

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2021CLE/gen/01025

Common Law and Equity Division

BETWEEN

D'ANGELO CLEARE

Plaintiff

AND

COMPTROLLER OF CUSTOMS

First Defendant

AND

THE ATTORNEY-GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Donovan Gibson for the Plaintiff
 David Higgins for the Defendants

Hearing Date 17 May 2023, 4 April 2025 and 16 May 2025

DECISION

SIR IAN WINDER, CJ

This is a claim by the plaintiff (“Cleare”) seeking relief in respect to his claim to an appointment in the Bahamas Customs and Excise Department.

[1.] The claim was brought by Cleare by Originating Summons dated 10 September 2021, seeking the following relief:

- (1) A Declaration that he has met the requirements to be appointed as a Trainee Customs/Revenue officer.
- (2) An order that he is appointed a Trainee Customs Revenue Officer in the Bahamas Customs and Excise Department, Ministry of Finance.
- (3) Damages, and
- (4) Costs.

[2.] The application is supported by the affidavit of Cleare dated 10 September 2021 where he states:

- (1) In September 2016 he applied to the Ministry of Finance for the position of Trainee Customs/Revenue Officer. On 13 December 2016 he received the call from an agent of the Bahamas Customs and Excise Department informing him that he was selected as a recruit Trainee Customs/Revenue Officer and was to report to duty on the following Monday at the Bahamas Customs Headquarters on Thompson Blvd.
- (2) Between December 2016 and March 2017, he underwent examinations and successfully passed all of the examinations which were set by the Bahamas Customs and Excise department.
- (3) On 17 March 2017 he participated in the graduation and awards ceremony and was a part of the induction class number 1-20/16/2017. He was awarded a Basic Training Certificate by The Bahamas Customs and Excise department. The certificate states *“D’Angelo Cleare has successfully completed the course of study for basic training with the Bahamas Customs and Excise Department and has met the requirements for graduation to the rank of customs revenue officer”*.
- (4) After receiving the Certificate, he was rostered to work at the Lynden Pindling International Airport and performed work as a Trainee Customs/Revenue Officer and was posted at the counter belt for a period of four days. He was then transferred to the Air Freight Department where he was tasked with putting in entries and collecting revenue for a period of one week.
- (5) From December 2016 to July 2017 he received the salary of \$1,500 per month as a Trainee Customs/Revenue Officer.

(6) On 27 July 2017 he was sent a letter by Mrs. Janice Miller Permanent Secretary, informing him that he was appointed as a General Service Worker scale M6 in the Customs Department, Ministry of Finance on temporary month to month terms for a period of one year at a salary of \$11,450 per annum with effect from the date of assumption of duty. He was required to return all Trainee Customs/Revenue officer related items.

(7) He had an expectation of being appointed as a Trainee Customs/Revenue officer as he successfully completed his exams and graduated from the Trainee Customs/Revenue officer course.

(8) On 16 October 2017 he received the letter from the Acting Comptroller of Customs informing him that he did not have the requisite requirements for appointment as the Trainee Customs/Revenue Officer and once he obtained the requisite academic qualifications consideration would be given to reclassify him to the post of Trainee Customs Revenue Officer. In the letter he was also advised that:

(i) There would be no recovery of overpayment of salary

(ii) He would be given two (2) years to obtain the requisite academic requirements for the post of Trainee Customs/Revenue Officer.

(iii) Once he obtains the requisite academic qualifications, consideration would be given to being reclassified to the post of Trainee Customs/Revenue Officer.

(9) After his demotion he was assigned to work at Thompson Blvd. and ordered to take care of the yard and fix the building. He was then transferred to the yard where he was ordered to pick up garbage for two years.

(10) As a result of his demotion and job duties he was treated unfairly by the senior and junior officers and suffered embarrassment and great financial loss due to the decrease in salary.

(11) In 2020 he sent a formal letter advising that he was enrolled in the Bahamas Technical and Vocational Institute and had successfully completed College Math and English but was advised that he still did not meet the criteria to become a Trainee Customs/Revenue Officer as they did not accept partial degrees.

(12) He was enrolled in the Electronics Engineering Installers and Repairs Associate of Applied Science Degree program and has completed 47 credits which included College English and College Algebra which are above the Bahamas General Certificate of Secondary Education Examinations (BGCSE's).

(13) He has met the requirements to be appointed as a Trainee Customs/Revenue Officer by the Ministry of Education as the qualifications to become a Trainee Customs Revenue Officer are two BGCSEs of grade C or higher one of which is English.

[3.] The Defendant ("the AG") does not challenge the evidence of Cleare and did not file any evidence in response.

[4.] The issues for determination are as follows:

- (1) Whether Cleare had a legitimate expectation that he would be considered for reclassification to the post of Trainee Customs/Revenue officer upon attaining the required academic qualification; and,
- (2) Whether he satisfied the requirements to be reclassified as a Trainee Customs/Revenue officer.

[5.] Cleare says that “the communication from the Comptroller of Customs created a legitimate expectation that if he obtained the necessary academic qualifications in two years, consideration would be given to reclassifying him to the position of Trainee Customs Revenue Officer”. He also says that in reliance on the representation from the Comptroller of Customs he obtained the academic qualifications to be reclassified as a Trainee Customs/Revenue Officer in the Customs Department and that as his qualifications in College Math and English are equivalent to two BGCSE's. Finally, he says that the promise induced a legitimate expectation in him of a substantive benefit of consideration to reclassification as a Trainee Customs/Revenue Officer.

[6.] Cleare says that he satisfies the factual ingredients for a legitimate expectation, having been recruited as a Trainee Customs/Revenue Officer and subsequently demoted to a General Service Worker at a reduced salary almost four months later. He says that the clear and unambiguous communication of the Comptroller creates a reasonable expectation for him to rely on, that upon attaining the relevant qualifications consideration will be given to reclassifying him to the post of Trainee Customs/Revenue Officer with the benefits he previously enjoyed.

[7.] The AG complains that Cleare has proceeded by the incorrect application and asserts that he ought to have proceeded by way of an Application for Judicial Review, which required him to obtain leave to commence proceedings. The AG relies on the vintage House of Lords case of **O'Reilly v. Mackman [1983] 2 A.C. 237**, and the oft cited dicta of Lord Diplock, where he stated:

“... as a general rule be contrary to public policy and such an abuse of the process of the court, to permit a person seeking to establish that the decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means evade the provisions of Order 53 for the protection of such authorities.”

[8.] I accept that relief as it relates to legitimate expectation does sound in administrative law and an Application for Judicial Review. However, I am satisfied that the claim, as to whether Cleare has satisfied the qualifications for appointment as a Trainee Customs/Revenue Officer, is a matter which a claimant could raise as a matter of ordinary law.

[9.] In my view, Cleare's qualification for the appointment as Trainee Customs/Revenue Officer, having satisfied the stated qualifications to be appointed, is not seriously in dispute. The

qualifications require, in addition to passing the Bahamas Customs courses already set and passed by Cleare, two BGCSE subjects (one of which is English). Cleare produced a letter from the National Accreditation & Equivalency Council of The Bahamas (NAECOB) which stated:

Please be advised, that after examination of the transcript, the NATIONAL ACCREDITATION & EQUIVALENCY COUNCIL OF THE BAHAMAS (NAECOB) has concluded that:

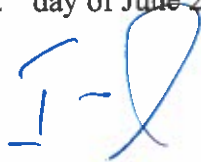
1. You are enrolled in the Electronics Engineering Installers and Repairers, Associate of Applied Science Degree programme.
2. You have completed 47 college credits, included in these credits are College English and College Algebra. These credits are above the level of The Bahamas General Certificate of Secondary Education and cannot be downgraded for the purpose of equivalencies.
3. B'TVI is registered with NAECOB.

The AG did not refute this evidence. This is not surprising as NAECOB is statutorily empowered by Section 4 of the National Accreditation and Equivalency Council of The Bahamas Act to determine equivalency of programmes and qualifications in accordance with internationally established frameworks.

[10.] Accordingly, I am prepared to make the declaration sought, that “Cleare has met the requirements to be appointed as a Trainee Customs/Revenue officer”. I will refuse to make the order sought, in relation to the claim of legitimate expectation, which ought only to be granted in Judicial Review proceedings.

[11.] I shall hear the parties by written submissions within the next 14 days as to the appropriate order for costs.

Dated the 2nd day of June 2025



Sir Ian R. Winder
Chief Justice