

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2021/CLE/gen/00439

BETWEEN

KELSIE MELVIN MUNROE

Claimant

AND

THE COMMISSIONER OF POLICE

First Defendant

AND

THE ATTORNEY GENERAL

Second Defendant

Before: The Honourable Madam Senior Justice Deborah Fraser

Appearances: Mr. Kelsie Melvin Munroe, appearing Pro Se
Mr. Rashied Edgecombe and Ms. Sophia Thompson-Williams
for the First and Second Defendants

Judgment Date: 23 November 2023

JUDGMENT

**Police Force Act, 2009 – General Orders of the Public Service – Force Standing Orders –
Gazetted Officer – Public Officer – Entitlement of Police Officers to Vacation Leave –
Entitlement of Police Officers to Casual Leave – Custom and Practice – Statutory
Interpretation – Generalia specialibus non derogant**

1. This is an action brought by the Claimant, Mr. Kelsie Melvin Munroe (“**Mr. Munroe**”) against the Commissioner of Police and the Attorney General of the Commonwealth of The Bahamas (collectively, “**Defendants**”) for alleged breaches of statutory provisions under the General Orders of the Public Service (“**General Orders**”) and the Royal Bahamas Police Force Standing Orders dated 01 May 2004 (“**Standing Orders**”).

BACKGROUND

2. Mr. Munroe was enlisted in the Royal Bahamas Police Force (“**RBPF**”) on 28 July 1999. He was promoted to the rank of Corporal in 2007 and in 2014 promoted to the rank of Sergeant.
3. On 30 April, 2017 he was then promoted to the rank of Inspector.

4. On 06 June 2017, Mr. Munroe received a letter dated 01 June 2017 from the Ministry of Public Service which confirmed Mr. Munroe's appointment to Inspector and annual salary of \$38,850.00. It is important to note that the letter also indicated that the promotion and increase in salary took effect from 01 January 2017.
5. In May of 2018, Mr. Munroe reviewed the Police AS400 system to confirm his vacation time. He discovered that he was only granted four (4) weeks' vacation leave as opposed to five (5) weeks' vacation leave. He alleges that the five (5) weeks' vacation is what is allowed and in accordance with the General Orders (which he claims governs the RBPF vacation leave) based on his salary at the time.
6. Subsequently, on an unspecified date, Mr. Munroe spoke with the then Director of Human Resources for the RBPF, Mrs. Patrona Bethel ("**Mrs. Bethel**") concerning his vacation leave and his entitlement to casual leave under the General Orders.
7. He was informed by Mrs. Bethel that he was not entitled to five (5) weeks' vacation or casual leave because that entitlement is only afforded to the rank of Assistant Superintendent and above.
8. Mr. Munroe told Mrs. Bethel that the decision was in contravention of the General Orders. Mrs. Bethel then told him to write to the Commissioner of Police regarding his concerns and he did so (by letter) on 04 June 2018. Mr. Munroe claims he did not receive a response for some six (6) months.
9. He then wrote another letter to the Commissioner of Police on the subject on 10 December 2018. A meeting with the then Commissioner of Police, Mr. Anthony Ferguson in the presence of Assistant Commissioner of Police, Mr. Aston Greenslade (as he then was) and Assistant Commissioner of Police, Mr. Clayton Fernander (as he then was) followed. Unfortunately, the matter regarding Mr. Munroe's alleged entitlement to five (5) weeks' vacation leave and ten (10) days' causal leave was not resolved.
10. On 05 June 2019, Mr. Munroe applied for two (2) causal days, but this was denied.
11. On 30 August 2020, Mr. Munroe formally submitted his resignation (by letter) to the Commissioner of Police with immediate effect as at even date.
12. He was formally discharged from the Royal Bahamas Police Force on 09 April 2021. At the time of his discharge from the Police Force, Mr. Munroe's rank was that of Inspector.
13. Having been unable to resolve the matter internally, Mr. Munroe brought an action by Specially indorsed Writ of Summons filed herein on 30 April 2021 against the Commissioner of Police and the Attorney General of the Commonwealth of The Bahamas, requesting the following reliefs:

“(a) A Declaration that the Royal Bahamas Police Force is subject to General Orders [of the Public Service] concerning vacation leave and casual leave.

(b) A Declaration that the Plaintiff was entitled to 5 weeks' vacation leave per year from 30 day April, 2017 to present according to the provisions of General Orders of the Public Service concerning vacation leave.

(c) A Declaration that the Plaintiff was entitled to casual leave according to the provision of the General Orders of the Public Service.

(d) A construction of B9 paragraph 12 of the Royal Bahamas Police Force Standing Orders to say that the proper construction is that it entitles those ranks mentioned to the additional casual leave in lieu of overtime and does not derogate from the provision of casual leave in General Orders.

(e) Damages

(f) Interest pursuant to [the] Civil Procedure (Award of Interest) Act 1992 to be assessed.

(g) Further or other relief as this Honourable Court deems just; and

(h) Costs.”

14. On 08 June 2021, the Defendants filed their Defence denying all allegations made by Mr. Munroe and allege that his interpretation of B9 paragraph 12 of the Royal Bahamas Police Force Standings Orders is incorrect. They further allege that the section only speaks specifically to vacation leave and does not mention or relate to casual leave.

ISSUES

15. Mr. Munroe filed his Statement of Facts and Issues on 26 September 2022. He frames the issues as follows:

“1. Whether the Plaintiff was entitled to five weeks’ vacation leave?

2. Whether the Plaintiff was entitled to casual days?”

16. I do not see any Statement of Facts and Issues from the Defendants. In any event, from my understanding of the pleadings, this Court must determine: (i) Whether Mr. Munroe is entitled to five (5) weeks’ vacation leave as opposed to four (4) weeks’ vacation leave? (ii) Whether Mr. Munroe is entitled to any casual leave? (iii) Whether Mr. Munroe is entitled to any damages?

EVIDENCE

Mr. Munroe’s Evidence

Kelsie Munroe

17. Mr. Munroe filed the Witness Statement of Kelsie Munroe (“**Munroe WS**”) on 31 January 2022, which stood as his evidence-in-chief at trial. It provides that: (i) Mr. Munroe was enlisted in the RBPF on 28 July 1999; (ii) he was promoted to the rank of Corporal in 2007, then Sergeant in 2014; and (iii) he received a letter from the Ministry of Public Service dated 01 June 2017 indicating that, due to his promotion to the rank of Inspector, his salary would be \$38,850.00 per annum and that it took effect from 01 January 2017.

18. The Munroe WS further provides that: (i) he became aware, after checking the Police AS400 system, that he only receives four (4) weeks' vacation instead of five (5) weeks' vacation which he believes he is entitled to under the General Orders; (ii) he made inquiries to Mrs. Bethel who stated that Mr. Munroe was not entitled to five (5) weeks' vacation nor casual leave and that such entitlements are restricted to higher ranking officers; (iii) Mr. Munroe told Mrs. Bethel that their decision was not in compliance with the General Orders; and (iv) Mrs. Bethel advised him to address his concerns to the Commissioner of Police.
19. The Munroe WS also states that: (i) on 04 June 2018, Mr. Munroe wrote to the Commissioner of Police regarding these matters; (ii) six (6) months elapsed with no response from the Commissioner of Police; (iii) Mr. Munroe again wrote to the Commissioner of Police on 10 December 2018 regarding Mr. Munroe's vacation and casual leave entitlements; (iv) on 20 December 2018, Mr. Munroe was invited to a meeting with the Commissioner of Police, Mr. Anthony Ferguson, the Assistant Commissioner, Mr. Aston Greenslade and was later joined by Assistant Commissioner, Mr. Clayton Fernander to discuss the issues; (v) Mr. Munroe was asked to do a comparative study with police forces in other Caribbean jurisdictions concerning the issues; (vi) Mr. Munroe did the study and sent his findings to the then Police Commissioner, but never received any further response on the matter; (vii) on 05 June 2019, Mr. Munroe applied for two (2) days' casual leave, but was denied by the Commissioner of Police; and (viii) Mr. Munroe verily believes that he is entitled to five (5) weeks' vacation leave and ten (10) casual days per annum pursuant to the General Orders.

Defendants' Evidence

Chief Superintendent Patrona Bethel

20. The Defendants filed the Witness Statement of Chief Superintendent of Police Mrs. Patrona Bethel ("**Bethel WS**") on 20 September 2022, which stood as her evidence-in-chief at trial. There was also, strangely, an Affidavit of Chief Superintendent of Police Mrs. Patrona Bethel filed herein on 04 January 2022 ("**Affidavit**"). The information in the Affidavit largely mirrors that which is contained in the Bethel WS. Thus, both will be summarized below.
21. The Bethel WS states that: (i) Mrs. Bethel is a Chief Superintendent of Police in the RBPF and served as the officer in charge of the Human Resources Department in the Royal Bahamas Police Force from 2006 to April 2021; (ii) on 01 January 2017, Mr. Munroe was promoted to the rank of Inspector of Police in the RBPF; (iii) the Defendants accept the first declaration of the Claimant's claim that the Royal Bahamas Police Force is subject to the General Orders. This, however, is only to the extent that internal rules and procedures of the RBPF have not been established to deal with a particular situation regarding vacation leave; (iv) there are internal policies within the RBPF which govern who is entitled to certain forms of "leave" (though such internal policies being referred to have not been tendered into evidence); (v) the five (5) weeks' vacation leave entitlement is based on rank and not the particular salary of a police officer; (vi) only Gazetted Officers within the RBPF are entitled to five (5) weeks' vacation leave; and (vii)

Mr. Munroe is not entitled to five (5) weeks' vacation leave due to his rank not falling within Gazetted Officers.

22. Furthermore, the Bethel WS provides: (i) the amendment to General Orders dated 14 August 2014 which Mr. Munroe relies upon as the basis of his claim was transplanted from and pursuant to an industrial agreement between The Bahamas Public Service Union and the Department of Labor dated 05 August 2014 ("IA"). A copy of the IA is exhibited to the Bethel WS; (ii) the amended General Orders on vacation leave was copied verbatim from article 26 of the IA which is the article that addresses vacation leave; and (iii) the second annexation of the IA at page 59 lists the "Categories of Employees who are excluded from this IA" where at No. 8 on the list is the RBPF
23. The remainder of the Bethel WS appears to be legal submissions, thus I will strike it out and not accept it as evidence.
24. It is also important to highlight that the Affidavit does state that Mr. Munroe formally resigned from the RBPF on 30 August 2021 by letter addressed to the Commissioner of Police. The letter provides that Mr. Munroe would like to use the first four weeks of his leave (though it is unclear if he is referring to vacation leave only) as his required notice for his retirement/resignation. It also exhibits a discharge certificate evidencing that his date of discharge was 09 April 2020 and at that time, his rank was that of Inspector. This evidence has not been challenged or refuted by Mr. Munroe.

SUBMISSIONS

Mr. Munroe's Submissions

25. Mr. Munroe submits that he is entitled to both five (5) weeks' vacation leave and ten (10) days' casual leave per annum after his promotion in 2017 to Inspector and during his remaining tenure with the RBPF.
26. Mr. Munroe then relies on **section 11 (1) of the Police Force Act, 2009 ("Police Act")** which reads:

"The Commissioner may issue operational and administrative orders to be called Force Standing Orders, for the general control, direction and information of the force."

27. He further submits that the aforementioned section gives the Commissioner of Police the authority to make policies in the best interest of the Police Force. Accordingly, counsel asserts, the Commissioner of Police, with this statutory authority, created the Force Standing Orders also known as Force Policies.
28. Mr. Munroe further contends that there is no provision in the Police Act concerning leave for Police Officers. However, provisions for leave are addressed in the Police Force Standing Orders. He then quotes **Section B9 (1) of the Standing Orders** which provides:

"Leave for officers in the Force is governed by the General Orders of the Public Service. Force Policy is intended to ensure that all officers

enjoy a structured system of leave days and that, as far as possible, periods of vacation and casual leave can be taken at the time requested by the officer.”

29. Mr. Munroe submits that the above passage demonstrates that vacation and casual leave for the Police Officers are guided by the General Orders of the Public Service. Therefore, the RBPF is subject to the General Orders concerning leave.
30. Mr. Munroe asserts that it is apparent, when considering who is referred to as a public officer or officer, he falls within that category and is therefore entitled to five weeks' vacation leave per annum as he was making a salary of \$38,850.00 per annum. He bases his claim for additional vacation leave on his salary and not his rank in the RBPF.
31. He then cites **section 1624 (A) of the General Orders of the Public Service chapter 16** which reads:

“Officers in the X3 Scale or above on salary scales which start at \$20,450 per annum are not eligible for payment of overtime may subject to the exigencies of The Service be granted casual leave at the rate of ten working days a year. Casual leave may not be added to vacation leave; or half pay leave; nor may it be accumulated.”

32. Mr. Munroe asserts that the Government of The Bahamas 2016 Salary Book, Police Officers are on a P9 scale. This scale is above the X3 scale, thus, Mr. Munroe (whose scale starts at \$38,850.00) should have been granted causal leave at the rate of ten (10) working days per annum.
33. He then submits that, under cross-examination, Mrs. Bethel admitted that there is no written document confirming that only Gazetted Officers are entitled to five (5) weeks' vacation. He further asserts that the Defendants' attorney suggested that due to the IA dated 05 August 2014 between the Government of the Bahamas and the Bahamas Public Service Union, the benefits of that agreement excludes police officers and other law enforcement agencies. Mr. Munroe disagrees with this.
34. He then cites sections **27(1) and 28 of the Police Act** which provide:

“27 (1) It shall not be lawful for any police officer to be or become a member of any prohibited association.

**28. For the purpose of this Act a prohibited association means –
(a) Any trade union or any body or association affiliated to a trade union.”**

35. Mr. Munroe asserts that it is clear that, due to the aforementioned sections, the police force cannot be a part of any bargaining agreement of a union. However, as public servants, Counsel contends that police officers still benefit from the results of any such agreement for the benefit of public servants.

36. He concludes by asking the Court to grant the various reliefs sought in his Writ of Summons.

Defendants' Submissions

37. The Defendants' Counsel submit that Mr. Munroe is not entitled to any vacation leave beyond the four (4) weeks he was already granted nor is he entitled to any casual days.

38. The Defendants' Counsel concedes the first declaration of Mr. Munroe's claim – being that the RBPF is subject to General Orders. However, Counsel submits that, notwithstanding this general principle, there are internal policies and Standing Orders within the RBPF that qualifies the entitlement to different heads of "leave".

39. Like Mr. Munroe, Counsel cites **B9 paragraph 1 of the Standing Orders**, but includes the final sentence:

"Inevitably, the exigencies of the service have to be taken into account in approving application leave."

40. Counsel then submits that an example of derogation from the General Orders would be the Force Policies in relation to sick leave. In essence, the Standing Orders require police officers to provide a medical certificate in order to be granted sick leave whereas The Bahamas Government Human Resources Policies Manual 2017 at page 55 states Heads of Department may grant up to two (2) days sick leave without a medical certificate.

41. In relation to vacation leave, the Defendants' Counsel submits that the eligibility of the five (5) weeks entitlement is based on rank and not the particular salary of the police officer. Further, Counsel asserts that only Gazetted Officers within the RBPF are entitled to five (5) weeks' vacation leave. He submits that the categorization of Gazetted Officers begins at the rank of Assistant Superintendent of Police ("**ASP**"). Accordingly, Counsel asserts that Mr. Munroe would not have qualified for five weeks' vacation leave as he did not attain the rank of ASP or higher during his employ with the RBPF.

42. He then cites **B9 paragraph 12 of the Standing Orders** which provides:

"Vacation Leave

All officers are entitled to a period of vacation leave in each calendar year. A period of vacation leave may be three, four or five weeks depending on the Rank and Salary of the officer concerned. For the purposes of calculating vacation leave, a week shall be regarded as five working days. The actual period of absence will, therefore, include all normal leave days and, where applicable, public holidays occurring within the period concerned. Vacation leave will be approved by the OIC of the Division or Department. Vacation leave for gazette officers will be approved by the Commissioner."

43. Counsel further contends that Mr. Munroe's reliance on the General Orders amendment by the Ministry of Public Service Circular No. 17 of 2014 dated 14 August 2014 is flawed since this amendment was transplanted from an IA reached between the Government of The Bahamas and The Bahamas Public Service Union on 05 August 2014.
44. Counsel also submits that the Royal Bahamas Police Force was not intended to benefit from or be effected by the provisions of the IA based on the exclusionary clause at Annex 2 of the IA. This section, Counsel submits, expressly excludes the Police Force from the provisions of the IA.
45. Counsel for the Defendants further submit that there can be no argument that this section was originally not envisaged during the promulgation of the 2005 Force Standing Orders, and it is clear that the parties to the IA, which includes the Government of The Bahamas, intended for the RBPF to be excluded from its provisions.
46. Counsel further asserts that, under cross examination Mrs. Bethel indicated that while the Police Force sometimes benefits from IAs that is not always the case. She further indicated that the benefit from the IAs which the Police Force usually receives are in relation to salaries only.
47. With respect to casual leave, Counsel cites **The Bahamas Government Human Resources Policies Manual 2017 at pages 59 and 60** which state:

“Officers Eligible for Casual Leave

Officers in the X3 scale or salary scales which start above \$22,300 per annum (July 2008 Scales) are not eligible for payment of overtime may subject to the exigencies of the Service be granted casual leave at the rate of (10) working days a year: Casual leave may not be added to vacation leave, or half pay leave, nor may it be accumulated.”

48. Counsel asserts that, notwithstanding the above, like vacation leave, casual leave within the RBPF is also granted based on rank. Only Gazetted Officers are entitled to casual leave. He then cites **B9 paragraph 16 of the Standing Orders**, which reads:

“Casual Leave

Gazetted officers and Chief Inspectors who are not entitled to record overtime as at paragraph 9 above may be granted leave at a rate of ten working days per year. Casual leave will not be added to vacation leave nor can it be accumulated. Force policy is that casual leave will be taken in five two-day periods on any Thursday and Friday. Casual leave for Chief Inspectors may be approved by the OIC Division or Department. Casual Leave for gazette officers will be approved by the Commissioner.”

49. The Defendants' Counsel submits that the categorization of Gazetted Officers begins at the rank of ASP, thus Mr. Munroe (as an Inspector) would not qualify for casual leave as he had not yet attained the rank of ASP or higher. Counsel also submits that casual

leave does not accumulate, nor does it attach a monetary value or entitlement and is only granted based on the exigencies of the service.

50. Counsel submits and emphasizes that **B9 paragraph 12** deals specifically with vacation leave and does not mention casual leave at all. He further asserts that, even if the correct provision which Mr. Munroe wishes to rely on – being B9 paragraph 16 – was referred to, it is a clear derogation from the General Orders and would be absurd to construe the section as granting casual leave to officers receiving \$22,300 salary or more per annum and Gazette Officers and Chief Inspectors to receive the benefit of an additional ten (10) casual days per annum.

51. Counsel further asserts that Mr. Munroe is not entitled to damages as he has suffered no loss. Counsel concludes by requesting the Court to dismiss the action.

DISCUSSION AND ANALYSIS

I. Whether the Claimant was entitled to five weeks' vacation leave?

II. Whether the Claimant was entitled to casual leave?

52. In order to determine whether Mr. Munroe is entitled to five (5) weeks' vacation leave and/or casual leave, I believe it is important to give the full context and frame work of the legislation which governs leave within the RPBF – namely, the Police Act (along with the aforementioned IA), the Force Standing Orders, and the General Orders – in order to properly address each of the issues. Each will be examined below.

The Police Act and the Industrial Agreement ("IA")

53. I address both the Police Act and the IA under this heading as Mr. Munroe forms the view that the IA (to an extent) is applicable to the RBPF. With respect to the Police Act, the relevant provisions have been highlighted by Counsel – namely sections 11 (1), 27(1) and 28. **Section 11** provides:

“The Commissioner may issue operational and administrative orders to be called Force Standing Orders, for the general control, direction and information of the force.”

54. This section is clear – the Commissioner of Police is empowered to provide Force Standing Orders for the purpose of managing the RBPF. The Police Act does not provide any provisions relating to vacation and/or casual leave entitlements of members of the Police Force. The Parties appear to accept that this is the position. Thus, the Force Standing Orders must have the relevant provisions.

55. I must also highlight the provisions of the Police Act which speak directly to the RBPF and any proposed affiliation with any union. Section 27(1) and 28 of the Police Act provide:

“27 (1) It shall not be lawful for any police officer to be or become a member of any prohibited association.”

28. For the purpose of this Act a prohibited association means – (a)Any trade union or any body or association affiliated to a trade union. (emphasis added)”

56. These sections expressly state that members of the RBPF are prohibited, by law, from joining any trade union or any association/body affiliated with a trade union. This segues to the IA.

57. **Article 2.1 of the IA** states:

“STATEMENT OF PURPOSE

2.1 The spirit and intent of this Agreement is to secure, in the interest of the well-being of the employees/employer, the efficient and economic operation of the Employer through an orderly and constructive relationship between the Government of the Commonwealth of The Bahamas and The Bahamas Public Services Union...”

58. **Articles 4.8 and 4.9 of the IA** provide:

“4.8 EMPLOYEE The term “Employee” shall be interpreted as all persons directly employed by the Employer except for those employees employed in the disciplined forces as expressed in paragraph one of Article 31 of the Constitution of the Commonwealth of The Bahamas, employees represented by Unions other than The Bahamas Public Service Union, employees employed by Local Government Authorities after 1996 and employees with personal service contracts.

4.9 EMPLOYER The term “Employer” means: The Government of the Commonwealth of The Bahamas (emphasis added).”

59. **Article 31 of the Constitution of the Commonwealth of The Bahamas, 1973 (“The Constitution”)** provides:

“disciplined force” means —
(a) a naval, military or air force;
(b) the Police Force of The Bahamas;
(c) the Prison Service of The Bahamas; or
(d) any other force or service specified by Act of Parliament to be a disciplined force for the purposes of this Chapter...(emphasis added)”

60. Accordingly, the purpose of the IA is to ensure the interest and well-being of both the employees (i.e. persons employed by the Government of the Commonwealth of The Bahamas) and The Government of the Commonwealth of The Bahamas

("Government"), through a mutually beneficial and constructive relationship between the Public Services Union (which is a trade union) and the Government.

61. It is abundantly clear that members of the RBPF are excluded from the provisions of the IA. This can be observed from sections 27 and 28 of the Police Act (mentioned above which overtly provide that members of the RBPF are prohibited from joining any trade union or affiliate, such as the Public Services Union) article 4.8 of the IA (in conjunction with the definition of disciplined forces as provided under Article 31 of the Constitution) and Annex 2 of the IA. **Annex 2 of the IA** states:

"CATEGORIES OF EMPLOYEES WHO ARE EXCLUDED FROM THIS IA:

- 1...
- 2...
- 3...
- 4...
- 5...
- 6...
- 7...

8. Royal Bahamas Police Force...(emphasis added)"

62. Mr. Munroe even admits this under cross-examination. Thus, Mr. Munroe cannot rely on the IA to assist his case as, being a member of the RBPF at the material time, he was expressly excluded from the provisions of it.

63. I do note that, during cross-examination, Mrs. Bethel stated that certain excerpts of the IA were utilized by the RBPF. She stated that portions relating to salary increases were used and agreed with Mr. Munroe that the RBPF did benefit from certain aspects of the IA, even though the RBPF is overtly excluded from it. There is nothing before me evidencing that the IA's application to the RBPF went beyond salary increases. Accordingly, from the evidence before this Court, the applicability of the IA appears to only extend to the salaries of members of the RBPF and nothing more.

Force Standing Orders ("Standing Orders")

64. As mentioned above, Standing Orders have been established by the Commissioner of Police for the management of the RBPF. Section B9 of the Force Standing Orders govern vacation and casual leave for police officers. For the purposes of this action, the relevant provisions include: **Section B9 paragraph 1 – General, paragraph 12 – Vacation leave and paragraph 16 – Causal leave.** Those sections provide:

"LEAVE

General

1. Leave for officers in the Force is governed by the General Orders of the Public Service. Force Policy is intended to ensure that all officers enjoy a structured system of leave days and that, as far as possible,

periods of vacation and casual leave can be taken at the time requested by the officer. Inevitably, the exigencies of the service have to be taken into account in approving applications for leave.

Vacation Leave

12. All officers are entitled to a period of vacation leave in each calendar year. A period of vacation leave may be three, four or five weeks depending on the rank and salary of the officer concerned. For the purposes of calculating vacation leave, a week shall be regarded as five working days. The actual period of absence will, therefore, include all normal leave days and, where applicable, public holidays occurring within the period concerned. Vacation leave will be approved by the OIC Division or Department. Vacation leave for gazetted officers will be approved by the Commissioner.

Casual Leave

16. Gazetted officers, and Chief Inspectors who are not entitled to record overtime as at paragraph 9 above may be granted casual leave at the rate of ten working days per year. Casual leave will not be added to vacation leave nor can it be accumulated. Force policy is that casual leave will be taken in five two-day periods on any Thursday and Friday. Casual leave for Chief Inspectors may be approved by the OIC Division or Department. Casual leave for gazetted officers will be approved by the Commissioner (emphasis added).”

65. During cross-examination, Mrs. Bethel stated that only a “Gazetted Officer” was entitled to five (5) weeks’ vacation and that there is nothing in writing confirming this. She also agreed with Mr. Munroe during her cross-examination that the granting of vacation leave was based on a ‘practice’. Though not overtly stated, Mrs. Bethel seems to be referring to a custom and practice within the RBPF. This will be expanded upon further below.
66. In relation to a “Gazetted Officer”, there does not appear to be a definition for this term within the Standing Orders nor in the Police Act. During her cross-examination, Mrs. Bethel said that there is no written document regarding who is considered a ‘Gazetted Officer’ from her recollection. It is only based on practice during her twenty (20) plus years of service in the RBPF.
67. The Court does note, however, that there is a definition for a “Gazetted Police Officer” in the Criminal Law (Measures) Act, 1991. According to section 2 of that Act:

“”gazetted police officer” means any police officer of or above the rank of assistant superintendent;”

68. It is unclear if this definition is of general application or specific to that piece of legislation. In any event, the definition coincides with Mrs. Bethel’s testimony. I accept this as the definition of “Gazetted Officer”.

69. Should this not be the accepted position, I do glean from the Standing Orders that a “Gazetted Officer” is in a differing and higher rank than that of an Inspector (which Mr. Munroe was at the time of his resignation). This can be gathered from **Section A11 under Canteen and Messes paragraph 3 of the Force Standing Orders**, which expressly provides different messes (which appear to be dining areas) for different ranking police officers. That section provides:

“Messes

3. Messes are established at Police Headquarters and messes at Grand Bahama for the benefit of the following ranks:

Senior Officers Mess - All Gazetted Officers

Inspector’s Mess - Inspector ranks

Sergeants Mess - Sergeants

Corporals Mess - Corporals

Constables Mess – Constable (emphasis added)”

70. In fact, at several instances, as is the case from the above excerpt, in the Standing Orders, the terms “Inspector” and “Gazetted Officer” are separate and distinct. Other instances can be found at Section B10 at paragraphs 12 to 17 (which addresses entitlement to pension), and at Section B10 at paragraph 19 (which addresses death benefits to dependents/representatives). This strongly suggests that an Inspector is not considered a member of the “Gazetted Officers”.

71. Further, in order to qualify as a Gazetted Officer, Mr. Munroe would need to prove that his ranking as an Inspector was published in the Gazette. There is no evidence of this before the Court, thus I am not satisfied that Mr. Munroe was a Gazetted Officer at the time he was made an Inspector.

72. During cross-examination, Mrs. Bethel also admitted that she obtained casual leave when she was an Inspector, which is contrary to her earlier testimony. She, however, went further to state that such a ‘practice’ was discontinued in or around 2016 – which is one year before Mr. Munroe’s promotion to Inspector. Even if there was a custom and practice with respect to vacation and/or casual leave, this has to be established through clear and cogent evidence.

73. In establishing the existence of a custom and practice in the workplace, the Bahamian Court of Appeal in **Evangelistic Temple v Lauriette Lightfoot BS 2021 CA 165 (“Temple”)** stated the relevant test. In that case, the Court had to determine, *inter alia*, whether there was an established custom and practice that an individual would be retired from the employ of the Evangelistic Temple upon attaining the age of sixty-five (65) years old. At paragraph 72, Crane-Scott JA opined:

“72. Based on the Temple's evidence led at the trial (more specifically the contents of Reverend Cash's Witness Statement) it does not appear that the Temple had ever set about to positively establish the existence of a longstanding unwritten custom and practice in the workplace by which its non-pastoral staff retired at 65. As far as we can determine, the Temple's Witness Statement makes no mention of a custom and practice, and no employment records were produced

nor was any list of the persons who had been retired at age 65 put into evidence. Quite simply, there appears to be nothing in the appellate record to indicate when the alleged custom and practice commenced, how long it had been in place, and most importantly, whether the practice was “reasonable, certain and notorious” which, as the cases show, is the legal standard to be met by any party seeking to rely on a custom or practice. [See Sagar v. Ridehalgh & Son (above); Bond v. CAV Ltd [1983] IRLR 360 paragraph 54–56 per Peter Pain J; and the Court of Appeal decision in Henry and others v. London General Transport Services Ltd, paras 27–34 per Pill LJ (above).] (emphasis added)”

74. Relying on the *Temple* decision, aside from the testimony of Mrs. Bethel, there is no evidence before this Court establishing the existence of any custom and practice of providing casual leave or five (5) weeks’ vacation leave to persons below the rank of Superintendent or a “Gazetted Officer”. It would have assisted the Court if employment records were provided or witness testimony from other persons who would have received such casual leave in lower ranks were tendered into evidence. Sadly, none of this evidence was placed before me.
75. In fact, there is nothing before this Court that establishes the commencement of any such practice, how long it had been in place or whether the practice was reasonable, certain and notorious. He who asserts must prove. Mr. Munroe sought to rely on the fact that Mrs. Bethel was granted casual leave as an Inspector, but did not furnish any corroborating or cogent evidence confirming such custom and practice.
76. Consequently, the granting of casual leave or vacation leave of five (5) weeks only applies to those considered “Gazetted Officers” – which, from my understanding of the various documents and legislation I have referenced, refers to senior police officers, being persons who are assistant superintendents or higher. Mr. Munroe being an Inspector at the time, excludes him from such entitlement, thus he is not owed five (5) weeks’ vacation leave.
77. In the circumstances, I rule that, in accordance with the Force Orders, Police Act and/or the IA, there is no entitlement to casual leave or five (5) weeks’ vacation for members of the RBPF who are not “Gazetted Officers”.
78. Mr. Munroe also sought a declaration that **B9 Paragraph 12 of the Force Orders** addresses casual leave. The wording is clear and express. There is no room for misinterpretation. It only mentions vacation leave. Thus, I rule that casual leave is not addressed in that section of the Force Orders.
79. Even if one were to rely on B9 paragraph 16 of the Force Orders, as the Defendants’ Counsel submits, it does not apply to Mr. Munroe as he was an Inspector during his tenure at the RBPF. **B9 paragraph 16** provides:

**“Casual Leave
Gazetted officers and Chief Inspectors who are not entitled to record
overtime as at paragraph 9 above may be granted leave at a rate of**

ten working days per year. Casual leave will not be added to vacation leave nor can it be accumulated. Force policy is that casual leave will be taken in five two-day periods on any Thursday and Friday. Casual leave for Chief Inspectors may be approved by the OIC Division or Department. Casual Leave for gazetted officers will be approved by the Commissioner.”

80. As I have ruled that Mr. Munroe does not fall within the definition of Gazetted Officer nor was his rank a Chief Inspector, the above section does not apply to him. Thus, he is not entitled to casual leave.

General Orders

81. It is accepted by all parties that the General Orders apply to the RBPF. I only wish to add that the General Orders apply where the Force Standing Orders are silent on a particular matter. It is important to note that, the General Orders outline the procedure when there are matters regarding the conditions of employment of a public officer. **Article 100 (4) of the General Orders** provides the definition for “public officer”. The article states:

“(4) "Public officer" or "officer" means:

(a) a person who holds a Pensionable Office within the meaning of any Act relating to the pensions or gratuities of persons employed in The Public Service;

(b) a person employed in The Public Service whose employment is not of a casual nature and whose whole time is employed in The Public Service.”

82. The General Orders do not expressly exclude police officers from its purview. In fact, police officers and certain policies specific to such persons, are addressed in the General Orders. It appears that police officers are subsumed in the definition of “public officer” to an extent. It is also noted that Mr. Munroe received a letter from the Ministry of Public Service dated 01 June 2017 indicating an increase to his salary due to his promotion. This is evidence that he fell within the Public Service. As Mr. Munroe was a person employed in the Public Service full time, he is deemed a Public Officer and the General Orders applied to him to the extent that there is no inconsistency with the Force Standing Orders – which specifically apply to police officers.

83. I will go through the exercise of analyzing the relevant portions of the General Orders and amendments thereto. Mr. Munroe has placed into evidence **Circular No. 17 of 2014 – Amendments to General Orders (“Circular”)**. The relevant portions read as follows:

“Please be advised that the salary increase for July 2008 has prompted adjustments to the following General Orders:

General Order 1502 which speaks to vacation leave should be amended to read as follows, with effect from 1st July, 2008:

The salary points should be:

- (a) In the case of an officer whose salary is \$30,450 per annum (July 2008) or above – five (5) weeks a year.
- (b) Officers earning \$21,250 to \$30,449 per annum (July 2008) – four (4) weeks a year.
- (c) Officers on the permanent and pensionable establishment, who served continuously (on weekly and monthly terms) for at least seven (7) years – four (4) weeks a year.
- (d) Officers earning \$10,700 to \$21,249 per annum (July 2008) – three (3) weeks a year...(emphasis added)”

84. This makes it clear that any ‘officer’ whose salary is \$30,450 per annum or more is entitled to five (5) weeks’ vacation. At the time of Mr. Munroe’s resignation he made \$38,850 per annum (as evidenced by the 01 June 2017 letter to Mr. Munroe from the Permanent Secretary of the Ministry of the Public Service). At first blush, it appears that Mr. Munroe fall squarely within the ambit of paragraph (a) of the aforementioned Circular. However, one must look at the Standing Orders as well. Section **B9 paragraph 12 of the Standing Orders** provide:

““Vacation Leave

All officers are entitled to a period of vacation leave in each calendar year. A period of vacation leave may be three, four or five weeks depending on the Rank and Salary of the officer concerned. For the purposes of calculating vacation leave, a week shall be regarded as five working days. The actual period of absence will, therefore, include all normal leave days and, where applicable, public holidays occurring within the period concerned. Vacation leave will be approved by the OIC of the Division or Department. Vacation leave for gazette officers will be approved by the Commissioner (emphasis added)””

85. One must reconcile the two provisions which clearly conflict. In the realm of statutory interpretation, when there are two conflicting statutes, the statute with a provision that deals specifically with a particular subject prevails and excludes the more general provision in the other statute. This maxim is known as *Generalia specialibus non derogant*. According to **Halsbury’s Laws of England, 4th ed, vol 44(1), para 1300:**

“It is difficult to imply a repeal where the earlier enactment is particular, and the later general. In such a case the maxim generalia specialibus non derogant (general things do not derogate from special things) applies. If Parliament has considered all the circumstances of, and made special provision for, a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision; and therefore, if such an enactment, although inconsistent in substance, is capable of reasonable and sensible application without extending to the case in question, it is prima facie to be construed as not so extending. The special provision stands as an exceptional proviso upon the general. If, however, it appears from a consideration of the general enactment in the light of admissible

circumstances that Parliament's true intention was to establish thereby a rule of universal application, then the special provision must give way to the general (emphasis added)."

86. This maxim is also outlined in section 88 of the code in Bennion, "Statutory Interpretation" 6th ed (2013):

"Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly the earlier specific provision is not treated as impliedly repealed."

87. The maxim was also addressed in the Bahamian decision of **Rolle v Commissioner of Police et Al BS 1999 SC 11** where Osadebay Snr. J made the following pronouncements:

"It is a rule [of] construction of legislation that where there are general words in a later legislation capable of application without extending talent to [a] subject specially dealt with by an earlier legislation, as in this case, one is not allowed to resort to the general words of the later legislation to deal with the subject specially provided for in the earlier legislation. " Generalia Specialibus non derogant."

In The Vera Cruz (1884) 10 App. Cas. 59, the Earl of Selbourne Lord Chancellor said with regard to the principle and rule of Generalia Specialibus non derogant:–

"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so (emphasis added)."

88. Applying the maxim, as the Standing Orders specifically address police officers and the Circular address general members of the Public Service, the former prevails and excludes the latter. I can glean no intention from Parliament that the Circular was intended to affect police officers – particularly when the Standing Orders overtly state that it is the governing document for the management of the RBPF.

89. Furthermore, I am comforted by the fact that Mr. Munroe being granted four weeks' vacation based on his rank is evidenced in the internal software database of the RBPF (according to the AS400 print out). Other corroborating evidence of his entitlement to only four (4) weeks' vacation can be found from both the witness statement and testimony of Mrs. Bethel (who has been in the Human Resource Department for 15 years and is familiar with the policies and practices of the RBPF regarding vacation leave). I am thus satisfied that Mr. Munroe was only to receive four weeks' vacation

based on his rank and salary being conjunctively considered by the RBPF in accordance with B9 paragraph 12 of the Standing Orders.

90. In addition, there can be no unused vacation leave, as the four weeks' vacation leave that Mr. Munroe was entitled to was utilized prior to his resignation. Further, **B9 Paragraph 13 under Vacation Leave in the Special Force Orders** provides:

“13. Although the General Orders of the Public Service provide for the accumulation of vacation leave, no officer will be allowed to accumulate vacation leave unless he has the express approval of the Commissioner or Deputy Commissioner and only then if there are compelling reasons why it was not possible to take leave during the year. It is fundamental to the general welfare of all officers that they enjoy a vacation period with their families on a regular basis and supervisory officers will ensure that they do so (emphasis added).”

91. Consequently, even if there was any unused vacation, it was lost. There is no evidence before this Court that Mr. Munroe requested any vacation leave beyond the four (4) weeks he was granted prior to 04 June 2018 (as evidenced through a letter from Mr. Munroe to Mr. Anthony Ferguson – Commissioner of Police at the time).

92. In relation to casual leave, **General Orders, article 1624(a)** provides:

“1624(A). Officers in the X3 Scale or above on salary scales which start at \$20,450 per annum are not eligible for payment of overtime may subject to the exigencies of The Service be granted casual leave at the rate of ten working days a year. Casual leave may not be added to vacation leave, or; half pay leave; nor may it be accumulated (emphasis added).”

93. As it is accepted that the General Orders apply to the RBPF, this article applied to Mr. Munroe during his tenure with the RBPF. What is unclear is if Mr. Munroe falls within the X3 Scale. There is no evidence confirming this. He who asserts must prove. This action was brought by Mr. Munroe, who has failed to prove that he falls squarely within the X3 Scale. Accordingly, I am not satisfied that Mr. Munroe falls within this category of officers who may be entitled to casual leave

III. Whether the Claimant is entitled to any damages?

94. Having ruled that Mr. Munroe is not entitled to vacation leave of five weeks nor any casual leave, I rule that he is not entitled to any damages as he has suffered no loss or injury.

CONCLUSION

95. Based on the evidence and the current law, I adjudge and declare that:

- A) Members of the Royal Bahamas Police Force are subject to the General Orders, to the extent that there is no inconsistency with the Special Force Orders;
- B) The Claimant was not entitled to 5 weeks' vacation leave per year. He was only entitled to 4 weeks' vacation leave due to his rank as Inspector during his tenure with the Royal Bahamas Police Force.
- C) Upon the true construction of B9 paragraph 12 of the Royal Bahamas Police Force Standing Orders, it does not entitle those ranks mentioned to the additional casual leave in lieu of overtime as it does not reference casual leave. B9 paragraph 12 does not derogate from the provisions regarding casual leave in the General Orders.
- D) The Claimant was not entitled to casual leave under the terms of the General Orders.

96. Accordingly, Mr. Munroe's claim is dismissed. The Claimant shall pay the costs of the Defendants, to be assessed if not agreed.

Dated this _____ day of _____ 2023

Senior Justice Deborah Fraser