

**IN THE SUPREME COURT OF BELIZE A.D. 2018
(CIVIL)**

CLAIM NO. 63 of 2018

BETWEEN:-

ISAAC LONGSWORTH

CLAIMANT

AND

**ANGLICAN DIOCESE OF BELIZE
BELIZE TEACHING SERVICE COMMISSION
TEACHING SERVICE APPEALS TRIBUNAL**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT**

Before: The Honourable Madame Justice Griffith.
Dates of Hearing: [Written Submissions, 25/07/18 Claimant and 1st Defendant; 21/08/18, 2nd & 3rd Defendants] [Hearing 24/10/18] [Oral Decision 23/01/19]
Appearances: Mr. Darrell Bradley, Bradley Ellis & Co. for the Claimant; Mr. Rodwell Williams SC and Mr. Adler Waight, Barrow & Williams LLP for the 1st Defendant; and Mr. Nigel Hawke, Solicitor General and Mrs. Samantha-Matute-Tucker for the 2nd and 3rd Defendants.

DECISION

Introduction

1. This is a claim for judicial review filed by Mr. Isaac Longsworth ('the Claimant'), a teacher, who was dismissed from his employ as principal of the St. Barnabas' Anglican School on the 29th September, 2017. The route of the Claimant's dismissal was via a recommendation by the Anglican Diocese of Belize ('the Managing Authority') further to a disciplinary hearing of several charges levied under the Education Rules 2012 ('the Rules'), the approval of that recommendation by the Teaching Service Commission ('the Commission'), and ultimately the confirmation of the dismissal by the Teaching Service Appeals Tribunal ('the Tribunal'). Subsequent to receiving notification of the Tribunal's dismissal of his appeal, the Claimant applied for judicial review of the decisions arising from all three bodies, seeking in the round, relief declaring his dismissal unlawful, an order of certiorari to quash the respective decisions, as well as an order of mandamus for his reinstatement to the position of principal of St. Barnabas'. The Claimant seeks also damages arising from the dismissal including lost salary.

2. The grounds of the claim for judicial review of the respective decisions are that the hearing of the Board of the Managing Authority was conducted in breach of natural justice; the proceedings were biased; and the Managing Authority's decision was ultra vires, having not been completed within the statutory period prescribed under the Education Rules for doing so. With respect to the hearing before the Commission, it was argued that the Commission also failed to discharge its statutory duty to afford the Claimant a fair hearing. The Defendants respectively contend that the Claimant was afforded an adequate opportunity of being heard but failed to avail himself of that opportunity and that the delays in the conclusion of the disciplinary proceedings before the Board of the Managing Authority were due to the Claimant's own actions in failing to attend the hearing on several occasions. The 1st Defendant also contended that the Claimant could not establish that the proceedings were tainted by bias. On the whole, it was contended on behalf of all the Defendants that the Claimant's dismissal was lawful and justified.

Issues

3. The following issues arise for determination:-
 - (i) Was the Claimant's dismissal unlawful by reason of any one or more of the following:-
 - (a) A failure to afford the Claimant an opportunity to be heard in making his defence to the charges against him;
 - (b) The proceedings were tainted by bias; or
 - (c) The hearing was not concluded within the statutorily prescribed period and as such was ultra vires.
 - (ii) If found unlawful, what relief should be afforded to the Claimant?

Background and Submissions

4. The Claimant indicates that he has been in the teaching profession since 1988. For the school year 2012- 2013, he was employed by the Managing Authority as a teacher at the St. Ann's Anglican Primary School and thereafter was approved as principal of St. Barnabas' for the school year 2013-2014.

According to the Managing Authority's General Manager of Primary Schools Ms. Domingo ('the General Manager/GM'), the Claimant was appointed as acting principal for the 2013-2014 year. The precise terms of the Claimant's appointment beyond the period 2014 were not clear from the evidence, however at the very least it is inferred that he either was renewed as acting principal or principal for the year 2014-2015. Resolution of this gap in the evidence is not material within the context of this claim. Following a complaint made by a parent against him, an internal audit of the school's accounts, and appraisals carried out of his performance, the Claimant was notified that a formal process of investigation was being commenced against him, as a precursor to disciplinary proceedings. In accordance with the Rules, the Claimant was placed on administrative leave with full pay from the 27th August, 2015 for the course of the investigation, and upon its conclusion, the Managing Authority decided to lay charges for various violations of the Education Rules.

5. By letter dated the 24th September, 2015, the Claimant was notified of the charges against him, placed on interdiction with full salary, and was advised that he would be provided with copies of the evidence for his case, as well as the details for his hearing. By letter dated 5th October, 2015 the Applicant was notified of a disciplinary hearing for 14th October, 2014 at 11.00am before the Board of the Managing Authority. That hearing convened, however the Claimant did not attend at 11.00am. Instead, he presented himself at 3.30pm on the basis that the attorney-at-law he had retained to serve as his agent in the hearing was unable to attend, and had sent a message to the Board to that effect, requesting that the hearing be rescheduled to 3.30pm that day. In the meantime, having received no communication from the Claimant, the Board had commenced the proceedings in his absence. Less than an hour into those proceedings, the Board received a message regarding the Claimant's request for the hearing to be rescheduled until 3.30pm that afternoon due to the unavailability of his attorney. According to the minutes of the proceedings, the Board opted to reschedule the hearing to another day instead of deferring it until the afternoon.

Upon his arrival in the afternoon, the Claimant was advised of the adjournment to the 26th October, 2015 at 9.30am and subsequently received written notice to that effect.

6. On the adjourned date of 26th October, 2015 the Claimant's attorney asserted that the Claimant had not received disclosure as was mandated by the Rules. The General Manager Ms. Domingo asserted that the disclosure had been sent via registered mail, but was not able to establish proof of such receipt. The Board therefore once again adjourned the hearing, this time for the 6th November, 2015 in order to facilitate the delivery of the disclosure to the Claimant. It was agreed that the Claimant's attorney would receive the disclosure at an address given for that purpose. On the 6th November, 2015, the Claimant presented himself with his attorney for the hearing, but the premises were closed and there were no members of the Board present. Later that day, the Claimant says he received notification via email that because of difficulties encountered in delivery of the disclosure to his attorney, the documents had only belatedly been delivered and as such the hearing had to be adjourned. The Claimant was informed that he would be notified of the next adjourned date of the hearing. According to the Claimant he was next notified re the hearing on the 15th January, 2016, to the effect that the Board would be meeting to discuss his case on the 22nd January, 2016 and he would be informed accordingly.
7. The Board met on the 22nd January, 2016 in an ordinary meeting, at which time there was discussion on written submissions provided on behalf of the Claimant sometime in early December, 2015. Nothing further was communicated to the Claimant by the Board over the ensuing months, however the Claimant provided evidence of several email inquiries made to various persons, lamenting the failure to conclude his hearing. In his inquiries, the Claimant also expressed his opinion as to the lack of legal standing of the proceedings given the time that had elapsed. Subsequent to one such inquiry in May, 2016, the Claimant was notified by an email dated the 2nd June, 2016 that the hearing would continue on the 7th June, 2016. The Claimant alleged in his affidavit evidence that he received that notification on the 6th June, 2016. However from an email response dated the 3rd June, 2016, it became clear that he'd had sight of the email at least in the morning on that day.

Via email directly to the Chairman of the Board on the 7th June, 2016, the Claimant protested the notice as being too short; that he would not have been able to contact his attorney due to such short notice; and thus indicated his intention not to attend,.

8. The Claimant's email of the 7th June, 2016 appears not to have come to the attention of the Chairman of the Board, thus the hearing proceeded in his absence, and the recommendation was made for the Claimant's dismissal. In accordance with the Education Rules, the recommendation for the Claimant's dismissal was submitted to the Teaching Service Commission (on the 27th June, 2016) and on the 3rd November, 2016, the Commission approved the recommendation for dismissal. The Claimant appealed to the Teaching Service Appeals Tribunal which dismissed the appeal and the Claimant's dismissal was effected on 29th September, 2017. This is the broad sequence of events giving rise to the Claimant's application for judicial review. Within the legal submissions outlined hereinafter and its discussion and analysis, the Court will make reference to specific aspects of the evidence, the contentions surrounding such evidence and its findings in such regards.

Submissions of Counsel

The Claimant

9. Counsel for the Claimant's arguments firstly impugned the decision of the Managing Authority according to alleged fatal deficiencies in the proceedings before the Board. Thereafter, the decision of the Commission is attacked on the basis of its alleged failure to carry out its mandate as prescribed by statute. The decision of the Appeals Tribunal was impugned on the basis that it could not be upheld in the face of the failures of the proceedings before the Board and the Commission. In respect of the proceedings of the Board, the decision is challenged on three bases. First, that the hearing as a whole did not constitute a true and proper hearing, thus being in breach of the Claimant's right to natural justice. Counsel for the Claimant prefaced the standard according to which a hearing is required to be conducted in order to be considered fair, by indirect reference to House of Lords' decision in ***Board of Education vs Rice***¹.

¹ [1911] AC 179

Counsel commended unto the Court² the following reference in which it was stated that a public authority '*must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything*'.

10. Counsel for the Claimant contends that the Board fell short of this duty in two respects. The first, by the fact that the Board conducted the hearing in the Claimant's absence in circumstances where it was unfair for them to have done so. In particular, Counsel contends that the hearing having remained adjourned from the 6th November, 2015 with no word in between of any adjourned date, the notice given on the 2nd June, 2016 for the 7th June, 2016 was too short and unfair to the Claimant. Further, that as evident from the minutes of the meeting, the members of the Board made no attempt to contact the Claimant to ascertain his whereabouts. Secondly, Counsel contends that the actual deliberation of the Board amounted to no hearing at all. Counsel pointed to the minutes of the first hearing which had been commenced in the absence of the Claimant as failing to disclose consideration of any evidence by the Board members themselves, instead they relied upon the statements made by the General Manager. There was also no indication from the minutes, of any position being considered in favour of the Claimant, that being more so required because of his absence.
11. Further, the Board had agreed to adjourn the prior hearings for the benefit of the Claimant, and had received written submissions from his attorney. Despite these facts however, at the proceedings on the 7th June, 2016, the minutes reveal that there was no consideration of those submissions and very little if any, actual consideration or deliberation of evidence. As such Counsel for the Claimant alleges that the proceedings cannot be viewed as amounting to a hearing at all. The second of Counsel's three arguments relating to the hearing before the Managing Authority is that by virtue of Rule 93(11) (of the Education Rules), the hearing was required to be completed within 30 days of the date of notification to the Claimant of the charges.

² Submission of Counsel for the Claimant para 13

This was based on the Rule providing that if the hearing of a teacher placed on interdiction is not concluded within 30 days of the date of notification of the charges, the teacher is to be reinstated without prejudice to his status or emoluments. Insofar as the Rule is made conditional upon the teacher presenting himself at each scheduled hearing, Counsel for the Claimant expressed the view that the Claimant had in fact presented himself for each scheduled hearing.

12. In the circumstances, it was submitted that the hearing having not been concluded within 30 days, the Claimant ought to have been reinstated in accordance with Rule 93(11) and the continuance of the proceedings - if not in November, 2015, certainly in June, 2016 - was ultra vires Rule 93(11). The third limb of the Claimant's arguments in relation to the Authority was that the proceedings were tainted by bias occasioned by the role of General Manager, Ms. Domingo. The argument re bias was premised on the basis that as General Manager of the Managing Authority, Ms. Domingo had oversight of the Claimant's performance as principal of the school, and as such it was she who conducted the investigation into the allegations made against him. Further, it was evident from the documentation, that it was Ms. Domingo primarily who interacted with the Claimant in the course of the investigations. The argument continued more importantly however, that as General Manager, Ms. Domingo was an ex officio (albeit non-voting) member of the Board, thereby having a dual role in the proceedings. With that dual role as primary investigator who compiled the case against the Claimant and regular albeit non-voting member of the Board, it was she who presented the case against the Claimant to the Board.
13. Counsel for the Claimant alleges that such a situation resulted in Ms. Domingo being in the position of both judge and accuser in relation to the Claimant, thereby giving rise to the bias alleged. Such bias is alleged to have been evidenced by the minutes of the hearings on the 14th October, 2015 and 7th June, 2016, where the General Manager made prejudicial statements about the Claimant to the Board, thereby improperly influencing the members at the hearings.

On those three bases, the Claimant alleges that the decision of the Board to recommend the Claimant's dismissal should be declared unlawful by the Court and accordingly quashed. With respect to the decision of the Teaching Service Commission, Counsel for the Claimant contended that the Commission's failing in this case is to be gleaned with reference to its duty as prescribed under Rules 93(18)&(22-24). Counsel submits that these Rules place a duty on the Commission to refer the case back to the Managing Authority in the event that it considers that the hearing was not concluded with due process. In light of such duty, Counsel's submission was that the facts of the hearing ought to have led the Commission to the conclusion that they either ought to have heard the Claimant themselves as they were empowered to do under Rule 93(18) or remitted the matter to the Managing Authority for consideration afresh.

14. Having taken neither of those actions, as well as on the minutes of its own deliberation having not considered any evidence on behalf of the Claimant, Counsel for the Claimant asserts that the Commission's decision also failed to afford him a fair opportunity to be heard. In light of the two prior decisions respectively being impugned, Counsel for the Claimant submitted that the decision of the Appeals Tribunal would similarly have to be struck down. In respect of an appropriate remedy to be awarded to the Claimant in the event of the Court finding his dismissal to be unlawful, Counsel for the Claimant submitted that there would be no other alternative available except that of reinstatement of the Claimant to his position as principal of St. Barnabas. Counsel based his submission on the Privy Council decision of **McLaughlin v Governor of the Cayman Islands**³ in which it was affirmed that the consequence of a finding that a dismissal of the holder of a public office was effected in breach of natural justice is that the dismissal is void. As a further consequence, the office holder continues to hold such office until such time as lawfully removed or upon his or her resignation from the office.
15. Counsel for the Claimant also expressed the view that reinstatement was in line with the tenor of the Education Rules pertaining to disciplinary proceedings. Further, the fact that the usual practical considerations which militate against reinstatement would be absent.

³ [2007] UKPC 50

In particular, the strained relationship evident with the General Manager would not be an issue as she no longer held that position. Additionally, within the ordinary course of his duties, the Claimant would have little to no contact with members of the Board who might have been involved in his hearing. Lastly, in the event that the Court is not minded to grant reinstatement, the Claimant's claim would be for recovery of his salary from the date of his substantive dismissal, until such time as he resigns or is otherwise lawfully dismissed from the service of the Managing Authority.

The Defendants

16. Senior Counsel on behalf of the 1st Defendant – the Managing Authority, firstly submitted that the claim for judicial review, lay not against the Managing Authority, but the 2nd and 3rd Defendants. This was the case it was submitted, that as provided by the relevant legislation⁴ the Managing Authority's role was merely to recommend the disciplinary action, whilst it was the Commission which made the substantive decision, to thereafter be confirmed or overturned by the Appeals Tribunal. This primary position aside, the arguments submitted on behalf of the Claimants were substantively countered. With respect to the sufficiency or adequacy of the Board's hearing, citing **O'Reilly v Mackman**⁵, Senior Counsel for the 1st Defendant contextualised the rules of natural justice as being discharged by being afforded a reasonable opportunity of knowing the case against you and of putting a case in answer to it, as well as the absence of bias on the part of the decision maker. In this regard, it was contended that having been notified of the charges on the 24th September, 2015, the first hearing being on the 14th October adjourned to the 26th October, 2015, by the time of the hearing date of 7th June, 2016, the Claimant had received sufficient notice to prepare for his defence.
17. Additionally, contrary to the Claimant contending that he had received notice of the June, 2016 hearing on the 6th June, the Claimant had in fact received notice of the hearing by email on the 2nd June, 2016, having raised and expressed his concerns with the hearing with more than one official of the Authority.

⁴ The Education and Training Act, Cap. 36:01, s. 41; The Education (Amendment) Rules 2012, Rules 93(17) and 93(21).

⁵⁵ [1983] 2 AC 237

With respect to the argument that the hearing was statute barred, Senior Counsel for the 1st Defendant urged upon the Court a much different interpretation of Rule 93(11). It was submitted that the reference to reinstatement of the teacher in the event of the hearing not being concluded within 30 days of notification of charge, did not and could not in the absence of express words to that effect, bring the disciplinary proceedings to an end. Rather, the purpose of the section is to ensure that a teacher on interdiction – whose salary would normally be reduced – is not kept out of pocket nor in any other way prejudiced by the effect of the interdiction, for more than 30 days. In other words, the reinstatement of the teacher had nothing to do with bringing the disciplinary hearing to an end. It was open for the hearing to remain incomplete after 30 days, but the teacher was entitled to be restored to his or her teaching position and remuneration, pending the conclusion of the proceedings. In the circumstances therefore, the continuance and conclusion of the hearing in June, 2016 was not ultra vires Rule 93(11).

18. This interpretation notwithstanding, Senior Counsel for the 1st Defendant submitted that the Claimant could not be said to have attended all scheduled hearings, given that he had not presented himself at the appointed time at the initial hearing of the 14th October, 2015. Also, the reasons for the adjourned hearings on the 26th October, 2015 and 6th November, 2015 were attributable to the Claimant's attorney not being prepared in the case of the former date, and in the case of the latter date, the Claimant's attorney had failed to adhere to arrangements agreed for the receipt of reissued disclosure. Barring the Court's acceptance of its alternative interpretation of Rule 93(11) therefore, it was contended that the Claimant was not entitled to rely on the provision for reinstatement given that he had not satisfied the precondition of being present for all scheduled hearings. In relation to the allegation of bias occasioned by the participation of General Manager Ms. Domingo in the proceedings before the Board, it was submitted firstly that she was not a voting member and therefore did not contribute towards the decision in any way.

Further, it was submitted that Ms. Domingo's role was limited to having presented the evidence against the Claimant to the Board and as per the standard set by the House of Lords in **R v Gough**,⁶ it could not be established that her presence or her role presented any '*real possibility of infection*' of the decision made by the members of the Board.

19. On the final question of any relief to be afforded the Claimant in the event of the success of his claim for judicial review, it was submitted that an order for reinstatement of the Claimant as principal as claimed, would not be an appropriate remedy. As has been principally recognised in numerous wrongful dismissal cases but equally applicable to the case at bar, an order for reinstatement of an employee to his position prior to a wrongful dismissal is usually not a remedy readily countenanced by the Courts. The reasons underpinning the Courts' reluctance are generally of practical significance such as the availability or not of the position pre dismissal; the fact that the employment relationship has generally been damaged; but more so, the displacement of third parties who may have been employed to fill the position. By affidavit filed earlier in the proceedings, it was submitted that the post of principal at the school had already been filled by a third party who stood to be affected by reinstatement of the Claimant. In terms of the alternative remedy of damages the argument was repeated that having not been the substantive decision maker, the 1st Defendant ought not to be visited with any order of damages in favour of the Claimant. Further in any event, the Claimant had failed to provide any evidence going towards his attempts to mitigate his losses upon unemployment. For example, the Claimant had produced no evidence as to what kind of or how many times he had sought employment, any temporary employment or evidence of refusals of employment. There was no suggestion of what if any damages should then be awarded to the Claimant.
20. The arguments on behalf of the 2nd and 3rd Defendants were confined to the issue of natural justice and the question of what remedy would be appropriate for the Claimant if successful.

⁶ [1993] AC 646

Counsel for these Defendants held the position that the Claimant had been afforded more than adequate opportunity to attend a hearing (which need not have been an oral hearing), and having failed to attend, he was precluded from making any complaint about the treatment of the evidence at such hearing. Counsel for the Defendants cited **Callender (Widmark) v Commissioner of Police** in support of this point, particularly with reference to the dicta therein as to what suffices as a reasonable opportunity to be heard.⁷ Counsel for the 2nd and 3rd Defendants also made mention of the fact that the Claimant was not entitled to an oral hearing, as the Board had been entitled to decide the matter on paper.⁸ It was submitted that the fact that the Claimant failed to avail himself of the opportunities presented to him to make his defence precluded him from asserting that he had not been afforded natural justice. In relation to what remedy would be appropriate should the Claimant be successful, Counsel for the 2nd and 3rd Defendants likewise rejected the claim for reinstatement, referring to the House of Lords in **Chief Constable for North Wales Police v Evans**.⁹ This case was cited with a view to illustrating the difficulties inherent in a Court attempting to make an order for reinstatement. It was contended that by ordering reinstatement of the Claimant to his position as principal, the Court could be seen as usurping the function of the Managing Authority. Additionally, the employment relationship between the Claimant and Managing Authority was one of conflict that ought not to be imposed on the Managing Authority. Finally, as had been contended on behalf of the 1st Defendant, it was submitted that any award of damages in favour of the Claimant ought to be restricted by reason of his duty and failure to mitigate his loss.

Discussion and Analysis

The Legal Framework

21. It is important for the Court to identify the legal framework within which the Claimant's case falls to be determined, as this framework will intersect with relevant established general principles which arise in this case.

⁷ (2001) 63 WIR 110

⁸ Per **Kavanagh v Chief Constable of Devon and Cornwall** [1974] 2 All ER 697

⁹ [1982] 3 All ER 141

The principal Act is of course the Education and Training Act, Cap. 36:01, along with the subsidiary rules thereto – the Education Rules, as amended by the SI No. 87 of 2012. The relevant sections of the Act and Rules are extracted and appended to this judgment¹⁰. The material rules in this case are all part of the amendment of 2012, primarily from Rules 56 – 75 and Rule 93. In relation to the Act, the relevant sections which arise for consideration whether primarily or tangentially for context, are sections 17, 28, 29, 32, 40 and 41.

Findings of fact

22. In addition to the legal framework, a significant part of the Court’s decision turns on its view of the facts. In the circumstances, the Court sets out below, its factual findings (as well as inferences drawn from facts found), in relation to the respective hearings and decisions made. The Court firstly identifies the following general facts which were for the most part undisputed. The point of departure amongst the parties was in respect of the legal consequences which ought to flow from those facts but this aspect of the Court’s consideration will be dealt with later on in the analysis. The following facts are found or were not disputed:-

- (i) The Claimant was initially appointed as principal (or acting principal) at St. Barnabas’ for the year 2013 – 2014. At the time of his dismissal he was likewise so employed;
- (ii) There was no challenge to the investigation and institution of the charges. The following facts and inferences are found to arise from the hearing before the Managing Authority (‘the Board’)

14th October, 2015:-

- Further to the notification letter received by the Claimant on the 24th September, 2015, the hearing convened on the 14th October, 2015 and the Claimant was not present upon its commencements at 11.00am. At that time, the Board had received no communication from the Claimant and commenced the proceedings;

¹⁰ Appendix I – Education and Training Act, Cap. 36:01; Education and Training Rules, 2012; Appendix III – Original Rule 56, Education and Training Rules, Cap. 36:01

- At these proceedings the General Manager (GM) addressed the Board on the evidence against the Claimant;
- Just before lunchtime, the Board belatedly learned of the Claimant's request for the hearing to be deferred on account of the unavailability of his attorney. The Board agreed to adjourn the hearing to the 26th October, 2015;
- The Claimant attended for the hearing at 3.30pm on the 14th October with his attorney and was orally notified that the hearing had been adjourned. He was later provided with written notice of the adjourned date of the 26th October, 2015;

26th October, 2015:-

- On the 26th October, 2015 the hearing convened and the Claimant was present with his attorney. His attorney alleged that the Claimant had not received disclosure as he was entitled to. The GM asserted that the disclosure was sent via registered mail but was unable to confirm its delivery,* thus the hearing was once more adjourned, this time to facilitate delivery of disclosure to the Claimant. It was agreed that the Claimant's attorney would receive the disclosure at his office.

**From the minutes of the 7th June, 2016 hearing it would be seen that the GM commented to the Board that the registered mails sent to the Claimant had all been returned. It has therefore been established from the GM's own words that at this hearing of 26th October, 2015 the Claimant would not have been in receipt of his disclosure.*

- From the minutes of the meetings, the Claimant was provided with updated charges. The text of those updated charges was not laid before the Court.
- The hearing was adjourned to the 6th November, 2015.

6th November, 2015 and thereafter:-

- The Claimant and his attorney attended for the hearing but met no members of the Board. He was later orally advised by the GM that they had only been able to deliver the disclosure to the attorney that morning of the 6th and as

such the Board opted to once more adjourn the hearing. The Claimant was informed that he would be notified of the next adjourned date for the hearing;

- The evidence of the 1st Defendant establishes that they made unsuccessful attempts to deliver the disclosure to the attorney's office and received confirmation of the attorney having received the disclosure, only on the morning of the hearing of 6th November, 2015;
- The Claimant was not in the months that followed advised of a date of hearing, however he was advised that the Board was to have met on January, 22nd 2016 but he received no further notice in that regard;
- Sometime in December, 2015 the Claimant's attorney provided written submissions on behalf of the Claimant. These submissions were received and from the evidence of the GM, the Board did in an ordinary meeting discuss the submissions and decided to seek legal advice in respect of the submissions. There is no evidence on the outcome of any legal advice obtained in respect of the submissions, or of what became of the submissions relative to the hearing;
- In the months after the adjournment of the 6th November, 2015, the Claimant made several inquiries as to the conclusion of his hearing. In particular, on May 26th, 2016 he wrote a letter to the Minister of Education copied to several persons referring to his hearing and requesting its resolution;
- On the 2nd June, 2016 by email time stamped 6.39pm, the GM sent the Claimant notice of the continuation of his hearing on 7th June, 2016;
- The Claimant alleged that he received notice of the hearing on the 6th June, 2016 however it is established that he received the email in the morning on the 3rd June, 2016 as he wrote an email response referring to having received it earlier in the day on the 3rd June, 2016. The 3rd June, 2016 was a Friday;

7th June, 2016 and thereafter:-

- The Claimant sent an email protesting the lateness of the notice on the 6th June, 2016 and on the 7th June, 2016. The Claimant did not attend the hearing;

- The Board proceeded in the absence of the Claimant and recommended his dismissal on the charges laid;
- On the 27th June, 2016 the transcript of the Board's proceedings and recommendation was sent to the Teaching Service Commission and the Claimant;
- On 3rd November, 2016 the Commission deliberated and upheld the recommendation to dismiss the Claimant;
- The Claimant appealed to the Teaching Service Appeals Tribunal and his appeal was dismissed. The approval of the Board's recommendation for dismissal was upheld by the Tribunal and the Claimant dismissed effective the 29th September, 2017.

23. The Court now sets out its conclusions in relation to the actual proceedings before the Board and Commission, as evidenced from the minutes of the respective hearings or meetings:-

Managing Authority ('the Board')

- (i) On the 14th October, 2015 it is seen that the GM addressed the Board members. There were expressions from members about the volume of documentation and the Chair suggested '*I recommend that we hear the details of this case from the GM*'. This suggestion was adopted and the GM drew members' attention to a single document which was the letter from the HR Committee of the Diocese which summed up the investigation and recommended the disciplinary charges and hearing. This document was used to guide the members.
- (ii) There were a number of uncomplimentary and unfavourable utterances about the Claimant made by the GM and members of the Board. For example:-

Mr. R – '*I had a chance to read the emails and the tone was cordial...maybe too cordial. I don't think Mr. L took the management seriously*'

GM – '*The relationship with the local manager was strained. He had choice words for her and generally complied with management requests or directives with input from FD*'

Mr. L – '*Maybe had an issue taking supervision from women*'

(iii) The GM is referred to as having marshalled the evidence before the Board and nothing more; also that she was not a voting member of the Board.

It is accepted that the GM was not a voting member, however, based on the minutes, the Court finds that the GM played a substantive role in the proceedings in shaping the tenor of the hearing and controlling the material extracted for the Board's attention. For example:-

- When the Chair stated *'let's hear the details of the case from the GM'*, this suggests that neither the Chair, nor the members, had of their own accord familiarised themselves with the documentation and were content to be led in that regard by the GM.
- The Chair a little further on in the minutes invited the GM to review the charges for the Board.
- The review of the charges that thereafter followed consisted of the presentation of foregone conclusions of the Claimant's misconduct. There was no mention of any explanations or responses issued by the Claimant during the investigation, which as evidenced from the documentation submitted as part of the claim, exist in the form of emails and letters.
- The effect of the lack of responses from the Claimant being highlighted can be seen by the comment of one Board member who says -

Rv. M – *'there is no doubt the discrepancies are there'*

- Whilst this review is being presented it is evident that the GM is speaking to her fellow Board members as colleagues and has the ear of her colleagues, who appeared to have followed her lead in the tone of the proceedings. For example, after the GM refers to the Claimant having never responded to a request for his password to the office laptop

Mr. R – *'see...no regard'*

Chair – *'I would imagine he'd cooperate to clear his name'*

- By further example as to the tone of the hearing, with reference to the allegation of failing to take on a teaching role the GM says of the Claimant:-

GM – *'He never assumed teaching. When I visited in February to do his first appraisal, he said he wasn't teaching and told him he need to and I would return. I wrote a letter to that effect to him...When I returned in March to appraise him, the man had still not taken a teaching role.*

- Throughout her presentation the GM refers to her personal role in the investigation in a manner that infuses her own position in relation to the charges as well an apparent negative personal opinion as to the Claimant.
- (iv) It is noted that of the 9 members of the Board at the hearing, 4 of them comprised the HR Committee which made the decision to lay charges, interdict and hold a disciplinary hearing against the Claimant.
- (v) At the hearing on 7th June, 2016 the Claimant was absent and the hearing proceeded in his absence. At this hearing there were only 5 voting members of the Board and 2 of those persons were not persons who had been present at the October 14th hearing. At this hearing, there were similarly unfavourable and uncomplimentary comments made about the Claimant by Board members:-
 - In response to comments about the Claimant's absence from the hearing and arrangements regarding his certification course

Ms. G – *'his pay need to be cut until he communicating with the management'*

GM – *'Mr. L stated that the management is out to get him'*

Ms. G – *'where does he live, to get in contact with him' Stop payment until he makes communication*

Ms. C – *'If he wanted the situation resolve he will communicate with management'*

Ms. G – *'He does not want resolve because he is getting pay to do nothing'*

Chair – *'Show professionalism on his part'. 'If he wants his name clear he would show up'*

GM – *'Management try to work with him from he was at St. Barnabas. Mr. L's attitude and lack of respect for other people and authority was manifested even during the time he is out on interdiction...'*

(vi) As in the hearing of 14th October, 2015, the Chair once again ceded the conduct of the proceedings to the GM. This is further evidenced by the following excerpt:-
GM – *'Members of the Board, you have already heard my testimony (2 members had not) and you have reviewed the documents of this case. Do you have any further questions? My recommendation is that this panel, empowered by the Board, make a recommendation.'*

Chair – *'My recommendation is that the charges to be considered upheld given the absence of any defence or rebuttal from Mr. L. The fact that Mr. L was not performing as a principal as you see from the appraisal and the...his action (not communicating etc) indicate to me that the employment relationship must be severed. Do we all agree with this?'*

All – 'yes'.

(vii) The hearing on the 7th June, 2016 commenced at 9.45am and concluded at 10.20am, thereby lasting 35 minutes. There was no mention of the submissions of the Claimant's attorney which were provided to the Board some time in December, 2015 (as evident from the excerpt immediately above, prior to moving the recommendation for a vote on dismissal, the Chair referred to the absence of any defence or rebuttal from the Claimant). There was no account for the absence of prior members and the manner in which the new members (to the hearing) had been apprised of any evidence.

The hearing of the Teaching Service Commission

- (i) Albeit empowered by Rule 93(18) to do so if thought necessary, the Commission neither caused further investigation to be made into the matter nor required the Claimant appear before them to speak in his own defence;
- (ii) In order to make a decision, the Commission must, inter alia, as required by Rule 93(24) find due process to have been followed in the Managing Authority's hearing. The Commission stated that it found due process to have been followed and in paragraph (i) of its decision and record of proceedings entitled 'Procedure', made the following statements found to be inaccurate or unsubstantiated –

- *'d. notice of hearing conducted on October 14, 2015 was given via letter dated October 5, 2015 which provided full disclosure'*

The statement that the Claimant was provided full disclosure was refuted by the minutes of the Board's proceedings on October 26th where the Board accepted by reason at that time of not being able to prove delivery of its registered mail, that the Claimant had not received disclosure and agreed on that basis to adjourn the hearing. It was further revealed by the GM in the minutes of the June 7th, 2016 hearing that their registered mails sent to the Claimant had been returned. With respect to the question of due process, it was not open to the Commission to have concluded that the Claimant received disclosure on the 5th October, 2015;

- *'h. service of disclosure package to agent was difficult but he finally acknowledged receipt on November 6, 2016'*

Whether service of the disclosure on the Claimant's attorney was difficult or not, the Board of its own motion decided to adjourn the hearing for November 6th, 2015 thereby neutralising any attribution of fault in the reason for the adjournment. In considering due process, it was therefore not proper for the Commission to impose any element of fault on the Claimant for the adjournment of that hearing;

- *'j. Managing Authority met on January 22, 2016 to review the matter'*

This statement appears to attribute some significance to this meeting when what is available from the evidence is that the Authority held a meeting in the ordinary course of its business at which there was discussion about the written submission provided by the Claimant's attorney. There was no deliberation about the matter as there ought not to have been as the hearing had not been scheduled for that day. This meeting should not have been considered part of the hearing process.

- *'k. notice of the hearing where the matter was concluded was given via letter dated June 2, 2016'* and in paragraph (ii) titled 'the evidence', the Commission concluded *'From his communications with the Director of the Teaching Service*

Commission Secretariat, it is clear that he had ample notice of the final hearing on June 7, 2016'

This statement does not examine or acknowledge the fact that the email was sent at 6.39pm on the 2nd June, 2016 – which is beyond the close of business; and albeit the Claimant was proven by his own words to have received the email earlier in the day on the 3rd June, 2016 – the notice of the hearing constituted only 2 working days, as the 3rd June was a Friday.

Paragraph (ii) – 'the evidence'

- h – '*The Commission notes that the hearing started on this date'* (i.e. the 14th October, 2016)

The Authority voluntarily adjourned this hearing at the request of the Claimant. It was subsequently established that at that date the Claimant had received no disclosure. The hearing on the 26th October, 2016 presented expanded charges and the Claimant was given the benefit of the hearing starting de novo. Additionally, the composition of the panel was significantly different on the 7th June, 2016 than it was on the 14th October, 2015 due to absent members and 2 different members. There was no evidence from the minutes of consideration of the Claimant's submission nor any responses of the Claimant which were given during the investigation.

24. Having regard to all the above facts found, inferences drawn and observations made about the evidence as recorded in the respective minutes of the proceedings before the Managing Authority and the Commission – when taken into account with the relevant provisions of the Act and the Rules, the Court makes the following determinations as to the effects and consequences of the proceedings.

In relation to the Board

- (i) The hearing on the 14th October, 2015 is found to have been subject to a number of irregularities as follows:-

- The Board acceded to the Claimant's request for an adjournment on the basis that his agent could not attend at the stated time and as such that adjournment should not have been held against the Claimant;
- By Rules 93(10)(b) and 93(13) the provision of disclosure to the Claimant is part of the mandated due process of the conduct of the hearing;
Having acceded to the Claimant's assertion (later proven to be true by virtue of the reference to returned registered mail), of not having received disclosure on the 26th October, 2015, the hearing of October 14th, 2015 should have been acknowledged as not in compliance with due process requirements. It was also the Board that agreed to the adjournment;
- The content of the minutes illustrates that the Chair ceded control of the hearing to the GM. The GM's personal opinion as to the Claimant's guilt borne from her dual role of investigator was evident and demonstrated a conflict of interest with her position as a member (notwithstanding non-voting member), of the Board;
- By Rule 93(10)(d) the Board has an option to either allow a teacher the right to give a response in writing or to hold a hearing where a teacher attends to be heard in his defence. Having chosen to hold a hearing, the Board was obliged to give effect to all requirements for due process in relation to an oral hearing;
- By Rule 93(12) the Claimant is entitled to have an agent present to represent or assist him at the hearing. This is contrasted with Rule 93(18) by which the teacher if called before the Commission, may attend with or without an agent. The right of the Claimant to have an agent in proceedings before the Board, afforded by Rule 93(12) is therefore viewed as mandatory and due process must apply to the *opportunity* afforded the Claimant to have his agent present at the hearing before the Board;

- From the documentation compiled during the investigation, there were responses regarding the allegations made against him which the Claimant provided to the GM in writing; the Board also received the Claimant's attorney's submission in December, 2015 (in respect of which they discussed and sought advice on January 22nd, 2016). There was no reference to any of these responses or the submission in the proceedings before the Board;
- The notice given to the Claimant after the end of the business day on Thursday 2nd June, 2016 amounted to 2 working days' notice of a hearing that ought to have been commencing de novo in terms of evidence, but in any event after 7 months of inaction on the part of the Board;
- The Claimant is found to have misrepresented the fact that he received notice of the hearing on 6th June, 2016 but notwithstanding that fact, the notice of 2 working days was unquestionably short and insufficient for a resumption or recommencement of the hearing. Given that the hearing had commenced eight months earlier, it is not considered a question of whether the Claimant had sufficient time to prepare his defence, which it is accepted that he did. Instead, it is found that the Claimant was not given sufficient notice to attend the hearing, more so, to attend with the representative he was entitled to have present;
- In addition to the short notice, the conduct of the proceedings on the 7th June, 2016 fell short of a fair hearing given the difference in composition of the panel; the fact that the evidence ought to have been presented de novo, especially with 2 new panellists out of 5; there was no presentation or consideration of evidence and the tenor of the members' remarks are found to have been inflammatory and irrelevant to the charges.

In relation to the Commission

- (ii) The Commission from the minutes, did not address their mind to their powers under Rule 93(18) which enabled them to require the Claimant to attend the hearing in person.

Having regard to the above conclusions drawn regarding the hearing before the Authority, it was unreasonable for the Commission not to have even addressed their mind to the possibility of requesting that the Claimant appear before them.

- (iii) It is further stated that had the Commission addressed their mind to Rule 93(18) but determined that they need not apply it, the Court would be minded in the context of the Board's hearing, to find that determination in itself unreasonable, in the *Wednesbury* sense.

Legal Principles and Authorities

25. The above are the Court's findings and conclusions arising from the evidence. The Court now considers applicable legal principles. The Claimant's grounds for review of the Board's decision are that the Claimant was denied natural justice in the conduct of the hearings of the Board and Commission, and that the Board's hearing was ultra vires Rule 93(11) of the Education Rules. These two grounds will be primarily considered, whilst the third ground of bias in relation to the hearing of the Board will only be briefly treated for reasons set out hereinafter. The argument in relation to the hearing before the Commission will be considered thereafter.

(i) The Hearings and Natural Justice

Authorities are legion in public law on the subject of the entitlement of a person whose rights are being determined, to due process, meaning simply, those recognised means by which such a person is to be treated fairly. It will suffice for the Court only to mention a few of such decisions, for not only is this position entrenched in the common law, in the instant case it is expressly incorporated into statute.¹¹ With respect to its consideration of the authorities, the Court's focus will therefore not be on the existence or not of the duty, but rather, whether in the circumstances of the claim, the respective duties of the Board and Commission to afford due process, can be said to have been discharged.

¹¹ Rule 93, sub-rules (3), (5), (10), (12), (13), (18), (22), (24) & (25).

The Court firstly reminds itself of the parameters of judicial review in terms expressed by Lord Evershed in **Ridge v Baldwin**¹² that '*... it is not the decision as such which is liable to review; it is only the circumstances in which the decision was reached ...*' In other words, it is the method by which (primarily the Board), approached and carried out its task of determining the charges laid against the Claimant.

26. It is also useful to contextualise the consideration of whether or not there was a breach of natural justice by highlighting the precise nature of the duty as judicially defined and as incorporated into statute by the Education Rules¹³. Reference is made to **Wiseman v Borneman**¹⁴ with respect to how the requirement for natural justice is regarded. In answer to the question whether the tribunal's refusal to provide the appellant therein with certain documentation was in all the circumstances unfair, Lord Morris of Borth-y-Gest opened his consideration as follows¹⁵ (emphasis mine):-

"My Lords, that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action." Nor do we wait for directions from Parliament. The common law has abundant riches: there may we find what Byles J. called "the justice of the common law" (Cooper v. Wandsworth Board of Works (1863) 14 C.B.N.S. 180, 194)."

His Lordship said further @ pg. 309

"In the careful address of counsel for the appellants we were referred to many decisions. I think that it was helpful that we should have been. But ultimately I consider that the decision depends upon whether in the particular circumstances of this case the tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded"

¹² [1963] 2 All ER 66 @ 91

¹³ Rule 93, sub-rules (3), (5), (10), (12), (13), (18), (22), (24) & (25).

¹⁴ [1971] AC 297

¹⁵ Ibid @ 308-309

These words speak for themselves, but also of particular significance to the Court in this case is the fact that in **Wiseman**, the tribunal in question was not a tribunal tasked with the making of the order finally determining the taxpayer's rights. The tribunal was part of a fact finding process whose procedure was statutorily prescribed. Nonetheless, Lord Morris of Borth-y-Gest, stated¹⁶, albeit on the way to determining that the tribunal had not in that case acted unfairly:-

"...I have expressed the view that the statutory provisions must not be read as in any way absolving the tribunal from doing at all times what in all the circumstances is fair, even at a stage when no decision finally adverse to the taxpayer is being made..."

27. With specific reference to the contention on behalf of Senior Counsel for the 1st Defendant that the decision of the tribunal in this case was not the final one, Lord Guest (in **Wiseman**) in effect stated that the principles of natural justice must nonetheless be just as vigorously applied to the preliminary decision as it would be the proceedings on the final decision¹⁷. Further in this regard, the Court refers to Barbadian authority **Re Niles (No. 2)**¹⁸ in which the Barbadian Court of Appeal had before it for consideration an application to re-open and re-hear a disciplinary complaint against an attorney-at-Law. The procedure of that disciplinary process entailed a two stage process of a recommendation made by a disciplinary committee after investigative hearing, thereafter submission for final decision and imposition of sanction by the Court of Appeal. Chief Justice David Simmons¹⁹ acknowledged that the disciplinary committee did not decide rights and obligations, it merely recommended. However, he nonetheless affirmed that the proceedings consisted of both stages and the whole of the proceedings were by the terms of the statute infused with safeguards of the rules of natural justice. In further consideration of the rules of natural justice relevant to the circumstances of this case, the Court refers to the case of **Aris v Chin**²⁰, decided by the Jamaican Court of Appeal.

¹⁶ Wiseman v Borneman Supra @ 310

¹⁷ Ibid @ 311

¹⁸ (2003) 66 WIR 64

¹⁹ Ibid @ paras 40-41

²⁰ (1972) 19 WIR 459

This case similarly concerned an appeal against an order made against an attorney in respect of a complaint against him for professional misconduct. The facts are outlined as follow below.

28. On the first scheduled hearing date the attorney was granted an adjournment for medical reasons (supported by a medical certificate). On the adjourned date the attorney was granted a further continuance for medical reasons. At the next date, the attorney was notified that the hearing would proceed in order to take the evidence of the complainant who was due to permanently leave the country. The attorney attended in person, asserted that he was still unwell and requested a further adjournment which was refused. The attorney declined to partake in the proceedings which were concluded and a decision reserved. Immediately thereafter, a second complaint was due to commence. The attorney renewed his request for an adjournment on the basis that he was unwell, which was again refused. The complainant in that second matter testified and the attorney declined to partake and left the hearing. The hearing concluded and the attorney was found guilty of professional misconduct and his name removed from the rolls. The attorney appealed on the ground inter alia, that he had been denied a fair hearing by virtue of being refused the adjournment which he requested for medical reasons. As was the case in **Re Niles** above, this authority concerns an appeal, not an application for judicial review. However, the principles involved in considering whether there were or were not breaches of natural justice in the respective cases remain similarly applicable to the Court's consideration of this claim for judicial review.
29. In **Aris**, the Jamaica Court of Appeal by majority decision found that the refusal to grant the adjournment in the circumstances amounted to a breach of the appellant's right to a fair hearing. The Court refers to the dissenting judgment of Fox JA, who whilst deciding against the appellant on the basis of his view of the facts, examined certain principles of natural justice applicable to the circumstances of that case, which are relevant to the case at bar.

In the first instance the learned justice of appeal adverted to the core principle that a person should not be condemned without being heard; that the exercise of the principle really means being afforded the opportunity to be heard; and that natural justice is nothing more than fair play²¹. The learned justice of appeal captured what he saw as the difficulties inherent in deciding an issue of natural justice in the following manner²² (emphasis mine):-

“To be understood in this realistic and straightforward manner, a definition of natural justice presents no problem. The real difficulty is one of application. This demands the ability to recognise when in any particular factual situation natural justice has been honoured or denied.”

With reference to the specific issue therein, (i.e., the denial of an adjournment), the learned justice of appeal outlined a number of relevant considerations that the Committee therein would have been obliged to take into account. At this juncture it is important for the Court to contextualise the difference between the case at bar and the authority under consideration, so that the application of the case is fully appreciated.

30. That authority concerned an appeal, in which the court was at liberty to interfere with the exercise of the tribunal’s discretion in refusing the adjournment, if found warranted according to the principles applicable to an appellate tribunal. In the case at bar, being proceedings on judicial review, this Court would be at liberty only to affect the outcome in a manner consistent with the exercise of its remit in the course of such proceedings. That the question of a refusal to grant an adjournment can be subjected to scrutiny on a claim for judicial review is accepted by this Court based upon judicial authorities, and in the final analysis, the end result is considered the same. One such authority is UK Court of Appeal decision **R v Panel on Take-overs and Mergers, ex parte Guinness plc**²³ where Lloyd LJ said the following in reference to the issue of the appeal court’s consideration of the tribunal’s refusal to grant an adjournment²⁴:-

²¹ **Aris** supra @ 465

²² **Ibid**

²³ [1989] 1 All ER 509

²⁴ **Ibid** @ 531

“In the first place the question whether we are entitled to intervene at all is not to be answered, as counsel for the panel argued, by reference to Wednesbury unreasonableness...It is not a question whether, in the language of Lord Diplock, quoted by Watkins LJ in the Divisional Court, the decision to hold the hearing on 2 September was 'so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it'... Rather, the question has to be decided in accordance with the principles of fair procedure which have been developed over the years, and of which the courts are the author and sole judge. These principles, which apply as well to administrative as judicial tribunals, are known compendiously (if misleadingly) as the rules of natural justice.”

There is a nuance in this decision which the Court considers important to highlight for purposes of its deliberation in the case at bar. In ***ex parte Guinness plc***, counsel for the Respondent panel had submitted that inasmuch as the panel had made a *decision* not to adjourn the hearing, the relevant test for the court of appeal in respect of the adjournment was one of *Wednesbury* unreasonableness, viz – that the refusal to adjourn was such that no reasonable tribunal could have made that decision.

31. Continuing from the above excerpt, Lloyd LJ dealt with that submission in the following manner:-

*“Counsel for the panel argued that the correct test is Wednesbury unreasonableness, because there could, he said, be no criticism of the way in which the panel reached its decision on 25 August. It is the substance of that decision, viz the decision not to adjourn the hearing fixed for 2 September, which is in issue. I cannot accept that argument. It confuses substance and procedure. If a tribunal adopts a procedure which is unfair, then the court may, in the exercise of its discretion, seldom withheld, quash the resulting decision by applying the rules of natural justice. The test cannot be different just because the tribunal **decides** to adopt a procedure which is unfair. Of course the court will give great weight to the tribunal's own view of what is fair, and will not lightly decide that a tribunal has adopted a procedure which is unfair, especially so distinguished and experienced a tribunal as the panel. But in the last resort the court is the arbiter of what is fair. I would therefore agree with counsel for Guinness that the **decision** to hold the hearing on 2 September is not to be tested by whether it was one which no reasonable tribunal could have reached.”*

The Court's take away from this extract from Lloyd LJ is that the question of how a tribunal exercised its discretion in carrying out its *procedure* nonetheless remains a question of procedure, rather than a decision or substantive outcome of the proceedings.

Conversely, what is also clear is that the Court's decision to interfere with the outcome of a request for an adjournment should be sparingly exercised, and considered with reference to the overall fairness of the proceedings. In this regard, the Court now returns to its examination of **Aris v Chin**²⁵, in which there was discussion about relevant factors in the context of a challenge to the disciplinary committee's refusal to adjourn the hearing of the complaint therein.

32. It was seen in **Aris** that (i) the conduct of the person charged may affect how the process of fairness in being heard is determined, namely – if a person waives their right to be heard, or with knowledge of the proceedings ignores the opportunity to participate, the person cannot later complain of a denial of natural justice; (ii) a person may be taken to waive their right to be heard by conduct such as failing to attend on spurious grounds and a tribunal would be entitled to find such grounds as a pretence really of a refusal to attend. In such circumstances, however, the decision maker has to decide whether the application for adjournment is supported by authentic reasons or for reasons of delaying or frustrating the hearing. More importantly to this case, Fox JA states that²⁶:-

“There was firstly the question of the sufficiency of the notice of the hearing of the particular complaint which has given rise to this appeal. As a concomitant of the right to be heard, is the right to receive sufficient notice of a hearing. Failure to give such a notice is a denial of natural justice.”

Fox JA thereafter continued to examine the question of sufficiency of the notice therein with reference to correspondence between the appellant and the secretary of the committee. The learned justice of appeal came to the conclusion in that case that it had been open for the committee therein to find that the appellant's request for the adjournment on the ground of illness was not genuine given that the appellant had attended, the allegations in the complaint and the point in time at which the appellant chose to take his leave of the proceedings. In determining the overall fairness of the proceedings in the case at bar, the Court considers to be relevant factors - (i) the question of the sufficiency of the notice afforded the Claimant by the Board;

²⁵ Paras 27-29 above

²⁶ **Aris v Chin** supra @ pg 466

(ii) his prior behaviour towards the hearing; and (iii) his posture by the time of June 7th, 2016, of the illegality of the continuance of the hearing.

33. Before considering the application of the various principles as illustrated by the authorities to the circumstances of the case at bar, there is one more authority that the Court wishes to highlight. Where there is insufficient notice alleged as the reason for the unfairness of a hearing, there must be some question as to the justifiable consequences of a person's election not to attend. In **R v British Broadcasting Corp, ex parte Lavelle**²⁷ a BBC contract worker's services were terminated after being given same day notice of a disciplinary hearing arising from alleged misconduct. The worker was unable, as entitled to do, to secure the attendance of a union representative. She consulted with her union, attended and partook in the hearing after her request for an adjournment was refused. Upon her dismissal she applied for judicial review to quash the dismissal on the basis inter alia, of insufficient notice of the hearing. The proceedings were found not amenable to judicial review and the application was dismissed on that basis, however it was accepted, that given the existence of the statutorily prescribed mode of dismissal, the failure to follow that procedure entitled the applicant to seek an injunction and declarations to halt the further proceedings arising from her dismissal. The applicant was ultimately refused such injunctive and declaratory relief, but at least one of the Court's reasons for refusing relief is usefully highlighted with reference to the case at bar. The Court found that relief should be refused because although the applicant had clearly not been given sufficient notice of her disciplinary hearing, *'she had chosen not to insist on her rights to receive proper notice and to have a representative present at the interview'*. There is clearly to be borne in mind therefore, that there are consequences, which could have been visited upon the Claimant herein, had he elected to attend the hearing on June 7th, 2016 in spite of his protest.

²⁷ [1983] 1 All ER 241

Application to the case at bar

34. In considering the overall question of whether the Claimant was afforded natural justice at the stage of the hearing before the Board, the Court will take into account the legal principles extracted from its examination of authorities above in conjunction with the findings of fact and inferences drawn as set out in paragraphs 22-24 above. The most relevant factors are considered as follows:-

- (i) The legislative scheme of due process expressly prescribed by statute;
- (ii) The sufficiency of the period of notice in and of itself as well as relative to the state of the proceedings at the time;
- (iii) The Claimant's attitude and conduct in relation to the notice as well as the entire proceedings;
- (iv) The underlying reason for the Claimant's request for adjournment of the hearing of 7th June, 2016;
- (v) The process of adjudication evident from the minutes of the Board's proceedings;
- (vi) The overall fairness of the proceedings.

35. Consideration of evidence, legal principles and authorities and relevant factors:-

Legal Provisions

- The legislature has provided at length for the protection of a teacher's rights to due process in relation to a disciplinary hearing²⁸. In addition to the provision of general rights of natural justice, of critical importance, is the fact that at the proceedings before the Managing Authority, a teacher is entitled to be represented by an agent – Rule 93(12). On the other hand, in the event of a hearing before the Commission (Rule 93(18)), that hearing may be with or without the teacher having an agent to represent him. The Court views this distinction as significant and apprehends that there is a greater duty on the Managing Authority to accommodate the teacher's agent at that hearing, as opposed to at the hearing before the Commission, where it is envisioned that the teacher would already have had the full benefit of all aspects of the due process prescribed by the Rules.

²⁸ Rule 93, sub-rules (3), (5), (10), (12), (13), (18), (22), (24) & (25).

This right to an agent will be factored in with the treatment of the Board's request for an adjournment of the June 7th, 2016 hearing;

- The Court considers also Rule 93(13) which stipulates that no documentary evidence against a teacher shall be used in the hearing unless the teacher is provided with or with access to such evidence. At the initial hearing when the Board commenced its deliberation on 14th October, 2015, the Claimant had not been provided with his disclosure. This fact was confirmed by virtue of the GM's acknowledgment on 7th June, 2016 that all documentation sent to the Claimant via registered mail had been returned. The commencement of deliberations against the Claimant on 14th October, 2015 was marred by the Claimants non-receipt of his disclosure;
- By Rule 93(10)(d) the Managing Authority had a choice to afford the Claimant an opportunity to be heard on paper or to hold a hearing. They elected to hold a hearing and as such it is considered that the hearing is to be assessed against the due process applicable to discharge of an oral hearing, as opposed to provision of an opportunity to the Claimant to have made written representations in his defence.

Sufficiency of Notice

- The proceedings had been at a standstill for approximately over 6 months when the date was set for the continuation of the hearing. The Authority whether in their view justifiably or not, had granted the prior adjournments requested by the Claimant and had themselves adjourned the hearing for November 6th, 2015. The Claimant had been enquiring about the hearing consistently – the GM acknowledged that the Claimant had been in contact with her via email concerning the hearing. It was following the Claimant's last email on May 26th, 2016 strongly enquiring about the hearing, that the notice for the 7th June, 2016 was sent out;
- The email notice of the hearing was dispatched at 6.39pm on the 2nd June, 2016, which was a Thursday.

The Claimant received this email by his own words on the 3rd June, 2016. The notice afforded was therefore 2 working days before the hearing. In these circumstances, this is found to be insufficient notice. The proceedings had been dormant last by the Authority's action in adjourning the hearing of 6th November, 2015. It was the Claimant who kept inquiring as to its conclusion, albeit expressing strong views as to its legality, thus the Court finds that he had communicated his interest in the resolution of the matter. It was unfair for the Board to have proceeded in his absence on such short notice.

Claimant's attitude and conduct and the underlying reason for the refusal to attend on June 7th, 2016

- The Court notes that the Claimant's tone and posture in his responses throughout the investigative period and in relation to the hearing could understandably have caused the ire of the members of the Board. It can also be noted that whilst the Claimant attended the hearing, his attendance and co-operation can be classified as insistently on his terms. His objection to the legality of the continuation of the process as a violation of Rule 93(11) was strong and vociferous. However, none of these observances is found to be relevant to the question of whether or not the Claimant ought to have received more than 2 working days' notice of a hearing to be continued after a period of 6 months.
- The Claimant could have elected to attend the hearing on 14th October, 2015 without his attorney – but he did not, and the Authority acceded to a request for an adjournment. The Claimant could have elected to attend the hearing on June 7th, 2016 and protest the continuation in person - however the result of having so attended can be considered in light of ***R v BBC, ex parte Lavelle***²⁹ and ***Aris v Chin***, where the attendance of the persons before the respective tribunals in those cases negatively impacted their ability to maintain their subsequent protest of the proceedings being held.

²⁹ Supra fn 27

The Claimant is noted to have communicated the reason for protesting the hearing as it being insufficient notice both for him and his attorney. It is recalled, that part of the Claimant's statutorily provided due process rights is the right to have an agent present at the hearing. It is noted in fairness to the Authority that the Claimant was protesting the legality of the proceedings, however his ultimate position was that he had not been afforded sufficient notice of the hearing.

The process of adjudication and overall fairness of proceedings before the Authority

- The minutes of the hearing on 14th October, 2015 disclose that the proceedings commenced in the absence of the Claimant who was not present at the appointed time. The Board was justified in commencing the inquiry however as it later became known, no disclosure would have been provided to the Claimant as required by Rule 93(13) by that date. Further, the Board acceded to the Claimant's request for an adjournment. The minutes of that meeting were provided to the Claimant, however at the next hearing on the 26th October, 2015, the Claimant was provided with amended charges, in terms of particulars. It was also accepted by the Board that as receipt of the disclosure sent by registered mail could not be established, the hearing was being adjourned to facilitate the Claimant's preparation of his defence.
- The minutes reveal that the GM directed the members' attention to the summary of the HR Committee's meeting at which it was decided to lay charges against the Claimant. There were inappropriate utterings from several members of the Board in relation to the Claimant, the GM's statements displayed a personal opinion of the cogency of the charges and she stood in the dual role as investigator of the Claimant and was primarily responsible for the presentation of the material before the Board.
- The minutes do not reveal the members' attention being directed to any responses made by the Claimant during the investigative stage and from the documentation submitted, it is clear that such responses formed part of the documentary evidence in the matter;

- On June 7th, 2016 there were 2 new members on the panel and 3 original members were absent. There was no account made for how the 2 new members had been apprised of the documentary evidence and reliance was instead placed on the evidence presented on 14th October, 2015;
- By the 7th June, 2016, the Claimant had via his attorney made written submissions, there was no reference to the consideration of such submissions, in respect of which it is known that the Board resolved to seek legal advice at its meeting on 22nd January, 2016;
- The hearing of 7th June, 2016 again showed inappropriate utterings with respect to the Claimant, which were irrelevant to the Board's consideration of the subject matter of the charges. There was in the round no deliberation on the evidence apparent from the minutes of the meeting of October 14th, 2015. Instead, the Claimant's failure to attend appeared to have been viewed as indicative of his guilt.

36. The Court considers that in light of all the above, the hearing on 7th June, 2016 was in all the circumstances in breach of the Claimant's entitlement to due process. Whilst it is accepted that the Claimant would have had more than sufficient time to have prepared his defence, the period of 2 working days' notice of the continuation of hearing could not objectively be considered to have presented sufficient opportunity for the Claimant to secure the attendance of his attorney, particularly after the hearing remained dormant for over six months. Also, given that the Claimant had repeatedly demonstrated interest in the resolution of the hearing, it was unfair to have gone ahead with the hearing without at least ascertaining why it was that the Claimant was not present. It was also unfair for the GM to have presented the case against the Claimant, by reason of the fact on the one hand, that she was the investigator of the charges, and on the other hand, a part of the Managing Authority. In her statements to the members it was clear that she was addressing her colleagues from the position of an 'insider' and had the ear of her colleagues. The Court entirely disagrees with the consistent claims by and on behalf of the Defendants that the GM was the best person to have 'marshalled' the evidence.

Given the task before them and the statutory underpinning, the role undertaken by the GM at the hearings was really the role that ought to have been taken by the Chairman. The Court finds that in total, the hearing conducted by the Managing Authority was manifestly unfair and did not afford the Claimant a reasonable opportunity to be heard in his defence.

The proceedings before the Commission

37. Having regard to the legislative scheme applicable to the Commission, the considerations regarding fairness will be different than those which arose in respect of the Managing Authority. The relevant provisions are Rules 93(18-24)³⁰. Sub-rule 18 reads:-

(18) The Commission may, upon receipt of the submission and if it thinks fit, cause further investigation to be made into the matter and where it is necessary, the teacher may be asked to appear before the Commission and be given a reasonable opportunity to be heard in his own defence, with or without an agent to assist or act on his behalf at the hearing.

This Rule provides that upon receipt of a submission from a Managing Authority following upon a disciplinary hearing, the Commission has the discretion to (i) cause further investigation into the matter; and/or where deemed necessary (ii) ask the teacher to appear before the Commission upon a reasonable opportunity to be heard in his own defence, with or without an agent. As a discretionary power, the actions (or omissions) of the Commission pursuant to this Rule are amenable to judicial review. The Court in the first instance, regards the availability of this power as an additional safeguard to the rights of natural justice to be afforded a teacher. Further, upon a claim for judicial review, a decision to invoke or failure to invoke this Rule is subject to consideration of the ground on *Wednesbury* unreasonableness. Counsel for the Claimant relied upon this Rule in his urgings to the Court to find that the Commission's proceedings were similarly devoid of natural justice. In *R v Panel on Take-overs and Mergers ex parte Guinness*³¹, Lord Donaldson of Lynton MR, adverted to the fact that the exercise of the Court's jurisdiction on an application for judicial review could be rendered unduly complicated or

³⁰ The Education Rules are set out in Appendix II

³¹ [1989] 1 All ER 509 @ 512

cumbersome, where the grounds for review overlapped, so that the permutations possibly arising from the different grounds could be endless and confusing. In that regard, the learned Master of the Rolls eschewed an absolute separation of respective grounds, instead preferring an approach which examined the impact of the proceedings in the round. This observation and approach was made in the context of the Take-over Panel's recent genesis as well as its processes being derived from self-regulation.

38. The parallel that the Court applies in the instant case, is that taking a bird's eye view, the obligations of the Commission must be considered relative to the role and functions of the Managing Authority. Particularly, the Managing Authority's internal regulation, as distinct from the duties it is tasked with discharging, is largely self-regulating. For example, the Rules do not stipulate how a managing authority is to be comprised - if a Board, the numbers, terms or qualifications of its members are not prescribed. Also, there is no specification of what comprises a quorum in order for the Authority to carry out its business. In light of the fact that the Managing Authority is tasked with fact finding of misconduct which may result in the rights of teachers being affected, its functions are considered quasi-judicial. Having regard to this quasi-judicial nature of its functions relative to the lack of statutory definition or oversight in relation to its internal regulation, the Court considers that the disciplinary process of the Managing Authority is susceptible to breaches of due process. For example, as the case at bar demonstrates, notwithstanding that the GM was not a voting member of the Board, she was an integral part of the Board's composition and operations. Having personally conducted the investigation against the Claimant, she was in fact the Claimant's accuser. It was therefore not acceptable, on the most basic understanding of due process, that the GM, both as accuser and as a colleague and operational member of the Board of the Managing Authority, should have been involved in the Claimant's disciplinary hearing at all. All that is to say, that in respect of the Commission's powers it is considered that they are heavily obliged, as stipulated in Rules 93(22) and (24), to satisfy themselves that due process was carried out in relation to the Managing Authority's proceedings.

39. In this regard therefore, when considering the applicability of Rule 93(18), the question whether or not the Commission acted properly in respect of this Rule must be considered with reference to the proceedings before the Authority. The proceedings before the Commission are also of a quasi-judicial nature, thus the need for assuring itself of due process of the Board's proceedings, was therefore more than mechanically ticking off whether the requirements for due process have been satisfied. In this case, the Claimant had never been heard despite an oral hearing having been scheduled by the Authority. Whether or not the Commission was of the view that the Claimant contributed to his not being heard, the state of the deliberation in terms of evidence revealed by the minutes was a matter that ought to have plainly been of concern to the Commission. There was evidence before the Commission of the Claimant having made written submissions to the Authority but no indication exists that the Commission addressed its mind to such submissions. Even if the Commission considered that the Authority was justified in proceeding in the Claimant's absence on the 7th June, 2016, the absence of any representations taken into account on his behalf versus the heavy penalty of dismissal ought to have brought the Commission's attention to bear in respect of applying Rule 93(18). There is no indication from the record that the Commission entertained exercising their power under this Rule.
40. For these reasons, the Court considers that the Commission's failure to even consider the exercise of their power under Rule 93(18) to give the Claimant the opportunity to appear and place his position on record, amounted to a failure in the round, to afford him natural justice. The Court illustrates its position (by contrast) by reference to the decision of **R v Niles (No. 2)**.³² In this case (a similar two stage process to that at bar), one of the arguments advanced in support of the attorney having been denied natural justice was that, he ought to have been called before the Court of Appeal (in that case carrying out judicial functions qua administrative tribunal), told of its intended decision to disbar him and given the opportunity to show cause as to why that course of action should not have been taken.

³² Supra fn 18

The basis of the argument, was the acknowledgment by the courts (***Wiseman v Borneman***) that even where a statute incorporated express provisions safeguarding the right to natural justice, the Court as the final arbiter of what is fair, could supplement the statutory provisions to ensure that fairness was achieved. In such regard, it was argued that the Court of Appeal ought to have supplemented the statutory provisions afforded an attorney under the Legal Professional Act, and so allow him to be heard before the final decision maker in the disciplinary process. This argument was rejected by the then Chief Justice, when the matter made its way on substantive appeal, expressed in the following terms (emphasis mine):-

“Dr Cheltenham's neat point is that the statutory procedure in the Legal Profession Act should be supplemented by requiring the committee to recall an attorney at law and hear him in regard to the proposals it intends to make in the report. The statutory procedure has no such requirement. The statutory procedure has all of the attributes of a full-blown judicial trial and the attorney at law has every possible opportunity before the committee and in the Court of Appeal to ventilate his case before a final decision is made. The statutory procedure and the actual practice of the committee differ completely from what obtained in Ridge v Baldwin.”

Chief Justice Simmons then considered a line of authorities, distinguishing them all with reference to the differing statutory regimes and circumstances attendant in each respective case.

41. In the final analysis, the Chief Justice's rejection of the argument was that the statute required no additional safeguards for ensuring natural justice; the legislative regime was designed to achieve a full ventilation of all aspects of the hearing at the first stage of the disciplinary committee's hearing; and the attorney had in fact been given full opportunity to present his case and had failed to fully avail himself of those opportunities. Conversely, in the instant case, there is legislated, a power enabling the Commission to afford a teacher an oral hearing or to make written representations before the Commission makes its decision. The power is discretionary, thus it is possible for the Commission to find due process and still afford a teacher this opportunity, if thought necessary, or vice versa.

Unlike the extensive provisions likened to a court hearing which were legislated for the regulation of the disciplinary hearing in *Niles*, – in this case, although subject to basic principles of natural justice, the actual discharge of the Managing Authority’s functions of the disciplinary hearing is not statutorily regulated. In addition to this fact, the Managing Authority failed to meet the standard of due process by means of the poor quality of its deliberation process; there was a clear conflict of interest of the GM having presented the case both as a colleague to her fellow members of the Board and the Claimant’s accuser. The notice of two working days imposed after more than 6 months of inaction was unreasonably short; and the failure (at least on the record), to take into account the written submissions of the Claimant.

42. In the circumstances, it is considered that the failure of the Commission to even consider application of Rule 93(18) in the face of such failures by the Managing Authority (whether it apprehended the Managing Authority’s failures as such or not), renders the Commission’s own decision devoid of having afforded the Claimant a reasonable opportunity to be heard in his own defence. At this juncture, both the decision of the Managing Authority and that of the Commission with reference to the Claimant’s dismissal, have been found in breach of natural justice and thereby void. As a consequence of so finding, the decision at the third level – the Appeals Tribunal, cannot be upheld as it must be affected by the invalidity of both decisions below. The question of the consequences which must flow from this determination will be discussed in full in the ensuing paragraphs, however it suffices at this moment to say that the recommendation to dismiss the Claimant, the approval of the recommendation of dismissal, and the affirmation of the dismissal on appeal, must all be declared in breach of natural justice and accordingly, void.

The remaining grounds of bias and ultra vires (Rule 93(11))

43. The Court now considers the second and third arguments which were put forward in respect of the claim for review of the first level of the Claimant’s dismissal. In terms of the allegation of bias, the Court considers that this argument need not be addressed, given its extensive findings in relation to the breach of natural justice.

Notwithstanding, the Court finds it appropriate to make a few observations on the issue of bias and the proceedings. As was submitted by senior counsel in relation to the proceedings before the Authority, it is acknowledged that the General Manager was not a decision maker and that the Authority's recommendation for dismissal was not the final determination of the matter. In terms of any issue of bias however, the extent of and tenor of the GM's contributions to the process would have required significant consideration of the question of apparent (not actual) bias as justice should not only to be done, it should be seen to be done. Furthermore, the Court is of the view that a practical reality may very well be, that the Claimant's disciplinary hearing was perhaps reflective of a norm in the discharge of the disciplinary functions by both the Managing Authority and the Commission. Relative to the weight of the statutory obligations of these bodies and the extent to which the rights of persons are liable to be affected, the discharge of the disciplinary functions would be well served by strengthening of the method and quality of adjudication. With these few observations, the Court rests in relation to the issue of bias.

44. With respect to the question of the vires of the hearing according to Rule 93(11), this issue will be determined given that the construction of the rule is sure to arise in the future. As alluded to in its summary of the respective arguments of Counsel, learned senior counsel's interpretation of Rule 93(11), was that the limitation of 30 days is not intended to nullify the actual hearing, but directed towards protecting the teacher from the effects of interdiction for any extended length of time. That interpretation finds favour with the Court. The Rule does not state that the proceedings shall cease or be disposed of upon the expiration of the 30 days from date of notification of the charge. Rather, the Rule speaks to the consequence of failing to conclude the hearing, with specific reference to the status and salary of the teacher being reinstated and remaining unchanged. The use of the word 'reinstate' is perhaps the culprit giving rise to a construction that the proceedings are in fact disposed of; for 'reinstatement' in legal terms, is generally a remedy following upon resolution of a dispute in legal proceedings.

45. The Court agrees with senior counsel in his construction that the mischief of the Rule is really directed at ensuring that the teacher who is charged and placed on interdiction, (generally with a reduction in salary), is not subjected to that prejudice for longer than the period of 30 days. Additionally, the Court considers that there is a similar regard to be had in relation to the disruption to the delivery of curriculum which may be caused by the teacher's interdiction. Further, it is not inconceivable, that whilst the standard of disposal of the hearing has been set at 30 days, (or as stated with reference to the disposal of the Commission's process being without prejudice to 'quick and effective justice' (Rule 93(20)), the life of a hearing, could easily surpass 30 days, due to illness or other lack of availability of a party, or some other good reason. In the circumstances, the Court agrees, that if indeed the Legislature's intent was that the disciplinary hearing itself should be nullified by its non-completion within the 30 days, such an effect ought to have been expressly mandated in clear terms within the Rules. The Court therefore dismisses the ground of review that the continuation of the hearing in June, 2016 was ultra vires the Managing Authority's powers pursuant to Rule 93(11) of the Education Rules.

Remedies

46. The Court has found that the proceedings conducted by the Managing Authority and by the Commission were respectively in breach of the Claimant's rights to be afforded a fair hearing, particularly in terms of being able to put forward a case in his defence. The legal consequence flowing from such a finding is that the hearings, at both levels are void and the decision of the Appeals Tribunal is accordingly void. There is no want of clarity as to this being the effect of the Court's finding of a breach of natural justice by the failure to afford the Claimant a fair hearing. This position is clear from **Ridge v Baldwin**³³ per Lord Reid:-

"...Then there was considerable argument whether in the result the watch committee's decision is void or merely voidable. Time and again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void, and that was expressly decided in Wood v. Woad.⁶² I see no reason to doubt these authorities.

³³ [1964] AC 40 @ 80-81

The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case.

For the avoidance of doubt, it is noted that Lord Reid went on shortly thereafter to positively state that the decision of the Secretary of State upholding the watch committee's decision to dismiss the applicant therein, was itself void and was incapable of validating the void decision. With respect to the appropriate remedy that is to be awarded however, the authorities demonstrate less clarity, particularly arising in relation to a public officer whose unlawful dismissal has been quashed, and who desires reinstatement. This is such a case, as the Claimant herein is resolute in his desire for reinstatement to his position as principal of the primary school.

47. There have been several authorities on this issue, but even at the highest levels, there appears to have been some difficulty in reconciling the status of the public officer with reinstatement, subsequent to an impugned dismissal. The Solicitor-General on behalf of the 2nd and 3rd Defendants commended the case of **Chief Constable for the North Wales Police v Evans**³⁴ in support of his argument against reinstatement. The 2nd and 3rd Defendants' position is that the Claimant would be returning to an environment of conflict and the Court would be imposing an undesired relationship upon the Managing Authority. Senior Counsel on behalf of the 1st Defendant also argued against reinstatement on similar bases, including the impracticality of insisting upon the return of the Claimant to his position. In particular, it was asserted that the position of principal has already been filled and the working relationship between the Authority and the Claimant was incapable of repair. As far as this Court is concerned however, given that these are practical considerations, they will have to give way to any legal resolution deemed applicable by the Court. With respect to the authorities, in **Evans**, the police officer was found to have resigned under threat of dismissal and the decision finding him guilty of the misconduct which had given rise to his forced resignation, was quashed.

³⁴ [1982] 3 All ER 141

Lord Hailsham of Maryleborne LC, who delivered the decision on behalf of the House of Lords, acknowledged that there was a difficulty in finding an appropriate remedy borne out of the particular circumstances of that case³⁵.

48. The argument against reinstatement on behalf of the 2nd and 3rd Defendants, reads in similar terms with the headnote in **Evans**, to the effect, inter alia, that to order reinstatement 'would be impractical and might border on a usurpation of the powers of the chief constable by the court [*the Managing Authority herein*]...' The difference of course is that the Lord Hailsham's full reasons take the matter much further than a question of impracticality and the decision is highly fact specific, having regard to the officer therein having been employed on probation and found to have resigned under duress (as opposed to having been dismissed). By the time that matter was decided the appellant's employment path had already been altered by the expiration of his probationary period, hence reinstatement therein was an impossibility. This decision, because of its peculiar facts, does not assist the Court in the present case. In **Edwards v Attorney-General of Guyana and the Public Service Commission**³⁶, the Caribbean Court of Justice (JJCCJ Nelson and Hayton), alluded to the difficulties attendant upon reinstatement as a remedy in cases of dismissal from public employment, in the following terms:-

*"We are conscious of the dual dimension of the public employment relationship i.e. the public law and the private law elements. The notion taken from public law that a dismissal may be a nullity presents problems in terms of the relief appropriate in a case where a considerable period of time numbered in years has passed since dismissal during which the employee has performed no services for the employer. One possible approach is to say that the consequences of such nullity must vary "according to the facts of the particular case", including whether the employee remained ready, willing and able to work for the employer notwithstanding the termination and sought relief in the courts expeditiously: see the approach taken by Lord Bingham of Cornhill in *McLaughlin v H.E. the Governor of the Cayman Islands*. [FN1] However, it may be more appropriate to treat the State as any private employer, as this Court indicated obiter in *Brent Griffith v Guyana Revenue Authority* [FN2]. In this way, a court might focus on the private law contractual obligation;*

³⁵ Evans, supra @ pgs 145-146

³⁶ [2008] CCJ 10 @ para 15

see also the approach of the Canadian Supreme Court in Her Majesty The Queen in Right of Newfoundland v Andrew Wells[FN3]. We need not consider the merits of these contrasting approaches.”

49. In **Edwards**, the appellant was not seeking re-employment as a public officer, thus the Court went no further in its consideration of the issue of reinstatement. The brief remarks therein however, underscore the absence of a consistent approach on the issue. The decision of **McLaughlin v The Governor of the Cayman Islands**³⁷ is the decision upon which Counsel for the Claimant has based his argument for reinstatement. The issue of reinstatement in this case arose out of a decision retiring the appellant from the public service being quashed on appeal. Reinstatement was refused and the matter was remitted to the judge of first instance for assessment of damages. This decision illustrates a similar difficulty towards reinstatement which was encountered at first instance and on appeal, but Counsel for the Claimant has advanced the authority on the basis of the final resolution decided by the Privy Council. The facts of the matter are that on appeal, the Cayman Islands’ Court of Appeal reversed a decision at first instance that the appellant’s retirement in the public interest from his public post in the Ministry of Agriculture had not been effected in breach of natural justice. The Court of Appeal ruled that the appellant’s dismissal was void; that his remedy lay in damages; that reinstatement was not considered appropriate; and the matter was accordingly remitted to the trial court for assessment of damages. By virtue of the Court of Appeal’s order that the dismissal was void, questions of the appropriate measure of damages and extent of entitlement in terms of continuation of accrual of pension rights for example or payment of pensions contributions, became the subject of contention. The Chief Justice who was adjudicating the assessment of damages, rendered a judgment seeking to interpret the Court of Appeal’s ruling with respect to its intended effect in law. Both sides appealed against the Chief Justice’s findings as to the continuance and ultimate cessation of the officer’s employment in the public service, and the resulting monetary award that ensued.

³⁷ [2007] UKPC 50

50. On appeal once more, the Court of Appeal made a ruling confirming their refusal to order reinstatement, whilst revising their position that the effect of the breach of natural justice rendered the appellant's dismissal unlawful rather than being void, in line with a number of authorities which included **Evans, Ridge v Baldwin** and **Jhagroo v Teaching Service Commission**.³⁸ The Court of Appeal's second ruling was to the effect that the dismissal although declared unlawful, was still effective in terminating the appellant's tenure in the public service. The position in relation to the award of damages and refusal to order reinstatement was affirmed. The Court of Appeal's resolution did not find favour with the appellant, who appealed to the Privy Council. The Board's opinion delivered by Lord Bingham of Cornhill, firstly affirmed that the established consequence of a finding of dismissal of a public officer in breach of natural justice, is that once so declared by a court of competent jurisdiction, the dismissal is null, void, and without legal effect. Further, that regardless of the terminology employed ('void' or 'unlawful'), the legal result remains unchanged in that the dismissal lacks legal effect³⁹. Lord Bingham also distinctly stated⁴⁰, that '*...There is no analogy with wrongful dismissal, where a dismissal may be unlawful but nonetheless effective.*'
51. The ensuing paragraph addresses the crux of the issue which the Court has found to generally arise where reinstatement (so termed), is sought by a public officer following a dismissal declared to be void. At paragraph 17 of the judgment Lord Bingham continued (emphasis mine):-

"It was reasonable for the first Court of Appeal to decline to order that Dr. McLaughlin be restored, after a delay of nearly four years, to the specific office he had held in December, 1998. It is not entirely clear whether the Court, in refusing to order reinstatement, meant more than this. It was never, unfortunately clarified at the time. But if the Court did mean that Dr. McLaughlin was no longer an officer in the Government service, it was failing to recognise the legal effect of the declaration granted, an error from which reference to authority would have saved it."

³⁸ [2002] UKPC 63

³⁹ **McLaughlin** supra @ 15

⁴⁰ Ibid

The declaration thereafter that followed from the Privy Council was that⁴¹:-

“(1)...the purported dismissal of Dr. McLaughlin as from 31 December 1998 was ineffective in law to determine his tenure of office, and (2) Dr. McLaughlin is entitled to recover arrears of salary since 1 April, 1999, and to the payment of pension contributions on his behalf, making allowance for his earnings in the United States, until he resigns or his tenure of office lawfully comes to an end.”

The importance of this authority is that the Privy Council acknowledged the fact that an appointment to public office, short of lawful dismissal, could only come to an end by some other legally available mechanism – such as resignation. The usual difficulties attendant upon reinstatement in the private employment relationship obtain in the same manner, however, the legal status of the public officer remains intact where the dismissal is declared void.

52. The Privy Council recognised the difficulties inherent in reinstatement, which include delay from the date of purported dismissal, in other cases it was a lack of physical capability to do the job (**Jaghroo**), age, or time elapsed (**Edwards**). In the instant case it is complained that the relationship is broken down and that a 3rd party has already taken the Claimant’s position. According to **McLaughlin** however, those difficulties aside, the public officer nonetheless remains appointed as such but that position does not automatically mean that he or she could be returned to the same job. It appears left up to the Courts (and the employers), having regard to the particular circumstances of each case and (short of failing to recognise that the employment status remains from the unlawful dismissal), to make whatever order regarding the continued employment as is deemed appropriate. Such a course of action may be easier in some cases than in others. In order to determine what is appropriate in this case the Court must have regard to the status of the Claimant not only at the date of dismissal but at the time of judgment.

The Claimant’s employment status

53. Notwithstanding the position put forward by both parties in relation to the Claimant’s employment, the first place that the Court needs to direct its attention to is the Education and Training Act Cap. 36:01, and the Education (Amendment) Rules, 2012 to confirm the

⁴¹ **McLaughlin** supra @ 17

mode of appointment and employment of the Claimant. By virtue of section 17(2) of the Act, the Commission is vested with the power to approve the appointment of teachers to the teaching service. The enabling power is that of the Managing Authority pursuant to (i) section 29(5), which provides that a teacher shall be eligible for appointment by a Managing Authority subject to certain preconditions; and (ii) section 29(12) which provides that the Managing Authority may with the approval of the Commission appoint a teacher subject to stated conditions. The Managing Authority is also tasked with the employment, recruitment and interview process of teachers, including principals and vice-principals. Under the Rules, appointment and employment are referred back to sections 28 and 29 of the Act. Sections 28 and 29 do not specifically refer to principals or vice principals, but a principal is defined as the teacher in charge of a school, thus the reference to appointment of teachers, includes teachers employed as principals or vice principals. The mechanisms for employment and appointment are more particularly set out in the Education (Amendment) Rules Nos. 56 – 75. The full text of these Rules are set out in Appendix II but are extracted in brief below.

The Framework for Appointment

54. The Rules are not the simplest to unravel but as briefly set out, form the basis of the Court's determination of the Claimant's status as a necessary first step in order to award him the most appropriate remedy:-
- (i) 56(1) – every teacher must possess a licence to teach⁴²
 - (ii) 56(5) - a full licence to teach may be granted for up to 5 years only⁴³;
 - (iii) 57A – the teacher is required to maintain the full licence by completing a certain number of hours of professional development over the course of the 5 year period of the licence;
 - (iv) 64(3) – a teacher employed as a principal or vice principal is in the first instance required to hold a full licence in addition to a certificate of educational leadership

⁴² A licence can also be provisional or special, as provided under Rule 58.

⁴³ In contrast to the previous full licence granted under the repealed Rule 56 which had no time limit. The repealed Rule 56 is extracted in Appendix III.

- (v) 64(4)(a) – Rule 64(3) notwithstanding, a person employed as a principal or vice-principal with a full licence and nothing more may be so employed, but only on a year to year basis for a maximum of 5 years, until obtaining the certificate under 64(3);
- (vi) 64(4)(b) - a teacher employed as a principal or vice-principal with a provisional licence and nothing more may be employed on a year to year basis for a maximum of 7 years, until obtaining the full licence and certificate under 64(3);
- (vii) 70(2)(a-f) – governs contracts of employment which are issued by the managing authorities, according to the different classes of licence held;
- (viii) 70(2)(f) - a teacher employed as a principal with a full licence and nothing more may be employed on a year to year contract until compliance with 64(3) – i.e., until obtaining the certificate of educational leadership;
- (xi) 70(4) – the contract of employment is between the teacher and the managing authority;
- (x) 71(1)(2) – provides for appointment of teachers (as distinct from employment). Every appointment is subject to completion of a mandatory period of probation of 1 year, or 2 years if the period is extended by the Commission (this corresponds with section 29(5)(12) of the Act.
- (xi) Alternatively, 71(5) provides that the managing authority may at the end of the probation period terminate employment for failure to satisfactorily fulfil the conditions for appointment.

55. Having regard to the above Rules and provisions, the precise nature of the Claimant's position was not expressly stated in the evidence. In the first instance, the evidence was that the Claimant was employed as principal at the primary school for the year 2013-2014. Thereafter, his contract of employment was clearly renewed for 2014-2015 given that the charges were imposed against him in September, 2015. It is also the evidence that the Claimant was pursuing his certificate of educational leadership, which was interrupted and left incomplete as a result of the disciplinary proceedings.

Having been in pursuit of his certificate of educational leadership, the Court infers that the Claimant was in possession of a full licence and nothing more, as opposed to a provisional licence and nothing more. There was no mention or assertion (oral or documentary), of the Claimant having been appointed, therefore the Court finds the Claimant's status to have been one of employment, as distinct from appointment. In the circumstances, the Claimant's entitlement to any remedy, cannot go beyond what his status at the time of his dismissal affords him. As determined by the Court, at the time of his dismissal, the Claimant was employed by the Anglican Diocese, as Principal of St. Barnabas' Primary School, on a full licence, with nothing more. The status of the Claimant licence to teach is that it remains as it was at the time of his unlawful dismissal, unless or until altered in accordance with the provisions of the Rules.

Conclusion and Disposition

56. Regarding the Claimant's employment, it is to be recalled that by Rule 64(3) a principal with full licence only (i.e. without a certificate in educational leadership) could only be employed on a contract from year to year for a maximum of 5 years. In the circumstances, having inferred that the Claimant was in possession of a full licence only, at the time of his dismissal the Claimant at best could have only been employed on a renewable year to year contract for five years from the date of his initial employment as principal. It is considered that a declaration in this regard along with damages flowing therefrom is the appropriate remedy that the Court can provide to the Claimant. The matter is therefore disposed of as follows:-

- I. The decision of the Managing Authority of the Anglican Diocese of Belize recommending the dismissal of the Claimant on the 7th June, 2016 was made without affording the Claimant a fair opportunity to be heard and is declared void;
- II. The approval by the Teaching Service Commission on the 3rd November, 2016, of the recommendation of the Managing Authority for the dismissal of the Claimant, was made without affording the Claimant a fair opportunity to be heard and is declared void;

- III. As a consequence of paragraphs 1 and 2 above the Teaching Service Appeals Tribunal's decision affirming the dismissal of the Claimant on the 29th September, 2017 is declared void;
- IV. The Claimant's status as principal of St. Barnabas' Anglican Primary School remains effective from the 29th September, 2017 up to the 5th year anniversary of his employment as principal at St. Barnabas' Anglican Primary School;
- V. The Claimant is entitled to payment of full salary and emoluments as Principal of St. Barnabas' Primary School from the date of 29th September, 2017 to the 5th anniversary of his employment at the said school;
- VI. Costs are awarded to the Claimant in the sum of \$7,500 apportioned at 50% against the 1st Defendant and 50% against the 2nd and 3rd Defendants.

Dated the 27th day of March, 2019.

Shona O. Griffith
Supreme Court Judge

APPENDIX I

BELIZE EDUCATION AND TRAINING ACT CHAPTER 36:01

- 17. Power and functions of the Belize Teaching Service Commission.
- 28. Licensing etc., of teachers.
- 29. Employment, Probation and Appointment.
- 32. Disciplinary Action by Managing Authorities.
- 40. General functions of Managing Authorities.
- 41. Role of Managing Authorities in Employment and Appointment of teachers etc.

- 17.–** (1) The Belize Teaching Service Commission shall enforce,
- (a) standards set by the Ministry for entry into teaching to assure the quality and status of the Belize teaching force and the quality of the delivery of education; and
 - (b) all regulations governing the conditions of service of teachers with respect to employment, appointment, transfer, discipline and termination of teachers in government and government-aided pre-primary, primary, secondary, tertiary and TVET institutions subject to the provisions of sections 19 and 21 of this Act.
- (2) The Commission shall have the power to,
- (a) verify and ensure compliance with standards, set by the Ministry, and regulations prescribed in this Act and Rules made thereunder for employment of teachers;
 - (b) maintain a database of teachers;
 - (c) maintain a Register of Appointed Teachers;
 - (d) approve the appointment of teachers to the teaching service;

- (e) approve transfer of teachers;
- (f) approve such leave as long leave, study leave and maternity leave, extended sick leave and any other leave extending beyond ten days;
- (g) approve secondment and posting as itinerant resource officer;
- (h) approve disciplinary action, for major offences, against teachers in the teaching service or recommend the imposition of appropriate sanctions against managing authorities, for government and government-aided preschools, primary and secondary schools, and TVET institutions, in accordance with this Act and Rules made under this Act, and all other applicable laws.

(3) The Commission shall collaborate with the Chief Education Officer to help Managing Authorities achieve quality leadership in the administration of matters related to the employment and conditions of service of teachers through a system of support, guidance, training, and monitoring.

(4) The Commission, in the exercise of its functions under this Act shall recommend the imposition of appropriate sanctions against any Managing Authority or Proprietor which fails to comply with the provisions made under this Act and Rules made thereunder for matters related to the employment and conditions of service of teachers.

(5) The Commission shall, in the exercise of its functions under this Act, not be subject to the direction or control of any person or authority.

28.- (1) A person wishing to teach in a preschool, primary school, secondary school, TVET, or other educational institution shall apply to the Chief Education Officer for an appropriate licence to teach.

(2) The Chief Education Officer may, upon being satisfied that the prescribed requirements have been met, grant a Full Licence, a provisional licence or such other licence as may be prescribed, to the applicant which may be subject to prescribed conditions.

(3) The requirements for each type of licence, the manner and conditions for licensing, employment and appointment of teachers, the regulation of the behaviour of teachers and other school staff, the Code of Ethics governing them, and disciplinary procedures and other measures applicable to them, including disqualifications for breaching any provisions of the Act or Rules made under this

Act, or any other pertinent laws, shall be specified in Rules made under this Act, Provided that no person shall be granted a license to teach who has,

- (a) been convicted of a felony of a nature indicating unsuitability for the teaching profession;
- (b) not been certified by a registered medical practitioner to be free of;
 - (i) the use of illegal drugs;
 - (ii) a communicable disease, or where he is not free of a communicable disease, he does not constitute a risk of communicating said disease and is not likely to be a danger to the health of his students; or
 - (iii) any infirmity likely to interfere with the efficient performance of the person's duties.

(4) The requirements for maintaining a license to teach shall be prescribed in Rules made under this Act.

29.– (1) A person who does not possess a valid license to teach shall not be employed as a teacher.

(2) A person in possession of a Full License to teach is eligible for temporary employment which employment shall be for a probationary period and for subsequent appointment.

(3) At the time of first employment under a given Managing Authority, a teacher may be given temporary employment for a probationary period not exceeding two calendar years provided that the teacher possesses a Full Licence in accordance with this Act and Rules made under this Act.

(4) Notwithstanding the preceding, the Managing Authority supervising the probationary period may recommend appointment at the expiry of twelve months.

(5) A teacher shall be eligible for appointment by the Managing Authority with the approval of the Commission if such a teacher possesses a Full Licence and successfully completes a period of probation in accordance with this Act and Rules made under this Act.

(6) An appointed teacher who fails to meet the requirements to maintain a Full Licence to teach shall be struck off the Register of Appointed Teachers and shall not be eligible for continued employment or reappointment until he fulfils the requirements to maintain a Full Licence in accordance with this Act and Rules made under this Act.

(7) A teacher in possession of a licence other than a Full Licence shall not be eligible for temporary employment on probation as a prerequisite for appointment but shall be eligible for temporary employment for a period not exceeding five (5) calendar years to allow the teacher to acquire the necessary qualifications for a Full Licence in accordance with this Act and Rules made under this Act.

(8) A period of temporary employment, or any part thereof, may, on the recommendation of the Managing Authority and approval of the Commission, be regarded as service on probation for the purposes of appointment to the teaching service provided that the teacher meets the requirements for a Full Licence within the prescribed period and the Managing Authority recommends appointment based on the performance appraisals of the teacher.

(9) A teacher who fails to acquire the necessary qualifications for the Full Licence within the period prescribed in this section shall have his services terminated and that teacher shall not be eligible for further employment at any school or institution unless or until he acquires, at his own expense, the necessary qualifications for a Full Licence.

(10) The period of temporary employment, or any part thereof, during which a teacher failed to acquire the necessary qualifications for a Full Licence shall not be considered as service on probation for the purposes of appointment.

(11) A teacher in possession of a valid license to teach may be given temporary employment for an appropriate period in the case of filling temporary vacancies that may arise during the course of the school year.

(12) A Managing Authority may with the approval of the Commission appoint a teacher where the person fulfils the following conditions,

- (a) possession of the prescribed educational qualifications;
- (b) possession of the appropriate teaching licence;
- (c) any other condition, which the Minister may by Rules prescribe.

(13) Subject to this Act, and Rules made thereunder, a Managing Authority may, with the approval of the Minister establish a code of conduct for teachers within its management, which shall be recognized as the applicable conditions of service for such teachers.

32. Teachers shall be subject to disciplinary action by the Managing Authority, or its delegate, as the case may be, and in accordance with this Act and Rules made under this Act.

40.– (1) Managing Authorities of government, government-aided and community schools shall be responsible for,

(a) the proper and efficient organization and management of schools or institutions;

(b) the formulation of policies and internal regulations for the efficient and effective conduct of schooling, student discipline and behaviour, and student attire in accordance with Rules made under this Act; and

(c) the adequate provision of such support systems required to deliver appropriate education to all students enrolled in schools under their management. Such provisions at government-aided and community schools shall be provided with assistance and in partnership with the Government under the conditions for Grant-in-Aid as specified in this Act or Rules made under this Act.

(2) Managing Authorities of private schools shall be responsible to ensure compliance with requirements of this Act and Rules made under this Act in respect of,

(a) requirements for a licence to operate a school;

(b) qualifications of professional staff;

(c) health and safety conditions of the school and its premises; and

(d) formulation and adoption of non-discriminatory policies and practices for,

(i) proper and efficient organization and management;

(ii) efficient and effective conduct of schooling;

(iii) regulation of student discipline and behaviour; and

(3) adequate provision of such support systems required to deliver appropriate education to all students enrolled in their schools.

41.– (1) Managing Authorities shall recruit, interview and select persons to fill vacancies for principals, vice-principals and teachers and shall offer employment to the selected persons in accordance with sections 28 and 29 and subject to section 17 (2) (a) of this Act and Rules made under this Act.

(2) Managing Authorities may, with the approval of the Commission, appoint teachers who have successfully completed the required probationary period under their management pursuant to section 29 of this Act.

(3) Managing Authorities are empowered to,

(a) grant release to teachers who have so requested in accordance with Rules made under this Act;

(b) transfer teachers within their management in accordance with section 31 (1) of this Act;

(c) grant leave of less than ten days such as sick, professional development, compassionate, urgent personal, paternity, and special leave in accordance with Rules made under this Act;

(d) indicate support or otherwise, with justification, on applications for extended study leave, secondment or for posting as itinerant resource officer;

(e) take disciplinary action for minor offences against teachers under their management in respect of oral and written warnings or reprimands; and

(f) with the approval of the Commission, take disciplinary action against teachers under their respective management for major offences in accordance with this Act and the Rules made thereunder.

(4) The Minister shall by Rules made under this Act specify minor offences and major offences for the purpose of subsection (3) of this section, and prescribe the procedure for the making and investigation of complaints.

(5) Nothing in subsection (3) (f) of this section [relating to major offences] shall preclude a Managing Authority from suspending a teacher accused of a major offence pending a reference to Commission as required by the said subsection.

(6) A teacher aggrieved by disciplinary action taken against him by the Managing Authority may within 21 days proffer an appeal to the Tribunal in accordance with section 20 of this Act.

(7) In determining whether to approve a Code of Conduct proposed by a managing authority under subsection (2) of this section, the Minister may seek the advice of the Ministry, the Education Council or the TVET Council, as the case may be.

APPENDIX II

EDUCATION (AMENDMENT) RULES, 2012

ARRANGEMENT OF RULES

23. Revocation and replacement of rule 56.

25. Insertion of new rule 57A.

31. Revocation and replacement of rule 64.

32. Revocation and replacement of rule 66.

37. Revocation and replacement of rule 70.

38. Revocation and replacement of rule 71.

39. Revocation and replacement of rule 72.

40. Revocation and replacement of rule 73.

59. Revocation and replacement of rule 93.

23. The principal Rules are amended by revoking rule 56 and substituting the following -

56.- (1) Every person employed on the teaching staff of a pre-school, primary school, secondary, or Technical and Vocational school or institution shall possess a valid licence issued by the Chief Education Officer.

(2) A licence to teach shall constitute an agreement by the holder to abide by the Act and all Rules and Regulations made thereunder.

(3) A licence under subsection (1) shall allow the holder of that licence to teach at one or more specified levels provided that the teacher possesses the appropriate academic and professional requirements.

(4) Subject to the conditions for licensing under the Act and these Rules, a person who applies and possesses the necessary qualifications, specified in *Schedule 2*, for a Full Licence at the specified level and where appropriate, in the specified area, shall be issued a Full Licence.

(5) A Full Licence shall remain valid for a period not exceeding five years unless the licence is suspended or revoked by the Chief Education Officer in instances where the teacher fails to meet the requirements to maintain the licence or for such other causes or under such circumstances stipulated in the Act and these Rules.

(6) For the purpose of these Rules, the Commission shall cause to be maintained a database of teachers which shall include records of teachers in which pertinent information about all licensed teachers shall be recorded including their biographical data, type of licence, level at which licensed to teach, and any other information regarding the past and current status of the teacher.”.

25. The principal Rules are amended by inserting after rule 57 the following new rule 57A –

57A.- (1) A teacher shall maintain a Full Licence to teach provide evidence of successful completion of a minimum of one hundred and twenty hours of continuing professional development during the period of five years immediately following granting of the Full Licence through relevant studies in content and pedagogical areas or through other activities leading to enhanced competence in teaching, provided that such studies or other activities are approved by the Ministry.

(2) An appointed teacher who fails to meet the requirements to maintain a Full Licence to teach shall be struck from the Register of Licensed Teachers and the Register of Appointed Teachers and shall not be eligible for renewal of a Full Licence, continued employment or reappointment until he fulfills the requirements, at his own expense, and reapplies for a Full Licence in accordance with the Act and the Rules.”.

31. The principal Rules are amended by revoking rule 64 and substituting the following -

64.- (1) The employment of all members of staff of any school shall be in accordance with these Rules and any other laws made governing the employment of such staff.

(2) A person employed as a teacher at a pre-school, primary, secondary level, or TVET School or institution shall possess a valid licence to teach in Belize in that category.

(3) A person employed as a Principal or Vice-Principal at a pre-school, primary, or secondary, school or institution shall possess a Full Licence and certification from a teachers college or institution of higher learning, showing successful completion of an approved programme of studies in educational leadership and that programme of studies shall be a programme approved by the Chief Education Officer on the advice of the Belize Board of Teacher Education and published periodically by the Ministry.

(4) Where a person employed as a Principal or Vice-Principal at a pre-school, primary or secondary, school or institution -

(a) possesses only a Full Licence without more, that Principal or Vice-Principal shall be eligible for employment on a year to year basis only up to a maximum period of five years until that Principal or Vice-Principal, as the case may be, complies with the requirements under sub-regulation (3);

(b) possesses a Provisional Licence, that Principal or Vice-Principal shall be eligible for employment on a year to year basis only up to a maximum period of seven years until that Principal or Vice-Principal, as the case may be, complies with the requirements under sub-regulation (3).

(5) Where a person is employed as a manager or Principal of a TVET institution and possesses a Special Licence to teach in Belize that manager or Principal shall possess certification in management or administration or relevant experience in a managerial or administrative position of at least five years.”.

32. The principal Rules are amended by revoking rule 66 and substituting the following -

- 66.- (1) The Managing Authority of a Government and Government-aided preschool, primary, secondary, post-secondary, technical or vocational school or institution shall recruit and select teachers and other members of staff in accordance with the following procedures –
- (a) advertising the vacancy and inviting applications for the post;
 - (b) receiving the applications and verifying the particulars of the applicants, especially the possession of a valid licence to teach at the level;
 - (c) selecting from among the applicants a shortlist of persons to be interviewed based on the merits of the applications;
 - (d) conducting interviews with the short-listed applicants and assessing the applicants for suitability for the post on the basis of qualifications and merit;
 - (e) ranking the applicants interviewed in order of eligibility giving preference to applicants in possession of a Full Licence or Special Licences where applicable;
 - (f) submitting to the Commission all necessary and pertinent information on the person selected for employment as professional staff and shall include-
 - (i) licence to teach, in all cases;
 - (ii) professional, academic and other qualifications and employment history (where applicable), in all cases;
 - (iii) medical certificate, in all cases;
 - (iv) police record, in all cases;
 - (v) release letter or letter of resignation, in the
 - (vi) draft notice of probation, in the case of a teacher entering the profession with a Full Licence;

- (vii) draft notice of temporary employment, in the case of a teacher in possession of licence to teach other than a Full Licence
- (viii) a copy of the draft contract, in all cases; and
- (ix) a summary of information on all applicants interviewed in a form and manner approved by the Commission.

(2) In the case of a vacancy for the post of Principal or Vice Principal of a Government or Government-aided school, the Managing Authority shall advertise the post publicly.

(3) A person shall not be employed as Principal or Vice Principal simply by virtue of his post as Vice-Principal but such person may, if no less qualified for the post than other applicants, be given first consideration.

(4) In filling a teaching vacancy on the staff of a government or government aided school, every attempt shall be made to fill the vacancy with a teacher in possession of a Full Licence to teach in Belize and where a suitably qualified teacher in possession of a Full Licence is not available, a retired teacher with a Full Licence may be employed subject to the approval of the Commission.

(5) A Managing Authority which seeks, with the approval of the Commission, to employ an appointed teacher who has requested a release from his current Managing Authority, shall not require the teacher to serve a probationary period for purposes of appointment under its management.

(6) A teacher in possession of a Full Licence whose employment has been terminated by a Managing Authority, with the approval of the Commission, but which termination has not resulted in the suspension or revocation of his licence to teach and who seeks employment under a different Managing Authority may be offered temporary employment on probation in accordance with section 29(2) and (3) of the Act, and shall be eligible for appointment subject to satisfactory performance appraisals by the Managing Authority offering him employment.

(7) A vacancy for a Principal, Vice Principal or teacher of a government or government aided pre-school or primary school may be filled with the approval of the Commission by transfer of a person

currently employed as a Principal, Vice Principal or teacher, respectively, on the established staff of the relevant management subject to the provisions for the transfer of teachers as stipulated in section 31(1) of the Act and any other relevant provisions prescribed in these Rules.

(8) In filling a vacancy the Managing Authority shall not directly or indirectly discriminate among applicants on the basis of gender, race, religion, ethnicity, socioeconomic status or political affiliation.

(9) Every vacancy filled pursuant to this rule is subject to the prerequisites to licensing and employment of professional staff in accordance with provisions of the Act and these Rules and in relation to the employment of a principal or vice principal the contract of employment shall provide for a probationary period of up to two years.

(10) Following verification and approval of an applicant's eligibility for employment as a teacher by the Commission, the Managing Authority may offer temporary employment to the applicant for -

- (a)** a probationary period of up to two years from the date of employment, if the person is in possession of a Full Licence to teach provided that such applicant shall be eligible for appointment upon successful completion of the probationary period;
- (b)** one year from the date of employment if the person is in possession of a Provisional Licence to teach, provided that such applicant may be eligible for continued temporary employment on a year to year basis up to a maximum of five years, subject to satisfactory performance as determined by performance appraisals, to afford him the opportunity of meeting the requirements for a Full Licence, in accordance with section 29(7) of the Act;
- (c)** an appropriate period to a person with a valid Licence to teach to fill a temporary vacancy which vacancy may arise during the course of a school year; or
- (d)** a period of up to two years in the first instance to a person in possession of a Special Licence where the circumstances warrant the temporary employment of such person and any further temporary employment beyond the initial two years may be offered to such

person for additional periods of not more than two years in each instance where the circumstance so warrant.”.

37. The principal Rules are amended by revoking rule 70 and substituting the following -

70.- (1) Following approval by the Commission pursuant to Rule 66, a Managing Authority may offer employment to a person so selected to teach or to be Principal or Vice- Principal in a pre-school, primary, secondary, or technical and vocational school or institution.

(2) Subject to sub-rule (1), in offering an employment contract to a teacher, principal, or vice-principal, a Managing Authority shall offer one of the following contracts, as applicable -

(a) in respect of a teacher in possession of a provisional licence a temporary employment contract for one year from the date of employment, provided that such teacher may be eligible for continued temporary employment on a year to year basis up to a maximum of five years to afford him the opportunity of meeting the requirements for a Full Licence, in accordance with section 29(7) of the Act, subject to satisfactory performance as determined by performance appraisals;

(b) in respect of a teacher in possession of a Full Licence, an employment contract for a probationary period of a year but which may be extended for an additional year;

(c) in respect of a teacher in possession of a Full Licence who has successfully served the probationary period as required under the Act, an employment contract for the remainder of the period post probationary service, but which may not exceed the period for which the licence is valid;

(d) in respect of a teacher in possession of a Special Licence a temporary employment contract for a maximum period of two years in the first instance which temporary employment contract may be renewed for subsequent maximum periods of two years in each instance where the circumstances so warrant;

- (e)** in respect of first time Principals or Vice-Principals in possession of a Full Licence and certification in education leadership in accordance with rule 64(3) a contract of employment for a probationary period of up to two years and upon successful completion of the probationary period, as supported by performance appraisals, an employment contract for a period of three years subject to the maintenance of their Full Licence;
- (f)** in respect of Principals or Vice- Principals in possession of a Full Licence or Provisional Licence, without more, a contract of employment on a year to year basis in accordance with rule 64(3);
- (g)** in respect of a manager or Principal of a TVET institution in possession of a Special Licence, a contract of employment for a maximum period of two years.

(3) A contract offered pursuant to this rule shall be in accordance with the Code of Conduct for teachers approved pursuant to section 29(13) of the Act and shall be signed at the commencement of the contract period and witnessed by a third party.

(4) An employment contract between a Managing Authority and a teacher shall be in the Form EDR 7 set out in Schedule 3 and in addition to the content on the Form, shall specify the following, as applicable -

- (a)** the terms and conditions of the probationary period of employment, where applicable, which shall be in accordance with the Act and these Rules;
- (b)** the date on which the probationary period of employment of the teacher becomes effective;
- (c)** that the confirmation of appointment of the teacher is subject to the approval of the Commission and such appointment shall be subject to the successful completion of the probationary period;
- (d)** the salary scale and entry point at which the teacher is to be paid, approved by the Ministry, in accordance with Government salary scales for teachers; and

(e) any duties, approved school rules and other requirements as appropriate in accordance with the Act and these Rules.

(5) Where the employment of a teacher is for the purpose of temporarily replacing a teacher on study leave, maternity leave, extended sick leave, secondment, posting as an Itinerant Resource Officer, the terms and conditions and fixed period of the temporary employment shall be explicitly stated in the temporary employment contract and shall be in accordance with the Act and these Rules.

(6) A copy of every temporary employment contract executed under this Rule, along with copies of required documents, including an employment letter, the licence to teach, academic and professional qualifications, police record, medical certificate, references, birth certificate or other valid evidence of age and nationality and where warranted marriage certificate, and evidence of citizenship status or work permit shall be forwarded to the Commission.

(7) Notwithstanding the above, a contract of employment shall not contain terms as conditions precedent to the contract other than terms which are requirements under the Act and these Rules. “.

38. The principal Rules are amended by repealing Rule 71 and substituting the following:

71.- (1) Appointment of a teacher is subject to the completion of a probationary period in accordance with section 29 of the Act and other applicable provisions of these Rules.

(2) A Managing Authority may -

(a) after a minimum probationary period of one year from the date of employment, choose to extend the probationary period into the second year or with the approval of the Commission, may appoint or terminate the services of the teacher;

(b) Where a Managing Authority is desirous of appointing a teacher, extending the probationary period of a teacher into the second year, or terminating the service of a teacher who is on probation, the Managing Authority shall submit to the Commission -

- (i) every appraisal report, including the most recent appraisal report which must be made during the school term immediately preceding submission of a recommendation for appointment, extension of the probationary period or termination; and
 - (ii) evidence of the support provided to the teacher through the probationary period in accordance with rule 72 (1);
- (c) the form and manner for submission of the appraisal reports are as set out in the Schedule;
- (d) the Commission shall review and approve or not approve the submission made by the Managing Authority under paragraph (b).
- (e) in reviewing the submission under sub-rule (d), where the Commission finds a deficiency in the material or procedural requirements of the submission of the documentation required under rules 72 and 87, it shall request the Managing Authority to make good that deficiency within a reasonable time.
- (f) where a Managing Authority fails to comply with a request of the Commission under sub-rule (e), the Commission may -
 - (i) decide on the matter without prejudice to the teacher;
 - (iii) recommend to the Chief Education Officer that appropriate action be taken against that Managing Authority in accordance with section 17(4) of the Act and section 46 of the Act, as applicable.

(3) A teacher may, where the Commission upholds a decision of the Managing Authority to terminate the services of that teacher -

(a) apply for employment under a different Managing Authority; or

(b) appeal to the Appeals Tribunal.

(4) Where the Commission upholds the recommendation of a Managing Authority for the appointment of a teacher, the effective date of appointment shall be retroactive to the date of employment commencing the probationary period and the probationary period served shall be recognised as a period of pensionable service.

(5) Where a Managing Authority extends the probationary period of a teacher, into the second year the Managing Authority shall inform the teacher in writing not later than the end the first year of probation.”.

39. The principal Rules are amended by revoking rule 72 and substituting the following -

72.- (1) During the period of probation, a teacher shall be -

(a) provided with formative supervision including any necessary assistance to enable him to develop and maintain proper professional standards; and

(b) appraised at least two times in the first twelve month period and the first shall be conducted no earlier than the third month but no later than the fifth month and the second no earlier than the seventh month but no later than the ninth month and any such performance appraisals shall be discussed with the teacher.

(2) In the case of teachers, formative supervision and performance appraisals shall be conducted by the principal or an appropriate person appointed by the principal for that purpose.

(3) In the case of principal and vice principal teachers, formative supervision and performance appraisal shall be conducted by an appropriate person appointed by the Managing Authority for that purpose.

(4) The person conducting the appraisal shall share formal appraisal reports with the teacher appraised for review by the teacher and shall provide the teacher with an opportunity to participate in the appraisal process and comment on the reports immediately after completion of each report. The appraisal reports shall be submitted to the Commission immediately after completion and review by the teacher. The appraisal reports submitted to the Commission must be signed and dated by the teacher under appraisal, the appraiser and the Managing Authority.

(5) Should the probationary period extend into the second year, formative supervision shall continue and two additional performance appraisals shall be conducted in the second twelve month period and the conduct of the additional formal appraisals is subject to the same conditions as those of the first probationary year.

(6) The form and manner of submission of the formal appraisal reports are as set out in the Schedule 4.

(7) At the end of the probationary period the temporary employment of a teacher may be terminated for failure to achieve a satisfactory level of performance as determined through appraisals and other measures.

(8) The Managing Authority shall, at least two months before the end of the probationary period, ensure that the final appraisal of a teacher who is temporarily employed is conducted and shall on the basis of the appraisal reports, make a recommendation on the appointment of the teacher and shall submit its recommendation not more than ten working days after the completion of the appraisal to the Commission for its approval.

(9) The Commission shall inform the teacher, through the Managing Authority, of its approval or otherwise of his appointment within twenty-one days of receiving the submission from the Managing Authority.”.

40. The principal Rules are amended by revoking rule 73 and substituting the following -

73.- (1) A teacher who intends to resign shall give the Managing Authority not less than one month’s notice of that teacher’s intention to resign.

(2) A teacher who fails to give the required notice of resignation under sub-rule (1) shall forfeit one month’s salary *in lieu* of notice.

(3) Notwithstanding sub-rule (1), where resignation is to take effect in a month in which the end of a school term or semester occurs resignation shall take effect at the end of the term or semester and the teacher shall complete all responsibilities including the submission of grades, grade books and any other required reports.

(4) Subject to this Rule, a teacher who resigns after serving for one hundred and twenty consecutive school days under the same Managing Authority during that school year shall be entitled to receive one month's salary beyond the effective date of resignation *in lieu* of vacation.

(5) Subject to this rule, a teacher who resigns and has served for one hundred and eighty consecutive school days under the same Managing Authority during one school year shall be entitled to the payment of salary for the months July and August of that school year.

(6) A Managing Authority may terminate the services of a teacher, subject to the approval of the Commission, if at any time during the teacher's period of service -

(a) the teacher's performance is unsatisfactory based on a minimum of two performance appraisals conducted during one school year; or

(b) the teacher is guilty of a major offence under rule 92A (3) of these Rules.

(7) Where a Managing Authority terminates the services of a teacher, subject to the approval of the Commission, the teacher's licence shall be revoked if at any time during the teacher's service-

(a) the teacher is found guilty of one or more of the major offences listed in rule 92A(3)**(b)(iii)** to **(xxiv)** of these Rules; or

(b) the teacher fails to meet the requirements to maintain a Full Licence in accordance with section 28(4) of the Act.

(8) In the case of a teacher not in possession of a Full Licence who is temporarily employed on a year to year basis and who fails to acquire the qualifications for a Full Licence during the five year period allowed, that teacher shall have his services terminated and section 29(9) of the Act shall apply.

(9) A Managing Authority shall, except where termination is for misconduct, give a teacher one calendar months' notice of the termination of his services, or pay the teacher one month's salary *in lieu* of notice.

(10) Subject to this rule and except where termination is for misconduct, where termination of service is to take effect in a month in which the end of a school term or semester occurs, termination of service shall take effect at the end of the term or semester.

(11) Subject to this rule and except where termination is for misconduct, a teacher whose service is terminated after serving for one hundred and twenty consecutive school days under the same Managing Authority during that school year shall be entitled to receive one month's salary beyond the effective date of termination of service *in lieu* of vacation.

(12) Subject to this rule, except where termination is for misconduct, a teacher who has served for one hundred and eighty consecutive school days under the same Managing Authority during one school year shall be entitled to the payment of salary for the months July and August of that school year.

(13) A teacher whose services are terminated under this Rule shall be given written notification by the Managing Authority of the termination of his services and a copy of the letter of termination shall be submitted to the Commission.”.

59. The principal Rules are amended by revoking rule 93 and substituting the following -

93.- (1) A Managing Authority may initiate disciplinary proceedings for minor and major offences under rule 92A against a teacher in accordance with the provisions of the Act.

(2) A Managing Authority may take disciplinary action for minor offences in accordance with Schedule 6, which may be documented and recorded on the teacher's personal file.

(3) In respect of repeated minor offences, where a Managing Authority has utilized measures under sub-rule (2) and the teacher engages in the same behaviour or action leading to a major offence, the teacher shall be issued with a final written reprimand articulating the

charges and inviting him to be heard in his own defense at a hearing of the charges and the process outlined in sub-rules (6)-(18) shall apply.

(4) A repeated minor offence may become a major offence where the repeated minor offence has resulted in a final written reprimand after successive oral and written reprimands and such repeated behaviour or action may, with the approval of the Commission, warrant termination.

(5) A Managing Authority shall, upon receipt of a report or upon becoming reliably informed of possible misconduct that may constitute a major offence on the part of any teacher, conform to principles of due process and the rule of law and all documentation describing the process followed and all other pertinent documentation on the case must be submitted to the Commission for its review.

(6) A Managing Authority may, where allegations of the commission of a major offence have been made or where repeated minor offences have resulted in a major offence, place a teacher on administrative leave while it investigates an accusation of misconduct against him if the Managing Authority has grounds to believe that it is in the best interest of the students and the school.

(7) The Managing Authority shall, whether or not it decides to place a teacher on administrative leave while it conducts an investigation of alleged misconduct, -

(a) immediately notify the teacher in writing of alleged misconduct; and

(b) conduct a formal investigation into the alleged misconduct.

(8) The Managing Authority shall, at the conclusion of the investigation, decide whether there are grounds to bring charges against the teacher for the alleged misconduct.

(9) The Managing Authority shall, where it finds that there are no grounds for the alleged misconduct, inform the teacher in writing of its findings and the teacher shall continue in employment without prejudice to his status or emoluments.

(10) The Managing Authority shall, where it finds that there are grounds to bring charges against the teacher for the alleged misconduct,-

- (a)** notify the teacher in writing of charges against him;
- (b)** provide the teacher with a copy of all documentary evidence including transcripts, recordings or affidavits and any other evidence;
- (c)** may place the teacher on interdiction with not less than 50% salary, where it considers that it is in the interest of the students and school that the teacher immediately ceases to perform his functions; and
- (d)** may set a date and venue for a hearing and notify the teacher of date and venue of hearing or request the teacher or his agent to respond in writing within a reasonable specified time to afford the teacher the opportunity to be heard in his own defense.

(11) Where a hearing for a teacher placed on interdiction pursuant to sub-rule (10)(c), is not conducted within thirty days of the date of notification under sub-rule (10)(a) the teacher shall be reinstated without prejudice to his status or emoluments if the teacher had presented himself at each scheduled hearing.

(12) A teacher shall have the right to have an agent present at the hearing to advise or represent him.

(13) Documentary evidence shall not be used against a teacher unless the teacher has previously been supplied with or given access to a copy of the evidence.

(14) The Managing Authority shall, where after a hearing the charges are made out, determine the appropriate disciplinary measure in accordance with rule 97.

(15) Where, after a hearing, the charges are not made out, the teacher shall continue in employment without prejudice to his status or emoluments.

(16) Whether or not the proceedings result in disciplinary measures, copies of all written correspondences and attachments sent to or from the teacher or his agent during the disciplinary proceedings shall be placed on the teacher's personal file maintained by the Managing Authority.

(17) Where disciplinary proceedings result in recommendation for disciplinary measures to be taken against a teacher, the Managing Authority shall submit under confidential cover to the Commission -

- (i) its recommendation for disciplinary measures with justification,
- (ii) a copy of the transcript of the disciplinary hearing, and
- (iii) copies of all correspondences and attachments sent to or from the teacher or his agent during the disciplinary proceedings.

(18) The Commission may, upon receipt of the submission and if it thinks fit, cause further investigation to be made into the matter and where it is necessary, the teacher may be asked to appear before the Commission and be given a reasonable opportunity to be heard in his own defence, with or without an agent to assist or act on his behalf at the hearing.

(19) If without good reason, the teacher against whom disciplinary proceedings have been instituted or his agent does not attend the hearing, the Commission may proceed and conclude the matter in his absence.

(20) Where good reason is given to the Commission on behalf of the teacher as to why he is unable to attend the hearing, the Commission may postpone the hearing but not to the extent that quick and effective justice is prejudiced.

(21) The Commission shall make a determination pursuant to section 17(2)(h) of the Act as soon as possible.

(22) Where the Commission determines that the Managing Authority did not apply due process, has not established the grounds for suspension, termination, dismissal or other disciplinary action or where

the Managing Authority has failed to provide complete documentation, the teacher's status shall remain unchanged.

(23) Pursuant to sub-rule (22), the Commission may refer the matter back to the Managing Authority for its review and the Managing Authority may make a revised case submission.

(24) The Commission may approve disciplinary action pursuant to section 41(3)(f) of the Act, against a teacher where the following conditions are fulfilled-

- (a) the Managing Authority provides complete documentation on a case;
- (b) where due process is evident;
- (c) where grounds for suspension, termination, dismissal or other disciplinary action are supported by the evidence presented; and
- (d) there is no infringement on a teacher's constitutional rights.

(25) The Commission shall inform the Managing Authority and the teacher of its determination and shall inform the teacher of his right to appeal under section 20(2) of the Act."

APPENDIX III

EDUCATION (AMENDMENT) RULES, 2012

Rule 56

(1) From the date on which these Rules come into force, every person employed on the teaching staff of a pre-school centre, primary school and secondary school shall be required to have a licence to teach issued by the Chief Education Officer.

(2) The licence shall be a permit to teach at one or more specified levels, and where appropriate, in one or more subject areas.

(3) Subject to the conditions for licensing under these Rules, a person who applies for and possesses the necessary qualifications for a licence to teach at the specified level(s) and, where appropriate, in the specified area(s) shall be issued a Full Licence to teach.

(4) A Full Licence shall remain valid unless the licence is suspended or revoked by the Chief Education Officer where the teacher fails to meet the requirements to maintain the licence or for such other causes or under such circumstances as stipulated under these Rules.

(5) For the purpose of these Rules, the Chief Education Officer shall cause to be maintained a Register of Licensed Teachers in which pertinent information about all licensed teachers shall be recorded including their biographical data, type of licence, level of teaching and any other information regarding the current status of the teacher.

(6) All teachers on the staff of a pre-school centre, primary school or secondary school or institution at the time these Rules come into force shall by no later than two months of the effective date apply for a licence to teach.

(7) All persons teaching in a pre-school centre, primary school or secondary school or institution at the time these Rules come into force shall be automatically granted a Temporary Permit to teach for a period not exceeding one year while the application for licence is being processed.