

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF MONTSERRAT

CLAIM NO. MNIHCV2010/0045

IN THE MATTER OF AN APPLICATION BY NORMAN A. M. CASSELL FOR JUDICIAL

AND

IN THE MATTER OF THE MONTSERRAT CONSTITUTION ORDER 1989

BETWEEN

NORMAN A. M. CASSELL

CLAIMANT

AND

HIS EXCELLENCY THE GOVERNOR

FIRST DEFENDANT

THE PUBLIC SERVICE COMMISSION

SECOND DEFENDANT

THE ATTORNEY GENERAL

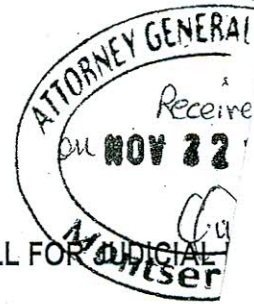
THIRD DEFENDANT

Appearances: Mr. Leon C. Symister for the Claimant

Miss. Allison Skerritt and Mr. Fitzroy Buffonge for the Defendants

2012: April 25

2013: November 22



JUDGMENT

1. **Rhudd, J (Ag).** This is an action commenced by the Claimant on June 16, 2011 by way of a Fixed Date Claim Form. That Fixed Date Claim Form was supported by an Affidavit sworn to by the Claimant and filed on the said date. A few days later, on July 4, 2011, the Claimant filed an Amended Affidavit in Support.

2. Prior to the filing of the Fixed Date Claim Form, the Claimant had, by way of an Application filed on December 30, 2010, sought leave to file and serve an Originating Motion seeking an Administrative Order under the Montserrat Constitution Order 1989 pursuant to Rule 56 of the Civil Procedure Rules. On May 30, 2011, the Honourable Mr. Justice Albert Redhead made the Order and granted leave on the condition that the Applicant/Claimant filed his claim within fourteen (14) days of the date of the making of that order.

3. In his Fixed Date Claim Form, the Claimant sought Orders:
 - (i) Reversing the decisions of the Public Service Commission and/or the Governor to dismiss him from his position as Airport Manager;
 - (ii) Declaring the decision of the Public Service Commission and/or the Governor *ultra vires*, null and void and of no effect;
 - (iii) Reinstating him as Airport Manager without loss of pay or benefits;
 - (iv) For cost; and
 - (v) For any other relief that the Court deems proper and just.

4. On October 11, 2011, Affidavits in Response were filed by Ms. Sarita Francis, the Deputy Governor of Montserrat and by Mr. Joseph Lynch, a member of the Public Service Commission.

Background

5. An outline of the background to this matter is in order. This background has been gleaned from the non-contentious portions of the several Affidavits filed in the matter.

6. From January 1, 1999 up to June 30, 2010, the Claimant was the Manager of the "John A. Osborne Airport" (formerly called "Gerald's Airport") in Montserrat. He had originally become employed to the Public Service in Montserrat in July 1986 as a Trainee Airport Officer at what was then then called "Blackburne Airport". That name was subsequently changed to the "W.H. Bramble Airport" and then to "Gerald's Airport". On January 15th, 1999, he was appointed as the Airport Manager at what had by then become the "John A. Osborne Airport".
7. On or around April 28, 2008, the Governor of Montserrat, His Excellency Peter Andrew Waterworth, based on concerns that had been raised relating to the operation and management of the airport, appointed a three person Commission (" the Governor's Commission") to inquire into the management and operations of the lone airport in Montserrat. That Commission was comprised of Mr. Kharl Markham (Chairman), Mr. John E. Ryan and Mrs. Claudia Roach. It was provided with both general and specific Terms of Reference. Those Terms of Reference related primarily to the areas of Airport Security, Airport Management and Air Traffic Control.
8. The Governor's Commission submitted its report in November 2008 to the Permanent Secretary in the Ministry of Communications and Works. That report highlighted several critical issues which were negatively impacting on the operations of the airport and included a number of recommendations. Those critical issues related to, among other things, lack of discipline among staff members, "incoherency and inconsistency" on the part of the airport management in addressing human relations matters and negligence and misconduct "at the highest levels". Several of the airport's employees, including the Claimant, were identified and adversely commented on in the report.
9. Specifically, in relation to the Claimant, the Commission recommended that an Officer above the grade of the Airport Manager be appointed to investigate allegations of misconduct that had been made against him. That investigating officer was to obtain necessary statements, reports and other documents with a view to referring the matter to the Public Service Commission for a determination of whether disciplinary proceedings should be instituted against the Claimant.
10. On December 18, 2008, the Permanent Secretary in the Ministry of Communications and Works wrote a Memorandum to the Chief Establishment Officer (ultimately to be forwarded to the Public

