

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. L042/2000

BETWEEN KEITH LEWIS CLAIMANT

AND THE ATTORNEY-GENERAL DEFENDANT

L. Equiano and S. Jarrett for Claimant

A. Lindsay instructed by Director of State Proceedings for Defendant

Heard: April 4 and 18, 2005

Beswick J.

Mr. Keith Lewis became a District Constable in December 1981. In 1994 he was arrested and charged for a criminal offence. Thereafter, he was suspended with no pay and was eventually dismissed.

Mr. Lewis claims against the Attorney - General, damages for wrongful dismissal, salary for the period of suspension as well as compensation for vacation leave earned before and during that period when he was suspended from work.

Mr. Lewis was charged, according to the witness' statement, with "conspiracy to fraud"(sic). Exhibited is a letter dated 15th December 1997 from St. Andrew Resident Magistrate's Court indicating, inter alia,

“Re: Regina vs. Keith Lewis

For Conspiracy to Defraud

Inf. No. 10095/94

....[On the 12th August 1997]... a No Order was made
...by the ...Resident Magistrate, as the complainant is
deceased, and there was no one willing to proceed with
the matter on the deceased's behalf.”

Whilst the matter languished in the Resident Magistrate's Court,
Mr. Lewis remained suspended.

On August 24,1998, by letter dated August 10,1998 from the
Assistant Commissioner of Police, Mr. Lewis was informed that his services
had been dispensed with, effective August 1, 1998. This was so, the letter
alleged, because he obtained or attempted to obtain money through deception
and used undue influence to collect money to which he was not entitled.

The letter continued that within seven (7) days Mr. Lewis may
respond in writing through his Commanding Officer, stating why he should
not be so removed.

Mr. Lewis' evidence is that he wrote to the Commissioner of Police on
August 26,1998 stating his innocence and asking for the matter to be looked
into further. He was never given a hearing.

In April 2001, the criminal matter was dismissed for want of
prosecution. Exhibited is Certificate of Acquittal certifying that on April 30,
2001, Keith Lewis was brought before a Resident Magistrate for the offence
of Conspiracy to Defraud and that the case was dismissed for want of
prosecution.

Mr. Lewis contends that his dismissal from his job was unlawful. He was not convicted of any crime. He was not given the opportunity to be heard as to why he should not be dismissed.

He states that he requested salary for the period of suspension but was offered fourteen (14) days vacation pay which he did not accept. He claims that he is entitled to pay for the period when he was suspended, pay in lieu of notice and sixty-three (63) days vacation leave. Included in these sixty-three (63) days are days he says he earned during the suspension period.

The Attorney-General counters that the Commissioner of Police exercised his lawful powers in dismissing Mr. Lewis and that the only payment outstanding is for fourteen (14) days vacation leave which had accrued before the suspension.

LEGISLATION CONCERNING DISTRICT CONSTABLES

Section 2 (1) of the Constables (District) Act provides that the Commissioner of Police may appoint District Constables.

Their removal is governed by Section 2(2) of that Act which states:

"The Commissioner may at anytime remove any District Constable so appointed....."

There is no provision in the statute as to procedure for such removal.

However, S.14 of that Act provides-

"Every district constable shall have the like protection, rights and privileges, in case of, and before the commencement of any action or proceedings at law against him, as a Constable at Common Law...."

Recourse must therefore be had to common law and the regulations concerned with constables.

ACQUITTAL OR FINDING OF GUILT

S. 44 of the Police Service Regulations 1961 provides:-

“A member acquitted of a criminal charge shall be restored to his rank and pay and be paid the full amount of his salary for the period of his interdiction or suspension.”

It is therefore important to determine whether Mr. Lewis was acquitted in order to decide on his entitlements.

Ms. Lindsay, for the Attorney-General, submits that a “No Order” and “dismissal for want of prosecution” differ from an acquittal.

She relied on the definition of “acquittal” in Osborn's Concise Law Dictionary, 9th edition, as “discharge from prosecution upon a verdict of not guilty...” and the explanation in Barron's Law Dictionary that “an individual is acquitted when, at the close of trial, either a jury or court determined that the person has been absolved of the charges.....a verdict of not guilty acquits the defendant”.

She argues that if there is no verdict stating that an accused person is not guilty, then he is not to be considered as being not guilty or as having been acquitted.

On the other hand, Mr. Equiano, for Mr. Lewis, argues that the criminal matter is at an end, there is no verdict of Guilt, and therefore Mr. Lewis must be presumed to be innocent and entitled to his job.

I agree with that submission. The failure of the Crown to prosecute could deprive Mr. Lewis of the right to be tried and the opportunity to be found not guilty. In order to rectify such a situation Mr. Lewis would have to bear the burden of placing the matter before the Court and seek to have it terminated.

It is my view that the term "No Order" in practice refers to the fact that the Resident Magistrate declined to sign an order consenting to the indictment for an offence to be preferred. The effect would be equivalent to the adjournment sine die as in extremely rare circumstances an Order for indictment could be signed later.

However, the dismissal is what it says. The matter shall proceed no further. That dismissal means that Mr. Lewis must continue to be presumed to be innocent of the crime alleged. Indeed the document from the Court certifying the dismissal for want of prosecution is named "Certificate of Acquittal."

When the charge is dismissed for want of prosecution, Mr. Lewis is to be taken as being innocent of the particular criminal charge and therefore acquitted.

SALARY DURING SUSPENSION

It is my view that Mr. Lewis should be "restored to his rank and pay and be paid the full amount of his salary for the period of his interdiction or suspension" in accordance with Police Service Regulations. He is entitled to all benefits which accrued to him during the suspension period.

It was pleaded by the claimant and admitted by the defendant that the Government Pay Scheme relating to "persons in the field of employment as the plaintiff is as follows:

“.....(c) \$550.00 per day per person employed for over 10 years.”

It is agreed that he was suspended for a period of 230 weeks.

There was no evidence of the number of days that Mr. Lewis works per week.

Mr. Equiano therefore invited the Court to consider a reasonable work week of five (5) days. There was no opposition to this by the defendant.

I take judicial notice of the working hours of District Constables and accept a five(5) day work week as being reasonable.

He would therefore have earned in that period of suspension \$550.00 per day for 230 weeks, with 5 working days each week.

VACATION LEAVE DURING SUSPENSION

The defendant argues that no vacation leave accrued to Mr. Lewis during his suspension.

Ms. Lindsay relied on **The Attorney-General v. Beatrice McKenzie** Suit E433/2001 where it was held that "public officers were not entitled to earn and accumulate vacation leave... in relation to the period during which they were on interdiction". She argued that interdiction was the same as suspension.

The Constables (District) Act does not speak directly to leave entitlement. However, the parties agree that at the time of his suspension Mr. Lewis had accrued fourteen (14) days vacation leave. His evidence confirmed that.

There was no evidence concerning leave entitlement and the claim for additional vacation leave was abandoned.

NOTICE OF TERMINATION OF EMPLOYMENT

As concerns his dismissal, it is agreed that Mr. Lewis received no notice of termination of employment. He had done nothing to provide cause for dismissal as he is enveloped in the shroud of the presumption of innocence. Mr. Lewis was entitled to notice. The Constables (District) Act does not specify a requirement for notice but certainly there is a presumption that an employer would give notice to an employee of an intention to terminate his employment or alternatively to give him payment in lieu of notice.

Counsel for Mr. Lewis urged the Court to accept 8 weeks notice as being reasonable in the circumstances. He based that on the fact that the Employment (Termination and Redundancy Payments) Act requires an employer to give 8 weeks notice to terminate the contract of an employee continuously employed for 15-20 years.

Mr. Lewis served as a District Constable from 1981. I accept 8 weeks notice to terminate his job as being reasonable. He would have worked 40 days at \$550.00 per day, being \$22,000.00.

ENTITLEMENT

He is therefore entitled to:-

- | | | |
|---|---|---------------|
| 1. Eight weeks salary in lieu of notice | - | \$ 22,000.00 |
| 2. Fourteen (14) days vacation leave | - | \$ 7,700.00 |
| 3. Salary for the period of suspension | - | \$ 632,500.00 |

JUDGMENT

I therefore give judgment for the plaintiff in the sum of \$662,200 with interest at 6% per annum from the time of dismissal until payment.

Costs to the claimant to be agreed or taxed.