

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division

Claim No. 2018/PUB/jrv/00017

**IN THE MATTER OF an Application for Judicial Review by Philip Miller pursuant to the
Rules of the Supreme Court, Order 53, Rule 3**

BETWEEN

PHILIP MILLER

Applicant

AND

MINISTER OF TRANSPORT & LOCAL GOVERNMENT

First Respondent

AND

THE ATTORNEY GENERAL

Second Respondent

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Romona Farquharson Seymour with Calvin Seymour and Samuel Taylor
for the Applicant
Sophia Thompson-Williams with Donard Brown (Shaka Serville had
carriage initially) for the Respondents

Hearing Date(s) 22 January 2020, 3 July 2024 and 8 October 2024

DECISION

WINDER CJ

This is the Applicant's (Miller's) application for Judicial Review of the decision of the Port Department Disciplinary Board (the Board) to suspend him from working within the Port Facility for a specified period with effect from 15 March 2018.

[1.] The action was commenced with the filing of an application for judicial review filed on 4 May 2018 seeking the following relief:

- (1) A Declaration that the decision of the Board suspending him from plying for hire as a taxi cab driver from Prince George Wharf.
- (2) A Declaration That the decision to suspend him from working at Prince George Wharf as a taxi driver for three (3) days was wrong in law.
- (3) A Declaration (sic) to suspend him from plying for hire as a taxi driver at Prince George Wharf was derived in breach of the rules of natural justice.
- (4) The application also seeks an order of certiorari quashing the decision of the Board suspending him from plying for hire as a taxi cab driver at Prince George Wharf.
- (5) And, a declaration that as a result of the Port Authority's unlawful actions the Applicant suffered a loss of seven (7) days employment.
- (6) The Applicant claims damages as provided by Order 53 rule 7.

[2.] The basic facts are that Miller claims, in his application for Judicial Review, to have wrongfully been deprived of access to the Port Area, Prince George Wharf for a period of several days due to the suspension of his access pass to the area. This determination followed a decision by the Board, chaired by Acting Port Controller Roker, on 15 March 2018. The decision of the Board, on the available evidence, appears to have arisen from a complaint by Terez Kemp following an altercation she had with Miller.

[3.] At the trial Miller gave evidence and called Gregory Kelly and Doral Fowler as witnesses. The Respondent called Berne Wright and Terez Kemp as witnesses.

[4.] Miller's evidence is centered on an incident at the Port where he alleges procedural unfairness and a breach of natural justice. Miller is a cab driver who operates from the Prince George Wharf where cabs are assigned a fare through a call up system on a first come first serve basis. Miller claims that on 19 February 2018, a fare was announced for his taxi cab at the Port, but by the time he arrived to collect it, the fare had been given away by Ms. Kemp to another driver. He says that he questioned Ms. Kemp about this, which led to a confrontation where he alleges she was aggressive towards him. As a result of this incident, his badge was taken, and he was suspended from working at the Port.

[5.] Miller contends that he was not given a fair hearing. He was not allowed to present his version of events or call witnesses during the disciplinary hearing. He argues that this lack of opportunity to be heard constitutes a breach of natural justice. In particular, Miller's specific oral evidence at the trial was that:

"Before the Board I went there that morning. The Board was supposed to meet at 9:00, they get in and got started around 11:00, and first they called Ms. Kemp in the room. They had me step out the room. And when Ms. Kemp came out, Ms. Kemp left and then they called me in the room and asked me what happened, my side of the story, and I proceeded to try to explain to them what had took place. And then Ms. Thompson said to the Board that "You was very rude to the officer. You were very rude to the officer." I said, "No, sir. How is it possible that you could sit here and you could tell this Board that I was rude?"

I say, "What did I say to the officer? " She in turn and said to me, "I don't know what you said to her. I didn't hear what you said to her, but because of the movement of your hands I could tell that you was rude to the officer." So I said to her, "Ms. Thompson, I came to you to complain about your officer. You in turn told me that you was sticking with your officer, and you was bringing me over here to get two weeks off from work." Ms. Thompson then -- they then tell me that's enough. I could step out. I stepped out. And when I stepped out they called me back in and they told me, "You have two weeks off." They didn't allow me no witnesses. They didn't allow anybody in the room. They didn't even allow me to speak to Ms. Kemp.

[6.] Miller acknowledges having been before the Board on three previous occasions for various infractions, but he disputes the current allegations of disorderly conduct and maintains that he was not rude or aggressive during the incident with Ms Kemp.

[7.] Miller highlights procedural issues, such as the lack of clarity on who constitutes the disciplinary board and the absence of any formal rules or guidelines provided to him regarding conduct at the Port. Miller's evidence focuses on challenging the fairness and transparency of the disciplinary process he underwent, emphasizing his belief that he was not afforded a fair opportunity to defend himself against the allegations.

[8.] The evidence of Gregory Kelly and Doral Fowler supported Miller's claim that he did not engage in any misconduct during the incident and highlights the lack of formal rules provided by the Port Authority to taxi drivers. Neither of them provided any assistance as to what transpired at the hearing where Miller's badge was suspended.

[9.] Senior Lieutenant Commander Berne Wright gave evidence regarding the role of the Defence Force and private security at the Port Department. The Defence Force's role was to support the private security and assist with security matters under the International Ship and Port Facility Security (ISPS) protocol. Wright also mentioned his involvement as a member of the Prince George Wharf Disciplinary Hearing Board, where he confirmed that individuals reported for

misconduct should be allowed to question their accusers. However, he could not recall specific details about Miller's hearing or the secretary responsible for taking minutes during those hearings.

[10.] Janet Thompson gave evidence on her interactions with Miller and the events surrounding the disciplinary proceedings. She stated that on 19 February 2018, Miller approached her to complain about Ms. Kemp, alleging that Ms. Kemp was being abusive and not allowing him a fair opportunity. Ms. Thompson recalled Miller mentioning an issue with Ms. Kemp but did not recall any badges being taken at that time. She stated that she did not have Miller's badge in her possession and did not recall receiving any instructions from Brad Smith to return the badge to Miller.

[11.] Thompson also mentioned that she was present at a disciplinary hearing in March 2018 but did not chair the board, which was chaired by the Port Comptroller and Deputy Comptroller. She clarified that she was present in her usual capacity but did not participate in the hearing involving Miller and Kemp. She stated that she excused herself from the hearing once she realized Miller was involved, as she represented road traffic and did not wish to be part of the matter.

[12.] Ms. Thompson indicated that she did not recall any specific instructions to secure the minutes of the hearing and was not aware of the outcome of Miller's case. She also mentioned that she did not see Ms. Kemp's report on the matter and had no reason to see another officer's report, as it would be sent directly to the Comptroller of the port.

[13.] Terez Kemp testified about the incident on 19 February 2018 involving Miller. She confirmed having an exchange with Miller after passing his fare to another driver, which she justified by stating that Miller took too long to respond when his taxi number was called. Kemp denied that Miller responded within a reasonable time and claimed that he used profanity during their exchange, although she did not include this detail in her report. Kemp admitted to calling a Defence Force officer to have Miller removed after he pointed his hands at her, which she found upsetting. She stated that she knew she had to write a report because she had asked for Miller's removal. Kemp also mentioned that Miller's badge was returned the same day after she submitted her report, and she claimed that Miller later approached her to apologize, which she accepted. Kemp did not attend the tribunal related to this matter and did not provide evidence there.

Analysis and Disposition

[14.] The supervisory jurisdiction of the Court, by way of judicial review, exists to control decisions made by administrative bodies and inferior tribunals, such as the Board in this case, exercising its ordinary administrative function in the instant case. These controls exist to protect persons against decisions which might materially affect their rights on the grounds of illegality, irrationality or procedural impropriety.

[15.] The Respondents have provided no formal indication of what transpired at the purported hearing, no minutes, no transcript or report from the Board. The Court is left to piece together what

transpired from the accounts of the witnesses and determine which account is to be believed, where they diverge.

[16.] In **Callenders & Co. (a firm) v. The Comptroller of Customs, SSCivApp No.63 of 2012** the Court of Appeal (Allen P, Conteh JA and Adderley JA) discussed the ambit of judicial review, outlining that there must be the existence of an unfair or unlawful decision which the applicant attacks by judicial review. Per **Adderley JA** at paragraph. 32 of the ruling:

"[J]udicial review seeking prerogative orders cannot take place in a vacuum; there must be an unfair or unlawful decision to quash by certiorari, a public duty not being performed, ultra vires proceedings which may be restrained by an order of prohibition, or public acts being performed or threatened which may be stopped by injunction. .."

[17.] In this context therefore, judicial review exists to review the decision making process rather than the merits of the decision. None of the witnesses, other than Miller can speak to what transpired (or didn't transpire) at the hearing. Miller says that he was not allowed to call any witnesses and he was not allowed to face his accuser. I accept this evidence which is corroborated by the evidence of Thompson and Kemp, who both indicate that they did not participate in any hearing.

[18.] I do not accept however that Miller was suspended from operating as a taxi cab driver, simply that he did not have access to the Prince George Wharf during the suspension period.

[19.] The challenge in this case is one of procedural impropriety and an allegation of a breach of the rules of natural justice. Basic natural justice comprises of two separate components, namely the rule against bias and the duty to be fair. It is this duty to be fair which raises the concern in this case as Miller asserts that his hearing was unfair as he was not afforded an opportunity to be heard and to face his accuser before the decision was made. I am satisfied on the evidence that Miller's case has been made out, having found that the decision was made without hearing him or his witnesses and not permitting him to hear Kemp's accusations. In fact, Kemp says that she did not participate in any hearing before the Board. Miller was entitled to be heard before any decision was made adverse to him and which could affect his livelihood is made.

[20.] I will therefore quash the decision to suspend Miller's badge and grant the declaration that the decision of the Board to suspend Miller's security access to the Prince George Wharf was arrived at in breach of the principles of natural justice.

[21.] On the question of damages, there is a dispute as to the extent of the suspension. In his oral evidence Miller asserts that he was out for a period of two weeks, which conflicts with his

pleadings which asserts a 3 day suspension in one instance and the loss of 7 days employment in the other. Miller's case on damages is weakened by the fact that he failed to provide any evidence to assess any such losses, regardless of the period. Counsel for Miller, on being confronted with this challenge during closing submissions, sought to ask for an order for damages to be assessed notwithstanding there was never any prior indication for a split trial.

[22.] Finally, Miller's claim to damages are further weakened by the fact that it was only Miller's access to the dock which has been frustrated by the Board's decision, not his ability to work as a taxi cab driver. During the suspension period Miller remained able to ply his trade from other locations in New Providence including the International Airport and the various Hotels.

[23.] In the circumstances, I am satisfied that Miller is entitled to no more than nominal damages. I therefore award the Applicant the sum of \$500.00.

[24.] Miller shall be entitled to his costs, such costs to be summarily assessed. The Applicant shall produce a pro forma bill of costs within 21 days hereof for the Court's consideration as to the appropriate amount of costs.

Dated the 15th day of April 2025

A handwritten signature in black ink, appearing to be 'I. Winder', written in a cursive style.

Sir Ian R. Winder
Chief Justice