

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 132/2011

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE BROOKS JA**

BETWEEN	SPECIAL SERGEANT STEVEN WATSON	APPELLANT
AND	THE ATTORNEY GENERAL	1ST RESPONDENT
AND	THE COMMISSIONER OF POLICE	2ND RESPONDENT
AND	LINTON LATTY	3RD RESPONDENT

Clyde Williams instructed by Townsend Whyte and Porter for the appellant

Miss Marlene Chisolm instructed by the Director of State Proceedings for the respondents

25 and 27 February 2013

ORAL JUDGMENT

MORRISON JA

[1] I have read, in draft, the judgment of Brooks. I agree with his reasoning and conclusions and have nothing to add.

PHILLIPS JA

[2] I too have read the draft judgment of Brooks JA. I agree with his reasoning and conclusions and have nothing to add.

BROOKS JA

[3] Special Sergeant Steven Watson, a member of the Island Special Constabulary Force, was ordered to appear before a disciplinary board of the force in September 2009. The board was convened on that date with Mr Linton Latty presiding. Mr Latty is a retired Assistant Commissioner of Police and had been appointed by the Commissioner of Police to preside over such disciplinary boards. Special Sergeant Watson disputed the validity of the constitution of the board on the basis that civilians may not sit as members of such boards.

[4] Mr Latty overruled the objection and commenced hearing evidence. Special Sergeant Watson then applied to the Supreme Court for judicial review of the ruling. The enquiry has, apparently, been suspended pending the outcome of the challenge to Mr Latty's ruling.

[5] Special Sergeant Watson's application for judicial review came on before D.O. McIntosh J on 14 October 2011. The essence of the issue before the learned judge was the interpretation of the word "may" as used at a particular place in regulation 28(1) of The Island Special Constabulary Force (General) Regulations 1950, as amended by the Island Special Constabulary Force (General) (Amendment) Regulations (1989).

[6] The learned judge ruled that the word “may” did not mean “must”, as Special Sergeant Watson had contended. Special Sergeant Watson has appealed against the learned judge’s decision. The issue for resolution by this court is whether the learned judge erred in his interpretation of the regulation.

[7] The clause in the regulation in issue reads as follows:

“(1) The Commissioner of Police may from time to time appoint a Disciplinary Board consisting of one or more persons (which **may** include the Commissioner of Police or any other officer of the Jamaica Constabulary Force or any officer of the Island Special Constabulary Force) to investigate and report upon any case which he, in his discretion, may think fit.” (Emphasis supplied)

The hearing in the court below

[8] The fixed date claim form that was filed on Special Sergeant Watson’s behalf sought:

- a. a declaration that civilians are not eligible to sit on the board;
- b. a declaration that the board convened in his case was improperly comprised and therefore wrongly convened;
- c. an order quashing the commissioner’s decision to appoint a civillian to the board;
- d. an order quashing Mr Latty’s decision that he was entitled to sit on the board;

- e. an order quashing Mr Latty's decision for the board to commence receiving evidence in the proceedings before it;
- f. a declaration that all evidence received by the board was null and void;
- g. damages;
- h. costs;
- i. further and other relief.

[9] The learned judge, after hearing submissions from counsel for Special Sergeant Watson and counsel representing the Attorney General for Jamaica, the Commissioner of Police and Mr Latty, used the literal approach to interpret the provision. He said, at paragraph 6 of his written judgment:

"It is simply good English to recognize that words in parenthesis [sic] are illustrative only and complementary of the rest of the sentence. Those words are not essential to the meaning of the sentence or passage taken at its highest they are discretionary and correctly interpreted cannot be mandatory."

Based on that approach, the learned judge found that Special Sergeant Watson's application was without merit and refused it.

The analysis

[10] Mr Williams, appearing for Special Sergeant Watson, in his written submissions to this court contended that the interpretation placed on the regulation by the learned judge, created an absurdity. This is especially so, he argued, when the provision is

considered in the context of the section of the regulations dealing with disciplinary charges, of which regulation 28 forms a part. Learned counsel argued that disciplinary measures may only be properly considered and implemented by officers of the police forces. He argued that an “absurdity results if the administration of discipline is “contracted out’ to civilians”. Learned counsel approached the matter from various aspects and these may be conveniently addressed in turn.

a. **The legislative context**

[11] For his first tack, learned counsel traced the history of the regulation, from its first embodiment in 1950, down to the present wording. The original 1950 regulation 28 stated:

“A Disciplinary Board may be appointed by the Commissioner of Police to investigate and report upon any case which in his discretion he may think fit. The Board shall consist of a Presiding **Officer** and two other **Officers** appointed for the purpose by the Commissioner.” (Emphasis supplied)

It would not be unreasonable, in the context of the regulations, to read the word “Officer”, in that regulation, especially as the first letter thereof, is capitalised, to mean an officer of the force. The term “officer” refers to a member of the force above the rank of inspector (see Part 1 regulation 2 of the first schedule of the 1950 regulations).

[12] In 1985, regulation 28 was revoked and replaced. The substituted regulation comprised two clauses, which read:

“(1) The Commissioner of Police may, from time to time, appoint a Disciplinary Board consisting of one or more persons (who **may** include the Commissioner or any other **member** of the Jamaica Constabulary Force or any **member** of the Island Special Constabulary Force) to

investigate and report upon any case which he, in his discretion, may think fit.

(2) A Disciplinary Board shall be selected with due regard to the rank of the Special Constable concerned and to the nature of the charges made against him." (Emphasis supplied)

When the 1989 amendment came into effect, clause (2) of regulation 28, of the 1985 formulation, was not affected. The major adjustment to clause (1) was that the word "member" was replaced by the word "officer".

[13] Mr Williams argued that the 1985 version of the regulation was changed because Parliament recognised that only persons, who were officers in the force, could properly appreciate the requirements of a disciplinary board established for the force. Such a board needed to understand the "duties, ethos, practices and standards of performance required of the force". It is in that context, he argued, that the term "persons" should be viewed. Learned counsel contended, at paragraph 21 of his written submissions, that:

"In other words, if the commissioner has a discretion at large then the phrase within the parentheses [in the regulation] would be wholly superfluous and would add nothing to the words 'one or more persons'. For this reason, among others, the Appellant submits that the word 'may' within the parentheses is to be given a secondary meaning and read as mandatory."

[14] In my view the submission is wholly misconceived. The shift from the requirement of three officers, to the use of the word "persons", as was done in the 1985 regulation, must I find, have meant that persons other than members of the force could be included on the board. Were it otherwise, the legislative draughtsman would

have specifically restricted the membership. A simple formulation would have stated that “the disciplinary board shall consist of one or more members of the Jamaica Constabulary Force or members of the Island Special Constabulary Force (who **may** include the Commissioner of Police)”.

[15] Similarly, if the intention in the 1989 regulation was that membership of the board would be restricted to officers then the amendment would, probably, have read:

“A Disciplinary Board may be appointed by the Commissioner of Police to investigate and report upon any case which he, in his discretion, may think fit. The Board shall consist of one or more officers of the Jamaica Constabulary Force or of the Island Special Constabulary Force (which **may** include the Commissioner of Police) appointed for the purpose by the Commissioner.” (Emphasis supplied)

It is inconceivable that learned counsel would argue that the word “may”, in that formulation, could mean “must”. In my view, that approach by learned counsel must fail.

b. Using the context of the regulations

[16] For his next tack, Mr Williams argued that the word “may” should be read in the context of the regulations. The context, he submitted, is that “internal disciplinary provisions have nothing to do with any interactions between police personnel and civilians”. Mr Williams developed that argument to conclude that “[t]he Disciplinary Boards deal only with allegations of breach of internal disciplinary provisions within the ISCF”. Accordingly, the argument proceeded, the context demands that disciplinary boards be restricted to members and officers of the force.

[17] Learned counsel, did however, concede in oral arguments, that internal disciplinary provisions could involve interaction between police personnel and civilians. In such circumstances, he accepted that “one can see some value in having a civilian oversight body to deal with issues that arise between police and citizens”. He argued that such oversight bodies do exist and there would be no need to include civilians in internal disciplinary boards.

[18] Learned counsel cited case law concerning the rules of construction, referring to context. The authorities that he relied upon for this approach were **Pinner v Everett** [1969] 3 All ER 257 and **Maunsell v Olins** [1975] 1 All ER 16.

[19] It is my view, that on this aspect of his submissions, Mr Williams has failed to heed the advice given by Lord Reid in **Pinner v Everett**. Lord Reid referred to the method of approaching the interpretation of words and phrases in statutes. He said at page 258I:

“In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that **it is wrong and dangerous to proceed by substituting some other words for the words of the statute.**” (Emphasis supplied)

In the instant case, learned counsel has sought to substitute some other possible meaning when the ordinary and natural meaning is plain, unambiguous and does no violence to the context of the regulation.

[20] In Mr Williams' submissions, he placed reliance on a portion of the dissenting judgment of Lord Simon of Glaisdale in **Maunsell v Olins**, where the learned Law Lord made reference to the "golden' canon of construction". That approach to statutory construction, otherwise called "the golden rule", was set out by Lord Wensleydale in **Grey v Pearson** (1857) 6 HL Cas 61 at page 106; 10 ER 1216 at page 1234:

"I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, **the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument**, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther."
(Emphasis supplied)

[21] In applying that rule of construction to the instant case, the use of the ordinary and grammatical sense of the word "may" leads to no absurdity, repugnance or inconsistency, in the context of this regulation. There is nothing in the section of the regulations dealing with discipline which excludes issues involving the interaction between civilians and police personnel and accordingly, there is no obvious basis for excluding civilians from sitting on disciplinary boards.

[22] Another flaw in the submissions in this regard, is that even if the "word" may were to be construed to mean "must", learned counsel has not taken into account the fact that the word "include" immediately follows the word "may". Read together, as

they must be, the result would be that where a board consists of more than one person, civilians are not excluded therefrom, by the regulation but that at least the Commissioner or one officer must be a constituent member of the disciplinary board. This approach by learned counsel also fails.

c. **The significance of the parentheses**

[23] As a platform for his next approach, Mr Williams referred to a quotation from G.C. Thornton, *Legislative Drafting* 4th ed at page 43. There the learned author said:

“Parentheses are marks of enclosure or separation sometimes known as brackets.

A parenthesis (which is the term used to refer to what is within parentheses) consists of an illustration, explanation or additional, related information or comment which is injected to a sentence but is not essential to the core meaning of the sentence....”

The learned author went on to point out that in some cases, words placed within parentheses may not be truly parenthetical in character; in some cases, those words, instead of explaining, may be used to restrict the context of what preceded the parenthesis.

[24] Mr Williams argued, in this aspect of his submissions, that if the words within the parentheses in regulation 28(1) were parenthetical, then they illustrated what is meant by the phrase, “one or more persons”. That meaning, he contends, is persons who are officers of one or other, or both of the police forces. Otherwise, the words in parentheses would be superfluous and “wholly unnecessary”. He argued that if the words within the parentheses were held not to be parenthetical, then they served to

restrict the clause, "one or more persons", to a specified class, that is, to officers of the force.

[25] In considering those submissions in the context of the instant case, it may fairly be said that the words in the parentheses in regulation 28(1) supply additional information but are not essential to the core meaning of the sentence. Without the words in the parentheses the regulation would read:

"(1) The Commissioner of Police may, from time to time appoint a Disciplinary Board consisting of one or more persons to investigate and report upon any case which he, in his discretion, may think fit."

The core of the import of the regulation would remain unaffected by the removal of the parenthesis.

[26] The words within the parentheses mean that the Commissioner of Police and other officers of the Jamaica Constabulary Force and Island Special Constabulary Force are not excluded from being appointed to the board. Looking at the parenthesis in that way, learned counsel is in error to state that, "[i]f may is read as discretionary then the phrase within the parentheses would be superfluous, wholly unnecessary, and would add nothing to the words '...one or more persons...'".

d. The meaning of the word "may"

[27] Mr Williams argued that if the word 'may' were given its natural and ordinary meaning of a permissive word, its effect would be to render regulation 28(2) irrelevant. For convenience, that clause is repeated here:

“(2) A Disciplinary Board shall be selected with due regard to the rank of the Special Constable concerned and to the nature of the charges made against him.”

[28] Again, I find that Mr Williams is in error. It is precisely because the Commissioner of Police and other officers are not excluded from appointment, that scope is given by regulation 28(2) for a broad variety of compositions of disciplinary boards. According to the rank of the member of the force and the nature of the charges against that person, the probable compositions would be:

- a. an all civilian board comprising one or more persons, who were never members of the force;
- b. an all civilian board comprising one or more retired members of the force, whether or not they were officers;
- c. an all force board comprising one or more members of the force who are not officers;
- d. an all force board comprising one or more officers only;
- e. a board comprising the Commissioner of Police only;
- f. a board comprising members taken from any two or more of the above categories.

It would be for the Commissioner of Police, considering matters of transparency, fairness, national security, the ethos and practices of the force and the duties and

standards of performance required of its members, to decide how best the disciplinary board should be configured.

e. Construing against absurdity

[29] As his final approach, Mr Williams reminded the court that it should seek to avoid a construction that produces an absurd result. On his submission, it would be an absurd result for civilians to investigate complaints against members of the force and sit in judgment with power to recommend dismissal.

[30] It is not clear what supports this submission. When asked for the basis for the submission, Mr Williams argued that the context of the regulations with respect to discipline, suggests that that is so. I respectfully, disagree. There can be no reasonable objection to including experienced, sober and responsible civilians on a disciplinary board. They may well bring an objective perception to a board that members of the force may overlook. I cannot agree with learned counsel on this submission.

Conclusion

[31] Regulation 28(1) in its current form is plain in its meaning. The word "may", as it appears within the parentheses, is not a mandatory but a permissive word. In the context of the regulation, it stipulates that the Commissioner of Police is permitted to appoint certain persons to a disciplinary board. The words within the parentheses give additional meaning to the words that precede them.

[32] Giving the word "may" its natural and ordinary meaning, as set out above, does not result in any absurdity, repugnance or inconsistency, in the context of this regulation. There is, therefore, no need to substitute words, such as the word "shall", "must" or any such mandatory connotation for that natural and ordinary meaning. For those reasons, I am in complete agreement with the decision of McIntosh J that there was nothing to properly prevent Mr Latty sitting on and presiding over the disciplinary board. The learned judge was, with respect, correct in finding that Special Sergeant Watson's application ought to have been refused. I am of the view that the appeal should be dismissed.

MORRISON JA

ORDER

- 1) The appeal is dismissed.
- 2) The judgment of McIntosh J is affirmed.
- 3) Costs to the respondents to be taxed if not agreed.