



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV04376

BETWEEN	JERMAINE SPENCER	CLAIMANT
AND	PUBLIC BROADCASTING CORPORATION OF JAMAICA	DEFENDANT

IN OPEN COURT

Mr. John Clarke for the Claimant

**Mr. Conrad George and Mr. Andre Sheckleford instructed by Hart Muirhead Fatta
for the Defendant**

**Ms. Kristina Whyte and Ms. Karessiann Gray instructed by the Director of State
Proceedings for the Interested Party**

HEARD: 26th and 27th July, and October 27, 2023

**Judicial Review – Procedural Impropriety – Breach of Section 125 of the
Constitution of Jamaica – Breach of Regulation 43 of the Public Service
Regulations – Breach of Sections of the Charter of Fundamental Rights and
Freedoms – Damages**

CARR J

Introduction

[1] Mr. Jermaine Spencer (the Claimant) was formerly employed in the Office of the Prime Minister (**OPM**). With effect from February 1, 2013, he was transferred on appointment to the Public Broadcasting Corporation of Jamaica (the Defendant). The Claimant was advised in a letter dated September 27,

2019, that his contract of employment was terminated with immediate effect. He appealed the decision of the disciplinary tribunal of the Defendant. He was unsuccessful in that appeal.

- [2] He sought assistance from the Jamaica Civil Services Association, and they lodged an appeal at the Ministry of Finance. He was dissatisfied with the response from that Ministry, and he made further complaints to the Ministry of Labour. The Ministry of Labour declined jurisdiction on the basis that he was a public officer. The Claimant wrote to the Office of the Services Commissions (**OSC**) seeking to clarify his status, and he was advised that he retained his rights as a public officer, however he no longer had a post at the OPM. The Claimant seeks the intervention of the Court as to his status and what he avers are breaches of his Constitutional rights.

The Claim

- [3] By an order of the Court the fixed date claim form was further amended. Counsel for the Claimant filed an application for relief from sanctions having filed the further amended fixed date claim form out of time on July 16, 2023. The application was opposed by the Defendant. I granted the application on the basis that it was made promptly as soon as Counsel received the notes of the proceedings. The explanation given was a reasonable one and the failure to comply was not intentional. The order of the court narrowed the issues for determination at trial and I was not of the view that the Defendant was prejudiced in those circumstances. The relevant portions of the further amended fixed date claim form are set out below.

The Claimant claims against the Defendant the following orders:

1. An order of certiorari to quash the decisions made by the Defendant in relation to the Applicant to remove the applicant from his employment without following the appropriate procedural steps.
2. A declaration that the actions of the Defendant breached the natural justice rights of the Applicant.

3. Damages to compensate the Claimant for his loss of income from the action of the Defendant.
4. A declaration that the Claimant's dismissal was in breach of section 125 of the Constitution and regulation 43 of the Public Service Regulation.
5. A declaration that the Claimant's right to equitable and humane treatment by a public authority under section 12 (3) (h) of Chapter 3 has been breached.
6. A declaration that the Claimant is entitled to his substantive position with all the attendant benefits, privileges, and rights of the position.
7. Declaration as to whether the Claimant is a public officer or a statutory employee of the Defendant.
8. Damages
9. General damages and special damages on the claim that arises on the facts as particularized in affidavits sworn by the Claimant.
10. Aggravated damages
11. Exemplary damages
12. Constitutional damages
13. Cost on an indemnity basis

The defendant breached the Claimant's fundamental rights, including his rights guaranteed and acknowledged by sections 13 (2), (g) (r) (h), 16 (2), (3) and (4) of the Jamaican constitution.

Issues

- [4] The Claimant's claim is twofold. He seeks to have the Court make orders on judicial review and he also seeks Constitutional redress with resultant damages. I have adumbrated the following as the main issues for determination.

1. Whether the Claimant is a public officer employed to the Defendant?
2. Whether the proper procedure was followed in terminating the employment of the Claimant?
3. Whether the Defendant's actions in dismissing the Claimant breached his Constitutional rights?
4. Whether the Claimant is entitled to damages?

Submissions on behalf of the Claimant

[5] Mr. Clarke submitted that the Claimant was dismissed in breach of the law and therefore his dismissal was null and void. It was suggested that the Court should find that for the Claimant's termination to be valid it must have been done in a manner consistent with Section 125 of the Constitution, Regulation 43 of the Public Service Regulations (**PSR**), the staff orders for the Public Service, and/or alternatively the Disciplinary Policy for Public Bodies.

[6] The Claimant, it was submitted, had been appointed to his position subject to Regulation 11(5) of the Public Broadcasting Corporation of Jamaica Regulations (**PBCJR**). He was appointed by the Governor-General and not the Defendant. He was therefore to be treated as a public servant continuing in the service of the Government of Jamaica. In support of this proposition Mr. Clarke relied on the authority of **Eugennie Ebanks v Betting, Gaming and Lotteries Commission**¹. Considering his appointment pursuant to Section 11(5), the Claimant's tenure as a public officer could only have been terminated by the Governor-General who was the sole authority with the power to remove him. In the alternative or additionally, it was further argued that the procedure adopted by the Defendant was contrary to PSR 43.

[7] In addressing the claim for damages for a breach of the Constitution, it was submitted that the Claimant's constitutional rights protected by Section 13(2) of the Charter of Fundamental Rights and Freedoms (**the Charter**) were engaged and breached. He pointed specifically to 13 (3) (g) equality before the law, 13

¹ SCCA No. 97 of 2003 delivered June 1 and 2 and December 20, 2005.

(3) (h) the right to equitable and humane treatment by an organ of the state, 13 (3) (r) and 16 (2) the right to due process and a fair hearing, and 16 (3) and (4) that the proceedings should have been public.

[8] It was further argued that the procedure for termination was in breach of the principles of natural justice and the Claimant's common law rights. Counsel contended that the principles of natural justice were not followed by the Defendant, as the Claimant did not have the benefit of an investigative report. This was critical as the Claimant was dismissed by the CEO, who had a personal grievance with him. This was indicative of an apparent bias, a lack of impartiality and the presence of procedural impropriety in how the decision was arrived at. The Claimant should have been afforded an opportunity to make representations before the decision was made. The failure to do so resulted in a breach of the Claimant's constitutional right to due process and a fair hearing.

[9] In closing Counsel addressed the claim for damages. It was contended that the declarations, although valid, were insufficient to remedy the breaches. Reliance was placed on the case of **Dale Austin v The Public Service Commission and another**². It was submitted that the Claimant in that case was awarded damages in the sum of Fifteen Million Five Hundred and Ninety-Eight Thousand Nine Hundred and Thirty-One Dollars and Sixty Cents (\$15, 598, 931.60) which would update to Nineteen Million Six Hundred and Sixteen Thousand One Hundred and Nine Dollar and Twenty Cents (\$19, 616, 109.20) as of March 2020.

[10] Counsel argued that as the Claimant in this case can prove additional breaches, he is entitled to a further sum of Two Million Dollars (\$2,000,000.00).

[11] Mr. Clarke accepted that there was no evidence by way of affidavit to support the claim for special damages and conceded that this could not be pursued.

Submissions on behalf of the Defendant

² [2020] JMSC Civ. 35

- [12] Counsel Mr. George, on behalf of the Defendant, maintained that the contract between the Central Government and the Claimant remains. He conceded that the proper procedure was not followed in the dismissal of the Claimant. He contends that the improper action by the Defendant did not disrupt the Claimant's status as a public officer nor did it cause him any loss. The gravamen of the defence is that the Claimant has pursued his claim against the incorrect party and the proper Defendant is the Public Service Commission (**PSC**), who in error determined that the Claimant was not a public officer. All his grievances as it relates to his emoluments should be directed towards that body and not the Defendant.
- [13] Counsel further argued that judicial review is a remedy of last resort and should not be granted if the Claimant has an alternative remedy. In this case he argued that the Claimant still has a remedy against the Central Government who remains his employer. He relied on the case of **Robert Ivey v Firearm Licensing Authority**³.
- [14] With respect to the claim for Constitutional redress, it was submitted that such a claim is inappropriate as there are other avenues that may be pursued, the authority of **Harrikissoon v A-G of Trinidad and Tobago**⁴ was cited in support of this point. In the alternative it was submitted that the provisions of the Charter did not apply as the Defendant was a body corporate and not an organ of the state. It was further submitted that natural justice did not arise in this case and the court ought not to be detained by such an argument. In closing it was reiterated that the Claimant has a private law remedy against the State and ought to pursue his options there.

Submissions on behalf of the Interested Party

- [15] Counsel Ms. Whyte commenced her submissions by agreeing with both the Claimant and the Defendant that the proper procedure under PSR 43 was not adopted in the dismissal of the Claimant. Her focus thereafter turned to the claim for breaches of the Claimant's constitutional rights under the Charter.

³ [2021] JMCA App 26

⁴ [1980] AC 265, 268

- [16] It was submitted that the considerations to be applied to a case such as this was discussed in the authority of **Maurice Tomlinson v Television Jamaica and others**⁵. The Claimant must show that he has a justiciable complaint, that he has standing to bring the action, that the complaint is substantial and adequate, that there is no other avenue for redress available and that the controversy or dispute which has prompted the proceedings is real.
- [17] It was contended that the substantive issue to be determined is whether the decision-making process of the Defendant to dismiss the Claimant was flawed and if the court finds that it was, then what was the appropriate remedy for the breach within the realm of judicial review.
- [18] With regards to the breaches of the Charter rights, Counsel commenced with the claim for equality before the law. The Claimant she argued must prove that there was a violation in respect of a law, or rule or policy. It was submitted that in the authority of **Rural Transit Association Ltd v Jamaica Urban Transit Company and others**⁶ the court concluded that the right under Section 13 (3) (g) was intended to guarantee equal protection as a matter of law itself. Section 1(1) of the Constitution defines law as any instrument having the force of law and any unwritten rule of law. The Claimant had not identified any law under which he had been treated inequitably and it cannot be said that the Claimant was dismissed in exercise of a statutory power, as such the right to equality before the law has not been engaged.
- [19] It was submitted that to establish a breach of a right to equitable and humane treatment it must be determined firstly if the institution is a public authority, and secondly was the treatment inequitable as laid down in **Sean Harvey v Board of Management of Moneague College Ministry of Education Youth and Culture and Attorney General of Jamaica**⁷. It was accepted that the Defendant is a public authority, however Counsel argued that there is no

⁵ [2013] JMFC Full 5

⁶ [2016] JMFC FULL 04

⁷ [2018] JMFC Full 3

evidence to suggest that the Claimant was treated inequitably as compared to persons in a similar position.

- [20] Citing the case of **Ernest Smith & Co (a firm) et al v the Attorney General**⁸, it was contended that under Section 16 (2) there are three discrete rights, the right to a fair hearing, a fair hearing within a reasonable time and by an independent and impartial court or authority established by law. Counsel argued that for the right to a fair hearing to be breached the Claimant must establish that he will not be able to bring witnesses, cross examine witnesses or be able to fully argue his case.
- [21] Counsel argued that the Claimant was advised of the outcome of the investigation and the charges that flowed from it. The Claimant was given an opportunity to be represented by counsel at the hearing and was heard, and the termination letter reveals that the disciplinary panel found that the charges were substantiated and that he was advised that he had a right to appeal the decision before the Chairman. All things considered the Claimant was afforded the right to be heard in relation to the charges laid, and his right to a fair hearing was not displaced even if, as argued, his termination was not carried out in accordance with PSR 43.
- [22] On the claim of the breach to a right to a hearing by an independent and impartial authority it was submitted that there was no breach. The decision maker and the complainant are not one in the same. Counsel averred that the right is not engaged simply because the decision to dismiss the Claimant was communicated by a person by whom a complaint against the Claimant had been made.
- [23] In relation to the rights under Section 16 (3) and (4) it was submitted that they are devoid of merit. The Claimant's termination did not have to be the subject of a public hearing. He was permitted to make representation in the disciplinary hearing and was informed of his right to appeal. PSR 43 does not require a

⁸ [2020] JMFC Full 7

public hearing for the delivery of decisions to dismiss an officer employed to the public service.

[24] The claim for damages, Counsel argued could not stand if there was in fact no breaches under the Charter. Further in respect of a claim for vindicatory damages the case of **Dale Austin** was distinguished. It was submitted that in that case there was an element of malice and other aggravating factors which entitled the Claimant to an award.

[25] Ms. Whyte further submitted that a claim for damages ought not to be granted in circumstances where there are alternative remedies available under judicial review, the right to Constitutional relief in such cases should be limited. It was argued that the Claimant would be duly compensated by the restitution he would receive for the loss of income.

Analysis and Discussion

Whether the Claimant is a public officer employed to the Defendant?

[26] The sole witness for the Defendant was Mr. Keith Campbell, in his affidavit filed on April 25, 2022, he exhibited the letters from the Defendant, first seeking to have the Claimant seconded from the OPM commencing October 22, 2012.⁹ Secondly, the letter appointing him to the post of Finance and Administration Manager for the Defendant with effect from February 1, 2013.¹⁰ Thirdly, a letter from the OPM outlining that in accordance with section 11(5) of the PBCJR the Governor General approved the transfer of the Claimant on appointment to the Defendant with effect from February 1, 2013.

[27] It is an undisputed fact that the Claimant *“was transferred on appointment by the Office of the Services Commissions from the Office of the Prime Minister to the Public Broadcasting Corporation based on the approval by His Excellency, the Governor General in keeping with Regulation 11 (5) of the Public Broadcasting Corporation of Jamaica Regulations 2002”*.¹¹

⁹ Affidavit of Keith Campbell dated June 28, 2022, Exhibit KC1

¹⁰ Ibid. Exhibit KC3

¹¹ Supplemental Affidavit of Jermaine Spencer in support of leave to apply for judicial review dated January 21, 2022 paragraph 22 Exhibit JS 14

[28] The Claimant was therefore appointed to the post of Finance and Administration Manager in accordance with the PBCJR. Regulation 11 (5) states that *“The Governor-General may, subject to such conditions as he may impose, approve the appointment of any public officer in the service of the Government of Jamaica to any office with the Corporation and any public officer so appointed shall in relation to pension, gratuity or other allowance and to other rights as a public officer, be treated as continuing in the service of the Government.”*

[29] The confusion as to his status as a public officer was contained in a letter from the OSC, which was dated July 19, 2021, and signed by Ms. Marlene Roper, Legal Officer. Ms. Roper indicated that the Claimant was no longer a public officer since he was transferred to the Defendant. It was also her indication that he had no substantive post at the OPM.

[30] This position was later clarified in a subsequent letter dated January 7, 2022. Ms. Roper concluded the following.

“Consequent on my review, I am to amend my earlier response and state that Mr. Spencer, having been transferred on appointment from the OPM to the PBCJ, retains his rights as a public officer and would therefore fall under the purview of the Public Service Commission. It will be pointed out however, that he no longer holds a substantive post as a public officer in the Central Government.”¹²

[31] Even though the parties have conceded on this point the evidence must be sufficient for a declaration to be made. Regulation 11 (5) is clear, in relation to pension, gratuity, or other allowance, and to other rights as a public officer, the Claimant is to be treated as continuing in the service of the Government. In these circumstances the Claimant is entitled to a declaration outlining his status.

¹² Supra. 3 Exhibit JS 14.

[32] It is declared that the Claimant is deemed to be a public officer within the meaning prescribed by Regulation 11 (5) of the PBCJ Regulations 2002.

Whether the proper procedure was followed in terminating the employment of the Claimant?

[33] The Claimant seeks an order of certiorari on the basis that the incorrect procedure was adopted in the termination of his employment. In matters of judicial review, the Court is not seeking to substitute its own decision for that of the decision maker. The role of the court is limited to an examination of the circumstances surrounding the making of that decision. Was the decision maker acting in accordance with the law. Was the decision maker acting in a manner which was irrational. Was there a breach of procedure or a breach of natural justice. These are the grounds on which a claim for judicial review rests. In the case of an order of certiorari a court must also be satisfied that there is a basis in law for making such an order, as the effect of it is that the impugned act is “*set aside and deprived of all legal effect from its inception*”¹³.

[34] It has already been determined that the Claimant is to be treated as continuing in the service of the Government, it follows therefore, that any process as to termination must be in keeping with the Constitution and the PSR, as to the dismissal of public officers. The parties are all ad idem on this issue and it was conceded by the Defendant that the proper procedure was not followed.

[35] Section 125 (1) of the Constitution of Jamaica provides that; “*Subject to the provisions of the Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission*”.

[36] The PSC is governed by the PSR. Under regulation 28 (1) the PSC is given the general authority to deal with disciplinary proceedings against officers in relation to reports received from Heads of Departments. If the Commission is

¹³ Attorney General (The) and anor. v. Smith (Machel) [2020] JMCA Civ. 67 para. 46

satisfied that proceedings should be instituted against an officer, they may make a recommendation to the Governor-General. By virtue of regulation 43 (1) an officer may be dismissed only in accordance with the procedure prescribed in the regulations.

[37] It is accepted that the Commission was not involved in the disciplinary proceedings commenced by the Defendant, nor were they involved in his dismissal. In his affidavit filed January 21, 2021, at paragraph 2, the Claimant stated,

“That by letter dated 27th September 2019 the Chief Executive Officer (CEO) of the 1st Respondent, Mr. Keith Campbell, advised me in writing that my contract of employment as Finance and Administration Manager was terminated with immediate effect by the Public Broadcasting Corporation of Jamaica (PBCJ).”

[38] At paragraph 3,

“The CEO was, to the best of my knowledge, the sole complainant in the employment matter which was referred to the specially constituted disciplinary tribunal. The tribunal recommended in its report that the issue of my dismissal be referred to the Board of Directors based on my substantive position at PBCJ.”

[39] In the circumstances there was a breach of the Constitution as well as the PSR. The Claimant is therefore entitled to an order of certiorari as the Defendant acted ultra vires the law that governs it and the improper procedure was used to terminate his employment. I do not accept the submission of Mr. George that as a public officer the Claimant is still employed in the Central Government in circumstances where he was transferred on appointment to the Defendant. On appointment his substantive post is now with the Defendant. I find that it is only in respect of pension, gratuity, allowances, and other rights that he is treated as continuing in the government service. This does not equate to him still being employed in the Central Government. Additionally, having been transferred to the Defendant his post at the OPM is no longer vacant.

[40] Following this determination, I find that the Claimant is still in his substantive post as Finance and Administration Manager for the Defendant. He is therefore entitled to the declarations sought in paragraphs 1, 4 and 6 of the further amended fixed date claim form.

Whether the Defendant's actions in dismissing the Claimant breached his Constitutional rights?

[41] Section 19 (1) and (3) of the Charter reads, in part, as follows: -

"If any person, alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to same matter which is lawfully available, that person may apply to the Supreme Court for redress. The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.

[42] The Claimant avers that the provisions under Section 13 (2) 13 (3) (g) (h) (r), Section 16 (2), (3) and (4) of the Charter have been breached.

[43] Section 13 (2) of the Charter states:

"Subject to sections 18 and 49, and to subsections (9) and (12) of this section, and save only as may be demonstrably justified in a free and democratic society - (a) this Chapter guarantees the rights and freedoms set out in subsections (3) and (6) of this section and in sections 14, 15, 16 and 17; and (b) Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges, or infringes those rights."

[44] The recent decision of **Julian J Robinson v The Attorney General**¹⁴, discussed the test to be applied when considering an application for redress under the Charter. Batts J opined: -

*“The test of constitutionality of legislation now involves two stages, namely;
A determination as to whether the law abrogates, abridges or infringes a guaranteed right;
and Secondly, if it does, is the abrogation, abridgment or infringement demonstrably justified in a free and democratic society.”*

[45] It is for the Claimant to establish on the evidence that the rights he set out in his claim have been abrogated, abridged, or infringed. In this case the Claimant avers that his rights under the Charter have been infringed.

[46] Counsel Mr. George submitted that the Defendant is not an organ of the State. In her submissions Ms. Whyte disagreed and accepted that the Defendant was in fact an organ of the State. In the Full Court decision of **Maurice Arnold Tomlinson v. Television Jamaica Ltd., CVM Television Ltd., and the Public Broadcasting Corporation of Jamaica**¹⁵, no issue was taken with the fact that the Defendant was an organ of the state. Ms. Whyte suggested that this case in addition to the Public Broadcasting Corporation of Jamaica Act, 1997 puts it beyond doubt that the Defendant is an organ of the state. A public authority or an organ of the state is simply an authority which carries out a public function. In this case the Defendant provides public broadcasting services. I agree with Ms. Whyte that the Defendant is a public authority and therefore can be found to be in breach of the Claimant’s rights under this section of the Charter.

Section 13 (2) (g) the right to equality before the law.

¹⁴ [2019] JMFC Full 04, at paragraph 268

¹⁵ [2013] JMFC Full 5

[47] The test to be applied in an examination of a breach of this right under the Charter was aptly set out in the Privy Council decision of **Bhagwandeem v The Attorney General of Trinidad & Tobago**.¹⁶ It was held,

“A claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has been or could be treated differently from some other similarly circumstanced person or persons as actual or hypothetical comparators, that comparison being such that the relevant circumstances in one case are the same, or not materially different in the other.”

[48] As Ms. Whyte succinctly outlined in her submissions, there is no evidence before this court of any similarly circumstanced person to offer a comparison of the treatment of the Claimant. His affidavit referred solely to his own situation without more. There is therefore no evidential basis for this complaint. Additionally, the Claimant has not established that there was a law which was being disputed or used to discriminate against him. The evidence is that he was subjected to disciplinary proceedings under the auspices of the Defendant. The decision was not the subject of any legal treatise or any policy which had the colour of legal authority. In the circumstances the Claimant has failed to establish a breach of this Charter right.

Section 13 (2) (h) the right to equitable and humane treatment by any public authority in the exercise of any function.

[49] The approach to this right is like that for equality before the law. The test as laid down in **Bhagwandeem** extends to this right. However, there is an additional hurdle that the Claimant will have to overcome. He will have to show that he was treated differently from some other similarly circumstanced person **and** that he was treated in an inhumane manner. It has already been established that there is no evidence of inequitable treatment, it is also evident from the affidavit

¹⁶ [2004] UKPC 21 paragraph 18

that the Claimant never averred that he was the subject of cruel treatment on the part of the Defendant. This right has therefore not been infringed.

Section 13 (3) (r) the right to due process as provided in Section 16.

[50] It is noted that the issue as to the right to due process arises in the context of the hearing which occurred. The finding that the decision to hold the hearing was improper means that anything which flowed from it is flawed. In the circumstances I am not of the view that there ought to be a determination on this issue as such a discussion would merely be an academic exercise as it is no longer relevant given the order of certiorari. In keeping with the authority of **Maurice Tomlinson** on this point, the Claimant does not have a justiciable complaint.

Whether the Claimant is entitled to damages

[51] The Claimant has claimed in addition to damages for loss of income, general damages, special damages, aggravated damages, exemplary damages, and constitutional damages.

[52] From the foregoing discussion the claim for constitutional damages must fail as there is no finding in favour of a breach of the Constitution.

[53] The case of **Denese Keane-Madden v The Attorney General of Jamaica and Corporal T. Webster**¹⁷ sets out the principles that a court must consider when looking at an award for aggravated damages. Edwards J (as she then was) opined at paragraph 46: *“Aggravated damages are awarded where the defendants conduct is sufficiently outrageous to merit condemnation and punishment. The outrageous behaviour usually carries features of malice, fraud, cruelty, insolence and the like.”*

[54] There is no evidence that there was any malice, fraud, cruelty, or insolence on the part of the Defendant in this case. In fact, the evidence suggests that there

¹⁷ [2014] JMSC Civ. 23

was confusion surrounding the status of the Claimant and that this confusion led to the process that was adopted in his purported dismissal.

[55] Exemplary damages are awarded in cases where the evidence is such that the court finds that a defendant should be punished for outrageous conduct. It acts as a deterrent to prevent similar conduct in the future. Similarly, to that of a claim for aggravated damages, I am not of the view that the evidence presented is sufficient to make such an award.

[56] I now turn to the claim for damages for loss of income, general damages, and special damages. Under the Civil Procedure Rules at 56.1 (4) the court may instead of an administrative order grant (b) restitution or damages. At Rule 56.15 (3) the court is permitted to grant relief where it is justified by the evidence. It is therefore incumbent on the Claimant to prove on a balance of probabilities that he is entitled to an award of damages. The Claimant must first establish that he has a cause of action which would give rise to such relief.

[57] The cause of action outlined by the Claimant is that of wrongful dismissal, on the evidence presented this has been established. The evidence of loss of income put forward by the Claimant was in his affidavit filed on June 10, 2022, where at paragraph 7 he stated, “...*I have not received any salary in relation to my public office since October 2019*”. The Claimant has not sought restitution but damages for loss of income. This must be specifically proved. The evidence put forward in respect of this was contained in the affidavit filed by Mr. Spencer. He stated that he lost his home, had outstanding credit card debts, that due to the loss of income he was unable to keep up with his financial obligations. He has put forward no documentary evidence in support of these claims. In the circumstances I do not find that an award in damages to compensate for loss of income or an award in general damages has been proved.

[58] In relation to special damages the general principle is that it must be specifically pleaded and proved. The Claimant did not set out a figure for that head of damages in the fixed date claim form. He also did not attach any documents in support of such a claim. At paragraph 24 of his affidavit filed June 10, 2022, he

states, "...I have incurred legal expenses to the tune of more than One Million dollars and this is continuing. I have incurred transportation expenses to attend the material disciplinary action and the attendant appeals and court actions. My transportation expenses are around fifty thousand dollars (\$50,000). I have incurred interest costs on loans and credit cards that are inextricably linked to the untimely and unjust loss of my salary. This sum is around Two Million One Hundred Thousand dollars (\$2,100,000.00). That I have also incurred other special damages which will be further particularized if the matter is referred to assessment of damages."

[59] In the further supplemental affidavit filed on behalf of the Claimant the only document exhibited in proof of special damages was an invoice for legal services dated July 18, 2023, from Ms. Zara Lewis Attorney at Law. The total was \$890,000.00. Counsel Mr. Clarke conceded in his submissions that the evidence in support of the claim for special damages was wanting as such there is no award made under this head of damages.

Costs

[60] Counsel has asked the court to award costs on an indemnity basis. The general rule is that the unsuccessful party must pay the costs of the successful party. The evidence in this case does not justify a departure from the general rule as to costs.

Disposition

[61] The Claimant was dismissed from the employment of the Defendant in contravention of the Constitution and the Public Service Regulations. The decision to convene a disciplinary committee and to terminate his employment is therefore quashed.

Orders:

1. It is declared that the Claimant is deemed to be a public officer within the meaning prescribed by Regulation 11 (5) of the PBCJ Regulations 2002.

2. An order of certiorari is granted quashing the decision of the Defendant to terminate the employment of the Claimant as the Finance and Administration Manager.
3. It is declared that the Claimant's dismissal was in breach of Section 125 of the Constitution of Jamaica and Regulation 43 of the Public Services Regulations.
4. It is declared that the Claimant is entitled to his substantive position with all the attendant benefits, privileges, and rights of the position.
5. Costs to the Claimant to be agreed or taxed.