2018. Such an act was therefore ultra vires and the claimants cannot be promoted and appointed merely by virtue of the inclusion of their names in the General Orders No. 03/2018.

[27] Ms. Hall submitted that Retired Commissioner Spencer's acts, being in excess of his actual authority, cannot be deemed to be acts of the Board. Counsel cited dicta of Diplock LJ in *Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd.* [1964] 2 QB 480 (at page 503), and further submitted that the claimants, as officers of the Brigade, and not outsiders, would be aware of the recruitment and selection processes employed by the Brigade, and would not have been relied upon the representation. Further, counsel relied on the House of Lords decision in *Morris v Kanssen* [1946] AC 459. There it was held that where there was no appointment of directors at all, the directors' acts could not be validated, and where a person dealing with the director was put on inquiry and made inquiry, such a person was not entitled to assume that internal company rules had been complied with<sup>3</sup>.

---

<sup>3</sup> See rule in *Turquand's case (Royal British Bank v. Turquand)* (1856) 6 E&B 327.

[28] Ms. Hall further submitted that the claimants ought to know that the Brigade recruitment and selection process involves officers applying for posts and successfully completing tests and/or interviews prior to a recommendation being made to the Board and the Board granting approval for any appointment or promotion. Further, it is the evidence of the defendants' witnesses that the claimants did not apply for the posts which General Order No. 03/2018 alleged they were promoted to, and that they were not successful in the qualifying exams to move to a higher rank. Ms. Hall submitted that there is nothing on the claimants' evidence that indicated they applied for a position or were successful in the interviews or examinations. In the circumstances, they could not rely on General Order No. 03/2018 as conferring promotions for which they did not apply. Counsel further submitted that the claimants had not indicated that there was any previous policy or conduct by the Board sanctioning Retired Commissioner Spencer's conduct where an appointment was made without the usual processes being followed. The claimants therefore could not have a legitimate expectation that they would be promoted.

[29] As regards the power of the Board Chairman to issue General Orders, Ms. Hall submitted that there is nothing in the Act and/or Regulations which precludes the Chairman from doing so. Further, it is submitted that the withdrawing of General Orders No. 03/2018 was not a revocation of the claimants' promotions since the claimants were never recommended for promotion and were never approved by the Board.

## THE LAW AND ANALYSIS

[30] I have given consideration to the authorities referred to me by both counsel and to the Act and the Regulations. Of particular note are the following provisions:

Section 8 (1) and (2) of the Act provides:

***"8(1) The Board shall be responsible for the efficient conduct and administration of the Brigade and for the proper expenditure of all public moneys appropriated for the Brigade.***

***(2) It shall be the duty of the Board to carry out all necessary measures to ensure the proper functioning of the Brigade."*** (My emphasis)

Section 8A(1)(a) and (b) of the Act provides:

**“8A (1) The Board may appoint and employ at such remuneration and on such terms and conditions as it may determine-**  
**(a) Commissioner, such other members of the Brigade; and**  
**(b) Such other employees and agents, as may be necessary for the purpose of the Brigade: ...’** (My emphasis)

Regulation 4 of the Regulations provides:

**“4. The Commissioner shall make recommendations to the Board with respect to**  
**(a) appointments;**  
**(b) promotions;**  
**(c) confirmation of individual members in their appointments”** (My emphasis)

Regulation 6 of the Regulations provides:

**“6(1) From time to time as vacancies occur the Commissioner shall consider for recommendation to the Board the eligibility of each member for promotion.**

**(2) In the performance of his functions under paragraph (1) the Commissioner shall, as respects each member, take into account his experience, merit, ability, good conduct and also-**

- (a) his general fitness**
- (b) his basic educational qualifications and any special qualifications;**
- (c) any special course of training that he may have undergone;**
- (d) any letters of commendation in respect of any special work done by the member;**
- (e) comments made in official reports by any officer under whom the member concerned worked during his service;**
- (f) the duties of the post for which he is a candidate;**
- (g) any employment in the public service;**
- (h) any special reports which the Commissioner may require.**

**(3) Notwithstanding anything in paragraphs (1) and (2) the Commissioner shall, in his recommendations to the Board give preference to members who have manifested superior intelligence and efficiency in the performance of their functions”** (My emphasis)

Regulation 8 provides:

**“8(1) The Board after consultation with the Commissioner shall determine the form and manner in which applications are to be made for appointment to the Brigade and for the conduct of any examination for recruitment thereto, and shall determine whether any candidate has the necessary qualifications for appointment to the Brigade.**

**(2) The Commissioner may interview candidates for appointment and shall consider in respect of each candidate(a) his educational qualifications;**

- (a) his general fitness;**
- (b) any previous employment in the Brigade or otherwise; and**
- (c) any reports which, the Commissioner may require from persons appearing to him to have knowledge of the candidate.**

**(3) Without prejudice to the foregoing provisions of this regulation, the Board may appoint as firemen individuals who possess the qualifications from time to time prescribed for admission to the Brigade, and may fill all vacancies occurring in the firemen ranks.**

**(4) In making any appointment or in filling any vacancies pursuant to paragraph (3) the Board shall (acting in accordance with paragraph (2)) make selections in**

**accordance with any conditions for the time being in force in relation to candidates for the particular post.”** (My emphasis)

Regulation 9 provides:

**“9(1) The Board may from time to time appoint one or more Selection Committees to assist in the selection of candidates for appointment to the Brigade and the composition of any such Selection Committee and the form in which its reports are to be submitted shall be determined by the Board, so, however, that the Commissioner or his nominee shall be an ex officio member of each such Committee.**

**(2) On the consideration of any report of a Selection Committee, the Board may in its discretion summon for interview any of the candidates recommended by such Selection Committee.”** (My emphasis)

Regulation 17 provides:

**“17. In order to qualify for promotion to any rank of subordinate officer, a member shall pass such written and oral examination as the Board after consultation with the Commissioner shall require, and shall be certified by the Commissioner to be of good character and efficient.”** (My emphasis)

[31] Having considered the Act and the Regulations, I am satisfied that the Act and Regulations do not stipulate that there is a need for vacancies to be advertised, except where there is no suitable candidate already in the Brigade available for the filling of any vacancy<sup>4</sup>. However, **Regulations 4, 6, 8, 9 and 17** clearly indicate that promotions are only approved by the Board following recommendations made by the Commissioner (with the assistance of selection committees), and provided that the candidates have the necessary qualifications, submitted an application, and completed the requisite written or oral examination or other assessment, as is determined suitable by the Board.

[32] Reference is made in **Regulation 8(3)** to the ability of the Brigade to stipulate or prescribe from time to time the “qualifications” required for admission of “firemen” to the Brigade. Likewise, in **Regulation 8(4)** reference is made to the Board’s power to make selections in accordance with any “conditions” in force in relation to candidates for the particular post. While there appears to be no similar provision in the **Regulations** in respect of “officers”, it would be absurd if the Board were not permitted to similarly prescribe conditions for promotion. I therefore am satisfied that the Board indeed had the power to develop the “Terms and Conditions Manual” which would assist in determining the method

---

<sup>4</sup> Regulation 7.

of assessment for promotion to the various ranks within the Brigade. Commissioner Beckford said that the Manual was developed in 1994 as a policy guide, akin to the Jamaica Staff Order for Public Service.

**[33]** I accept Mr. Hadeed's account that the Board only received board submissions in respect of seven parish divisions for the period August 2017 and March 2018, and that there was no submission in respect of Portland. Portland is the parish to which Mr. Johnson was assigned.

**[34]** I do not accept counsel Mr. Goffe's submission that it is for the defendants to prove that there were no submissions or that the procedure was not followed. I believe that it is incumbent on Mr. Johnson to satisfy this court that he submitted an application and underwent the requisite assessment and interview. This evidence was not forthcoming and is relevant to the issue of whether or not Mr. Johnson could reasonably hold an expectation that he would be promoted in such circumstances.

#### **What is the purpose and effect of a General Order?**

**[35]** It is the evidence of both Commissioner Beckford and the Board Chairman that a General Order is a medium used to communicate with the Brigade. In their opinion, a General Order therefore merely notifies members of promotions and is not a mechanism used to implement promotions.

**[36]** There must be a medium by which the Commissioner would communicate with the Brigade across the country, in relation to matters which fall under his command, as well as in relation to matters which the Board has made decisions. Indeed, as part of his operational command of the Brigade, the Commissioner is expected to give operational directions. **Regulation 25(2)** provides that "*operational directions*" means "*such orders, directions or rules as the Commissioner may make for the administration of the Brigade*". It seems logical that a General Order is the medium used to communicate orders, rules, directions, policy and general information. A General Order seems similar to the Force Orders of the Jamaica Constabulary Force ("JCF"), which is a

medium used by the Police Commissioner to inform JCF officers of matters including promotions. However, it has no effect in law.

**[37]** I accept that a General Order is simply a medium used to communicate with the Brigade generally, and specifically in relation to promotions, appointments and transfers. By virtue of the wording of **Regulations 4, 6, and 17**, it is clear that it is the decision of the Board that makes a promotion effective. The publication of a General Order has no effect on the promotion itself. Indeed, it is noted that General Order No. 03/2018 stated that the promotions took effect from April 1, 2018, which was a date which preceded the issue of General Order No. 03/2018 on April 6, 2018.

#### **Was General Order No 3/2018 valid and binding on the Board?**

**[38]** Within the Jamaica Fire Brigade, the practice has developed that General Orders are issued by the Commissioner, but a General Order might be issued by the Board Chairman, for example, when there is no Commissioner installed. It seems to me that a General Order might be issued by the Commissioner in respect of any matter under his purview, that he deems important. However, where a General Order would concern matters not solely within the purview of the Commissioner, I am of the opinion that he cannot issue the General Order without the approval of the Board.

**[39]** General Order No. 03/2018 purported to have been issued with the approval of the Board. However, since the promotions and appointments of some members of the Brigade were not approved by the Board, it contained inaccurate information. The Board having not approved the appointments and promotions of the 14 claimants, General Order No. 03/2018 was invalid, insofar as it related to those purported appointments and promotions.

**[40]** As a General Order is not the mechanism by which said promotions would take effect, there was probably no need for the Board to withdraw General Order No. 03/2018. However, the publication of the claimants' names in the General Order No. 03/2018 might have appeared as a promise of a promotion.

Although I do not find that it was a promise, I appreciate that it was important to correct any misrepresentation in the General Order that it was issued with the approval of the Board, when it was not.

[41] Finally, I am satisfied from Mr. Hadeed's evidence (at paragraph 11 of his affidavit), that General Order No. 04/2018 was issued by the Board. I am satisfied that he was authorised to issue General Order No. 04/2018.

**Is a Commissioner of the Brigade empowered to promote officers?**

[42] It is my considered opinion that a Commissioner does not have actual or ostensible authority to appoint or promote persons. The law is clear that a Commissioner may make recommendations to the Board for the appointment and promotion of officers, but a Commissioner has no actual power to appoint or promote persons, merely by making recommendations, or otherwise. The Regulations provide for three levels of screening of candidates. First, the Commissioner makes a recommendation in the form of Board Submissions (**Regulation 6**). Then, a Selection Committee appointed by the Board, assists in the selection of candidates by reviewing the Commissioner's recommendations (**Regulation 9**). The HR Subcommittee, referred to by Commissioner Beckford, is one such Selection Committee which reviews the Board Submissions, and then forwards its decision to the Board. Finally, it is only with the Board's approval that appointments and promotions become effective, as provided for in **section 8A(1)(a) and (b)** of the Act and **Regulation 8(3) and 8(4)** of the Regulations. As aforesaid, **Regulations 4, 6, 8, 9 and 17** indicate that promotions are only to be approved once the candidates have the necessary qualifications, submitted an application, and completed the requisite written or oral examination or assessment.

[43] The claimants would have known that the requisite promotions procedures had not been complied with. Applying the principle in *Morris v Kanssen*, the claimants could not rely on Retired Commissioner Spencer's decision, when the proper processes were not followed.



**Did the claimants have a reasonable expectation that they would be promoted?**

- [44] This is a case in which the claimants allege that they have a substantive legitimate expectation that they are entitled to a benefit which the Commissioner is bound to give them. Although it has not been expressly said by the claimants in the pleadings, it appears that it was so perceived by them and they contend that the current Commissioner and/or the Board, should not be permitted to resile from that promise.
- [45] Where the claimants allege that they have a substantive legitimate expectation, as distinct from procedural legitimate expectation, there is no requirement that they be afforded an opportunity to be heard before the alleged promise is withdrawn. In the circumstances, I do not agree with Mr. Goffe that the claimants in this case ought to have been afforded an opportunity to be heard before the issuance of General Order No. 04/2018.
- [46] In cases involving substantive legitimate expectations, the court must examine the circumstances to determine whether the public authority had, by practice or promise, created a legitimate expectation that a person or group would be granted some substantive benefit. The non-existence of a legal right does not prevent the assertion of a claim to legitimate expectation. A person or group who has come to expect a substantive benefit even though they have no legal right to it, ought not to be denied the benefit unless it offends public interest.
- [47] The case of *Regina v Newham London Borough Council ex parte Bibi and Al-Nashed* [2002] 1 WLR 237 is instructive on this point. There it was held that a court should consider precisely what the public authority had in fact committed itself to, whether by practice or by promise, and determine objectively whether its later conduct amounted to an abuse of power.
- [48] A claimant's right to legitimate expectation will only be found to be established when there is a clear and unambiguous representation made by a public authority or body upon which it is reasonable for him to rely. I do not find that General Order No. 03/2018 induced a legitimate expectation of a substantive

benefit. I accept Ms. Hall's submissions that the claimants were experienced officers with sufficient knowledge of the internal policies and procedures governing promotions, and consequently they could not have a legitimate expectation that they would be promoted when there is no evidence that they even applied for promotions.

[49] In his affidavit Mr. Johnson stated that he has been employed by the Brigade for over 35 years. During this time, he has risen to the rank of District Officer and had acted as Assistant Superintendent. According to **Regulation 3**, there are seven ranks between the Third Class Fireman and the District Officer. This means that Mr. Johnson ought to be familiar with the procedures for appointment and promotion. These procedures should comply with the Act and Regulations and the procedures as indicated in the "Terms and Conditions Manual". Having not submitted himself to the established processes including, applying for a vacant post, doing an assessment and attending an interview, Mr. Johnson, could not reasonably rely on General Order No. 03/2018 as a perceived promise of promotion. Likewise, there is no evidence before the court that any of the other claimants applied for promotions, did tests or went to interviews in respect of vacancies for promotions.

[50] The claimants have not satisfied me that there was a good basis for them to rely on the representation made in General Order No. 03/2018 or that it was reasonable for them to hold a legitimate expectation that the alleged promotions would be honoured. In the face of an established practice as regards promotions, and in the absence of any clear indication that the practice or policy had changed, the claimants could not reasonably expect to be promoted if they did not submit themselves to the rigours of the established process.

#### **Was there detrimental reliance by the claimants?**

[51] In *Bibi*<sup>5</sup> it was held that that although both reliance and detriment were relevant considerations in determining whether it would be unfair to allow the authority

---

<sup>5</sup> *Regina v Newham London Borough Council ex parte Bibi and Al-Nashed* [2002] 1 WLR 237.

not to honour the expectation, it was not necessary for an applicant or claimant to show detrimental reliance. In coming to that position, the court had regard to dictum in ***R v Secretary of State for Education and Employment, ex parte Begbie*** [2000] 1 WLR 1115 where Peter Gibson LJ said at page 1124 that “*it is very much the exception, rather than the rule, that detrimental reliance will not be present when the court finds unfairness in the defeating of a legitimate expectation*”.

[52] Having determined that the claimants had no reasonable basis to expect that they would be promoted, it is not necessary to assess whether they have established detrimental reliance in this case.

**Does the failure to promote the claimants amount to an abuse of power?**

[53] Even if it could be argued that General Order No. 03/2018 induced a legitimate expectation that the claimants would be promoted, I do not find that frustrating such an expectation, in the circumstances, would amount to an abuse of power

[54] In addition to the cases referred to me by counsel for the parties, I have also considered the decision of the Privy Council in ***Gokool and others v Permanent Secretary of the Ministry of Health and Quality of Life and another*** [2008] UKPC 54. In that case, the appellants challenged the decision to terminate the appointment of 388 Health Care Assistants (“HCAs”) after they had been notified that they were to be appointed on a temporary month-to-month basis. The Permanent Secretary of the Ministry of Health in Mauritius cancelled that recruitment process on the basis that she observed anomalies and discrepancies within the recruitment process. Shortly before the conclusion of the recruitment exercise, Mauritius was in the throes of election campaigns, and persons tasked with the responsibility of selecting HCAs chose an unduly large number of appointees from the constituency of the then Minister of Health. In her affidavit in response to the claim, the Permanent Secretary stated that she considered the effect of the anomalies on public confidence in the fairness and integrity of the marking system, and that it was not possible to have confidence in the correctness of the outcome of the

appointment process. She stated that she felt “*there was a compelling public interest in ensuring that the recruitments operated by the Ministry were transparently fair*”.

[55] The Privy Council had to decide whether the claimants had established that the decision was unreasonable in the *Wednesbury*<sup>6</sup> sense, and whether there had been an abuse of power. The Privy Council held that the reasons indicated by the Permanent Secretary for cancelling the recruitment were not unreasonable. It was doubted that the appellants could be said to have had a legitimate expectation that they would be permitted to commence work as HCAs and obtain permanent posts, given the temporary nature of the appointment. However, it was held that even if they could be said to have had that expectation, or could show that they had suffered sufficient detriment, the public authority changed its recruitment decision or policy on sufficient public grounds. It was necessary to terminate the appointments and to restore public confidence in the integrity of the Ministry and its appointing process. There was an overriding public interest behind its change of policy, and it would not be regarded as an abuse of power. The appellants were not entitled to a remedy.

[56] The facts of the *Gokool* case are slightly different from those in this case, in that the appellants had in fact been appointed, and that the appointment was on a temporary basis. Notwithstanding, the principles considered by the Privy Council are applicable to the instant case. Any decision by Retired Commissioner Spencer to appoint or promote the claimants without the usual processes being followed was ultra vires. Such a decision would undermine confidence in the fairness and integrity of the appointment processes. It was therefore necessary for the Board to seek to safeguard and restore public confidence in the integrity of the Brigade’s appointment and promotion process. The unusual circumstances in which the claimants were ostensibly promoted necessitated the intervention of the Board when Retired Commissioner Spencer refused to withdraw General Order No. 03/2018. The

---

<sup>6</sup> *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223.

Board, through its Chairman, was correct in withdrawing General Order No. 03/2018.

**[57]** There is no evidence before me that the claimants applied for promotions and completed the necessary assessments and interviews. I have noted that Commissioner Beckford admitted that he only checked records in respect of five of the claimants, including Mr. Johnson. Even if some of the claimants completed the necessary processes, it seems apparent that the Board did not receive Board Submissions in respect of the claimants. I accept Mr. Hadeed's account in this regard. While it is unclear whether or not the HR Subcommittee ever received Board Submissions from the former Commissioner, I am satisfied that Commissioner Beckford checked the Board Submissions held in his office as well as the records kept by HR Subcommittee and found no record of submissions in respect of five of the claimants. Such records ought to be up-to-date and complete, and if the records have not been located, I must find that there were no Board Submissions in respect of five of the claimants.

**[58]** In summary, Retired Commissioner Spencer did not have the power to appoint or promote officers. General Order No. 03/2018 was invalid insofar as it purported to indicate that the claimants had been promoted when the Board did not approve their appointments and promotions. It was appropriate for the Board to issue General Order No. 04/2018 indicating the withdrawal of General Order No. 03/2018. The claimants had not been demoted by the issuance of General Order No. 04/2018, as the claimants had not been promoted, and the withdrawal of General Order No. 03/2018 did not amount to an abuse of power.

## **CONCLUSION AND FINDINGS OF FACT**

**[59]** Transparency and fairness in the recruitment and promotion processes of any public or private body is essential to ensure that staff will have confidence that their work and worth will be recognised and that they will be treated with human dignity and respect. Every employee wants to feel that he/she will be treated in a fair and consistent manner by his/her employer.

- [60]** When there is a breach of the policy or protocols regarding the selection of candidates for promotions, or, where there are no clear selection criteria, this often means that the best candidates are not interviewed or selected. This cannot inure to the benefit of an organisation. Nepotism, or the appearance of it, breeds the perception of discrimination, underperformance, lack of motivation and absenteeism due to workplace stress. Ultimately the organisation as a whole suffers as there will be inefficiency and discontent, and talented persons who feel undervalued, will leave. In this case, the legislative framework and the Brigade's Terms and Conditions Manual must be honoured if there is to be a perception of fairness and for persons to have confidence in the organisation's promotions policies and procedures.
- [61]** Promotions should be fairly awarded on a meritocratic basis, after suitable candidates are found to have satisfied the prescribed criteria for promotion, including possessing the necessary qualifications, experience, skills and knowledge. Candidates should submit themselves to the rigours of the relevant application, interview and assessment processes. Finally, an impartial group of persons should determine the suitability of persons for promotions and should select the best candidates based on the prescribed criteria.
- [62]** There is no evidence before this court that the 14 claimants even applied for the various posts that Retired Commissioner Spencer selected them for. They may well have been suitably qualified persons, but there should be transparency and fairness in the selection process. I note Mr. Johnson's evidence that in 2018 there were two vacancies for the position of Assistant Superintendent. I also note the evidence of Commissioner Beckford that Retired Commissioner Spencer did not advertise those posts, but instead proceeded to attempt to appoint persons to the posts, without making Board Submissions and without the approval of the Board. Retired Commissioner Spencer acted outside of his powers and acted in breach of the Act and Regulations in failing to seek the approval of the Board.

**[63]** Having regard to the law and the evidence I have heard, I now briefly set out my findings and the reasons therefor:

1. Retired Commissioner Spencer had no power to promote persons without the Board's approval. This is stipulated in **Regulations 4 and 6**. Further, I find that the firefighters would have to go through the requisite steps for promotions, as considered by the Board to be appropriate, as is stipulated in **Regulation 8(1) and 8(4)** of the Regulations.
2. I find that promotions are usually effected through the mechanism outlined by Commissioner Stewart Beckford and Chairman Russell Hadeed in their affidavits, and Mr. Beckford's evidence in court. Having given consideration to **section 8A(1)(b)** of the Act and **Regulations 4, 6, 8, 9 and 17**, I accept the evidence of the witnesses for the defendants.
3. The former Commissioner's Board Submissions, the human resources files for five firemen and the HR Subcommittee Minutes for the period March 13, 2018 and March 19, 2018 do not reflect that these five claimants were recommended for promotion. These persons are Mr. Johnson, Mr. Enute Ebanks, Mr. Dennis Lyons, Ms. Winsome Grant and Ms. Heather Williams. I accept Commissioner Beckford's account that he could find no record that these five claimants were recommended for promotion or that submissions were approved by the Board for them to be promoted. Commissioner Beckford indicated that he only made checks in relation to these five claimants because he was not aware of the names of the other claimants, as they were not named in the claimants' statement of case filed on July 8, 2019.
4. In the absence of a record indicating the Board's approval of promotions for the claimants, the appearance of the claimants' names in the General Order No. 03/2018 was highly unusual.
5. It is the decision of the Board that makes a promotion effective.

6. The Board Chairman may issue a General Order, provided that it is approved by the Board.
7. The Commissioner may issue a General Order in respect of any matter under his purview, but he may not issue a General Order in respect of matters which require the approval of the Board, without first obtaining said approval.
8. I find that General Order No. 03/2018 was invalid, insofar as it related to appointments and promotions which were not approved by the Board.

**[64]** For the reasons indicated earlier, I am satisfied that the 14 claimants were not appointed on April 1, 2018, or on the date of the issuance of General Order No. 03/2018 on April 6, 2018. If the claimants did not participate in the prescribed selection process, they could not have a legitimate expectation of promotion.

## **DECISION**

**[65]** I now make the following orders:

1. The claimants are not entitled to the reliefs sought in the Fixed Date Claim Form filed on July 8, 2019.
2. The appointments and promotions of the 14 claimants having not been authorised by the Board of the Fire Brigade, General Order No. 03/2018 contained inaccurate information, insofar as it related to those purported appointments and promotions, and was invalid.
3. The withdrawal of General Order No. 03/2018 by General Order No. 04/2018 was valid.
4. No order as costs, having regard to rule 56.15(5) of the CPR.
5. Attorneys for the defendants to prepare file and serve this order.