

**BARBADOS**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT**

**CIVIL JURISDICTION**

**No. 2277 of 2003**

**BETWEEN:**

**The Board of Management of  
Alexandra School  
(Applicant)**

**AND**

**The Barbados Cricket Association  
(Respondent)**

**Before the Honourable Mr. Justice W. LeRoy Inniss, Judge of the High**

**Court**

**2004: January 28**

**February 9, 12**

Mr. Michael Yearwood and Mr. Arthur Holder Attorneys at-Law for the Applicant.

Mr. Adrian King and Ms. Wendy Maraj Attorneys at-Law for the Defendant.

[1] On 6th, 13th and 14th December, 2002 The Alexandra School (the school) played the intermediate semi-final cricket match against Her Majesty's Prisons under the auspices of the Barbados Cricket Association (B.C.A.). The school won the match by an innings.

[2] The rules governing the conduct of the game are set out in a booklet entitled "Special Conditions and Regulations of Play".

[3] On 17th December, 2003 the Board of the Barbados Cricket Association informed the school that the Board determined that the school had breached the rules pertaining to the eligibility of players to represent the school and that accordingly it had forfeited the game.

[4] As a result of this decision the school was unable to proceed to the finals. Instead the game was awarded to the opposing team Her Majesty's Prisons Officers Sports Club (HMPO) which would as a consequence play against MTW in the finals.

[5] The school in response filed an Originating Summons seeking the following Orders:

(a) "That the decision made by the Respondent THE BARBADOS CRICKET ASSOCIATION at its monthly meeting on December 15th 2003 that THE ALEXANDRA SCHOOL CRICKET TEAM had forfeited that game vs. HMPO Sports Club, be deemed null and void.

(b) That the ALEXANDRA SCHOOL was not given the opportunity to be heard at the BARBADOS CRICKET ASSOCIATION'S monthly meeting on December 15th December 2003 and thus was denied the right to a fair hearing.

(c) That the decision made by the Respondent THE BARBADOS CRICKET ASSOCIATION was therefore in contravention of the fundamental principles of natural justice.

(d) An injunction prohibiting the Respondent THE BARBADOS CRICKET ASSOCIATION from hosting the Intermediate Finals, between HMPO Sports Club and MTW scheduled to be played on the 20th, 21st December 2003, 3rd, 4th January 2004.

[6] On 20th December, 2003, Williams J granted an interim injunction prohibiting the Respondent from hosting the intermediate finals between Her Majesty's Prisons Sports Club and M.T.W.

[7] The Respondent filed a summons on 9th January, 2004 seeking inter alia an order that the injunction be discharged. The matter came on for hearing on 28th January, 2004 and by consent it was ordered that the injunction be discharged, that the applicant be allowed to amend its summons and that the two summonses be heard together.

[8] The Respondent filed a further summons on 4th February 2004 seeking the following relief:

1. A declaration that on the true construction of Rule 17 of the Special Conditions of play that Jamal Smith was ineligible to represent the Alexandra School in the BCA Intermediate Division Semifinal.

2. A further declaration that the act of forfeiture as exercised by the Respondent be deemed valid and binding.

3. A further declaration that no right to be heard arose on the decision of the Board to forfeit.

## BACKGROUND

[9] The Applicant's case is set out in the affidavit of Jeffrey Broomes Principal of Alexandra School. He deposes that on 18th November, 2003 he wrote a letter to the Respondent seeking clarification and guidance on the eligibility of two past students of Alexandra School to represent the school in the Intermediate semi-finals. He outlined the facts pertaining to the two students as follows:

1. Both Jamal and Kerry graduated from the school in July

2003.

2. Both were regular members of the Alexandra team during the season except in Jamal's case when he played for the combined schools.

3. Jamal's last game for the school was August 31st and Kerry's October 25th. Subsequently, Jamal played for Empire Club and Kerry for Wanderers' Club.

[10] On 24th November, 2003 he received a reply from the Business Manager of the Respondent indicating that under the provisions of the Special Conditions and Regulations of play 2003, the two former students were debarred from representing the school in the intermediate play-off matches.

[11] The Principal replied to the Business Manager's letter on 25th November appealing the decision on two grounds. According to him in his letter he stated:

"We at the school appeal this ruling on two specific grounds.

- It is inaccurate to say, "it is certain that the matches in the Intermediate Tournament did not commence before the end of the school year past and furthermore have not even commenced as yet."

- The facts will show that the Intermediate Tournament commenced since the month of May when both youngsters were very much a part of the school's student body. We are also more focused on their eligibility to represent the school whether it be in the Intermediate or the Second Division.

- It is inaccurate to say that, "the boys commenced the new season with new clubs." Again, the facts will show that the new season began in May and both boys represented The Alexandra School continuously until the dates mentioned in our previous correspondence to you.

- It is our intention to legally challenge this ruling, hence we have been asked by our Attorney-at-Law to kindly request a copy of the relevant rules that were used to arrive at your position."

[12] On 3rd December, 2003 the Principal received another letter; this time from the Chief Executive Officer of the Respondent, who stated that after reviewing the rules of the competition he found no support for the Principal's claim. His letter continued:

"Rule 17 (f) is applicable to the instant situation. Both students, having obtained the school's permission to continue playing for the school after the end of the official school year, did in fact represent the school as recently as August 31 in the case of Jamal and October 25 in the case of Kerry. However, they then represented Empire and Wanderers respectively in the First Division competition. This latter action was a clear violation of the rules.

If these players were to again represent the school in any BCA competition in the 2003 season, it would constitute a second violation of the rules. Surely you will agree that two wrongs do not make a right."

[13] There was no further correspondence between the parties. In the meantime on 17th December, 2003 Jamal Smith played for the school in the semi-final match. The Business Manager of the Barbados Cricket Association wrote the Principal of Alexandra School stating that the Board of Management of the BCA considered a report from its C.E.O. into the playing of Jamal Smith by Alexandra School in the game under reference (the intermediate semi-final) and referred to the earlier correspondence that had been exchanged between the Principal and the B.C.A. The letter stated inter alia:

"Press reports of the game list amongst the players representing Alexandra one Jamal Smith whom the BCA had determined was ineligible to play. Reports from the Umpires adjudicating the game and an official protest from your opponent HMPOSports Club have all confirmed that Smith played in the game.

At its meeting, on December 15, 2003, the Board noted Rule 38 of the Rule which stipulates as follows:

## INTERPRETATION

The Board is the sole authority for the interpretation of these Rules and By-Laws and Regulations made thereunder and the decision of the board, on any question of interpretation or any matter affecting the Association and not provided for by these Rules, is final and binding until it is overruled at a subsequent meeting of the Board or at a general meeting of the Association.

The Board has therefore determined that Alexandra School has breached the rules pertaining to the eligibility of players to represent a school by

the playing of Smith and that accordingly the School has forfeited the game vs. HMPO Sports Club.

The Board noted the concern that Alexandra had deliberately played Smith after being advised on two occasions by the BCA that he was ineligible. In light of this, the Board has determined that Alexandra will be summoned to a meeting at some future date to show cause why the school should not be subject to any further sanction from the BCA.”

#### THE QUESTION OF ELIGIBILITY

[14] The whole object of Regulation 17 of the Special Conditions and Regulations of play is to ensure that a player does not represent more than one club during the same season. Certain exceptions are made, however, for students who leave school during a particular cricket season. The exceptions are designed generally to allow a student who has left school to elect to continue playing for his school until the end of the season, or alternatively to represent another team on leaving school, without being in breach of the Regulation which debar a player from representing more than one club during the same season. For the purpose of the Regulations “club” includes “school”.

[15] The following is an extract from Regulation 17 of the Special Conditions and Regulations of Play:

“No player having taken part in any match for a club shall be eligible to represent any other club in any competition during the same season.

(a) “that any pupil, student, master or member of staff of any school, who has played for such school during any season and who leaves such school during such season, shall be eligible to play for another club in matches commencing after the date on which he shall have left school;

(b) that any such pupil or student [but not master or member of staff], may elect and shall be eligible to play for such school if he leaves at the end of the last term of the official school year, in matches commencing prior to the end of such official year and, if he leaves at any time during such official year, then in matches commencing before the date on which he shall leave such school;

(c) that any pupil or student of any school, but not master or member of staff, may play for a Club other than his school in matches commencing in that period of any season which shall be prior to the end of the official school year and may elect and shall be eligible to play for such school in matches commencing in that period of the said season, which shall be after the end of such official year.

(f) that a pupil or student leaving school at the end of the last term of the official school year may elect and, with the school’s consent, shall be eligible to play for his school for the remainder of the season. Provided, however, that any such pupil or student who elects to play for and does play for his school in any match commencing after the end of the official school year, shall not be eligible to represent any other club during that season.”

[16] A letter from the Ministry of Education admitted into evidence shows that the school year ends on 31st August of each year. Jamal left school in July and his last game was 31st August- the last day of the school year. His playing for the school after July is evidence of his election to continue playing for the school and he remained eligible to do so for the remainder of the season. However, in order to be debarred from playing for another club the student must not only elect to play for the school but must actually play for the school in a match after the end of the official school year (31st August). Had Jamal therefore played for the school after August 31st he would have become ineligible to play for another club. He did not play for the school after the end of the school year, however, and thus he was eligible to play for another club. Jamal subsequently, exercised his right to play for another club and played for Empire.

[17] The effect of Regulation 17 (f) is to give a newly graduated student the option to continue playing for his school to the end of the cricket season or alternatively to play for another club if he so desires. If he plays for the school after the end of the school year he is debarred from playing for another club. What is the position if he does not play for the school after the end of the school year but plays for another club? Clearly he is then bound by the general rule that no player is eligible to represent more than one club during the same period.

[18] The Chief Executive Officer misinterpreted the rules when he concluded that the position of Jamal and Kerry was the same. When Jamal played for Empire he was eligible to do so, and having played, he then became ineligible to play for the school or any other club. On the other hand, since Kerry had played for the school after the end of the school year, according to Regulation 17 he was ineligible to play for Wanderers when he did.

[19] It is unfortunate that an increasing number of sporting organisations either seek or are forced to seek the assistance of the court with little or no attempt to resolve their differences amicably. The time has come when these organisations need the assistance of a sports Referee or Arbitrator to assist in the resolution of disputes. In its revised constitution which came into effect in 2003 the Barbados Cricket Association has recognized the need for such a procedure and has included the following provision: Rule 23 (a):

(a) Complaints and disputes between:

(i) Member Clubs;

(ii) A Member Club and the Association;

(iii) A member and the Association; and

(iv) Other members of the Association

Must first be referred to the Board for resolution, then to arbitration by arbitrators appointed by agreement between the disputing parties or failing this in accordance with the Arbitration Act, Cap. 110A of the Laws of Barbados, before they are referred to the courts.”

This entire dispute has progressed as though Rule 23 does not exist. In the meantime the parties have come to the court, and the court cannot shirk its responsibility.

[20] One cannot help but observe a display of arrogance and mutual disrespect on the part of both the school and the Barbados Cricket Association. The school informed the Association that it was appealing its decision but when there was no word forthcoming from the Barbados Cricket Association that it was setting in motion the procedure for the "appeal" to be heard the school permitted the young man to play without any further reference to the Barbados Cricket Association.

[21] The Association on the other hand, having learnt that Jamal had played for the school never sought any information from the school but relying on what it considered to be the strength of its powers under Rule 38 of its Constitution deemed that the school had forfeited the game. It did not even consider the complaint of the Prison team.  
Breach of Natural Justice

[22] I am surprised that in this day and age the Barbados Cricket Association would seek to make a finding against one of its members and penalize it without affording it the opportunity to be heard. As early as 1911 the court observed in *Board of Education vs. Rice* (1911) AC 179 that "a duty lying upon everyone who decides anything is to fairly listen to both sides."

[23] Sports especially cricket, plays a pivotal role in the lives of many Barbadians. Those who administer sporting organisations must recognise that they must observe the basic principles of natural justice. They cannot deliberate in secret, and then pronounce their decisions expecting them to be accepted unquestionably. A provision such as Rule 22 of the Barbados Cricket Association's Rules will not insulate their procedure from judicial scrutiny. Mr. Yearwood for the Applicant submitted that in spite of Rule 22 which in effect seeks to oust the jurisdiction of the court, the Barbados Cricket Association is bound to observe the rules of natural justice.

[24] The question as to whether the Barbados Cricket Association can by its rules oust the jurisdiction of the Court, was addressed in *Griffith vs. Barbados Cricket Association et al* (1989) 24 Barb. LR 108. Williams CJ in that case, in considering the effect of the said Rule 22 cited with approval the cases of *Lee vs. Showman's Guild of Great Britain* (1952) 2 QB 329 and *Baker vs. Jones* 1954 2 AER 553.

[25] In Lee's case Romer LJ stated at page 354:

"The proper tribunals for the determination of legal disputes in this country are the courts and they are the only tribunals which by training and experience and assisted by properly qualified advocates are fitted for the task." The courts jealously uphold and safeguard the prima facie privilege of every man to report to them for the determination and enforcement of his legal rights."

[26] In *Baker vs. Jones* Lynskey J said at page 58:

"The parties can make a tribunal or council the final arbiter on questions of fact but though they can leave questions of law to the decision of a tribunal, they cannot prevent its decision being examined by the courts."

[27] In conclusion the Chief Justice stated in *Griffith vs. Barbados Cricket Association* at page 125:

"To hold that Rule 22 makes the Board or the Association the ultimate arbiter of the law would be contrary to the cases. Such an interpretation would make the regulation repugnant to the law of Barbados."

[28] Since the members of the Barbados Cricket Association have agreed among themselves to vest the authority in the Board to interpret its rules and regulations, that body has every right to carry out its functions free of enquiry and the Courts will not seek to usurp the authority of the Board. If, however, in carrying out these functions the Board breaches its contractual relations with its members to allow them a hearing in cases of disputes, or if it fails to observe the common law principles of natural justice, an aggrieved person to whom the rules apply may seek the assistance of the court.

[29] Even if the Board of the Barbados Cricket Association has the sole right to interpret the rules it does not have the right to apply them in a manner which adversely affects those who are bound by the rules without having given such persons the opportunity to be heard.

[30] In this case the effect of the Board's decision is to deprive the school of the opportunity to appear in the cricket finals. Having won the semi-final match decisively, the school would have had a legitimate expectation to proceed to the finals. It could only be deprived of its right to the fruit of its labour for good and sufficient cause and after an enquiry in which there was procedural fairness. The relevant principle has been expressed in *Kioa vs. Minister for Immigration and Ethnic Affairs* (1985) 62 ALR 321 at page 346 in the following words:

"The law has now developed to a point where it may be accepted that there is a common law duty to act fairly in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary intention."

#### The Right To Be Heard

[31] Another issue to be determined is what was the correct procedure to be followed after the Board had decided that an ineligible player had participated in the cricket match.

[32] Even if the Board had observed all the principles of Natural Justice and had arrived at the decision that Jamal Smith was ineligible to represent the school, it would still have had to afford the school a hearing before arriving at what was an appropriate punishment for the school's infringement of the rules.

[33] Counsel for the Respondent has submitted that if the court finds that the student was ineligible to play, forfeiture would automatically flow from the fact of ineligibility, thus the applicant would have suffered no injustice by not being heard. The Rules do not support the view that forfeiture is the inevitable punishment for breach of the ineligibility rules.

[34] The rules confer a discretion upon the Respondent to mete out varying degrees of penalties. Rule 19 of the Conditions of Play states:

"No captain shall waive any penalties imposed under the aforesaid Regulations nor shall disregard any violation of any such Regulations.

Breaches of the aforesaid Regulations or any of them shall be deemed to be violations by Clubs themselves and not by individual club members.

The Board may in its discretion reprimand any club found guilty of any violation of these Regulations or any of them, or, if in the opinion of the Board the gravity of such violations justifies the Board's so doing may:-

(a) cause any such club to forfeit the match in respect of which any such violation occurred or,

(b) disqualify any such club competing in any or all of the competitions.

[35] If the school was not afforded a hearing, on what basis did the Board exercise its discretion granted under the rules? Had the school been heard it might have been able to urge upon the Board some mitigating factors which could reduce the harshness of the eventual penalty. For example it could have submitted that consideration should be taken of the following:

(a) The Applicant at all times acted in good faith even though it misinterpreted the rules.

(b) That it sought clarification from the Respondent and when the Respondent replied, it appealed the decision pointing out specific facts which the Respondent had, no doubt, inadvertently misrepresented and the Respondent then neither convened a meeting to deal with the "appeal" nor did it refer the matter to its disputes committee as provided by its rules.

That the school defeated its opponent by a large margin. Although no evidence has been led to show the performance of the ineligible student, it is more likely than not that his absence from the team would have made no difference to the final result.

[36] It is not for the Court to seek to determine what weight the Board would have placed on any submission made on behalf of the school or what would have been the eventual result, had the school been heard. It is however, the duty of the Court to ensure that the rules and procedures are followed.

[37] In support of his submission Mr. King cited the case of Glynn vs. Keele University et al (1971) 2 AER 90.

[38] The circumstances of the two cases were completely different.

In Glynn's case, the Plaintiff, a university student was among a group of students who appeared naked in public. The Vice Chancellor investigated the matter and without hearing the Plaintiff, took disciplinary action against him. The Vice Chancellor justified his actions on the grounds that if he had convened a disciplinary panel as required by the Regulations of the university, some of the students would have graduated before the panel could meet and would no longer be subject to the discipline of the university. As a result, the Vice Chancellor imposed a punishment, limited to what the disciplinary panel could have inflicted and gave the students the opportunity to appeal to the Council which was due to meet shortly after. The court held that the Vice Chancellor of the university had acted without complying with the requirements of natural justice. It had to decide, thereafter whether or not to set aside the Vice Chancellor's punishment.

[39] Pennycuik V.C. accepted that the authorities show that the court has a discretion whether or not to set aside the decision of a quasi-judicial body. The court found that in the circumstances of that case all the Plaintiff could have done had he been heard was to put forward some plea by way of mitigation. As a result, it exercised its discretion after considerable hesitation, not to enforce the injunction.

[40] Even on the facts of that case, Pennycuik V.C. reiterated that the discretion not to grant an injunction

"Should be very sparingly exercised where there has been some failure in natural justice."

[41] It is not only in refusing an injunction but in any other matter where there is a judicial discretion that the Court should be reluctant to exercise that discretion in favour of a party which has not observed the rules of natural justice.

[42] There is no doubt that the granting of the remedies sought are discretionary. How must the court then approach a case such as this in which neither party is without blame? The court must consider all the factors including the conduct of the respective parties to determine if there is some extenuating circumstances to justify any breach of the principles of natural justice.

[43] The Respondent has given no good reason for its refusal to invite the Applicant to be heard on the question of forfeiture of the game. It is worthy of note, that in its letter announcing the forfeiture, it indicated that the Applicant would be given notice to appear to show cause why further action should not be taken against it. It ought to have been evident to the Board that in the same way it was considered necessary to afford the Applicant the opportunity to be heard before a decision was taken with respect to further action it might have afforded a similar opportunity before taking the initial action.

[44] The Applicant seeks inter alia a declaration that the decision of the Barbados Cricket Association was in contravention of the principles of natural justice and a Declaration that the decision be deemed null and void.

[44] After considering all the factors involved, in reaching a decision, I have decided to grant the relief sought by the Applicant. I have also granted the Declaration sought by the Respondent that on the true construction of Rule 17 of the Special Conditions of Play that Jamal Smith was ineligible to represent the Alexandra School in the BCA Intermediate semi-final.

[45] The injunction has already been discharged. I now make the following Declarations:

(a) That on the true construction of rule 17 of the Special Conditions of Play Jamal Smith was ineligible to represent the Alexandra School in the B.C.A. Intermediate semi final cricket match.

(b) That the decision made by the Respondent the BARBADOS CRICKET ASSOCIATION at its monthly meeting on December 15th 2003 that the ALEXANDRA SCHOOL CRICKET TEAM had forfeited the game played against HMPO Club, is deemed null and void.

(c) That the Applicant The Board of Management of THE ALEXANDRA SCHOOL was not given the opportunity to be heard at the BARBADOS CRICKET ASSOCIATION's monthly meeting on December 15th 2003 and thus was denied the right to a fair hearing.

(d) That the Respondent THE BARBADOS CRICKET

ASSOCIATION was therefore in contravention of the fundamental principles of natural justice.

[46] In the circumstances of this case, each party is to bear its own costs.

W. LeRoy Inniss  
Judge of the High Court