

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Jurisdiction

No. 308 of 2004

BETWEEN

BRIAN HARDING *Plaintiff*

AND

BARBADOS TURF CLUB *Defendant*

AND

No. 311 of 2004

BETWEEN:

HANIF EMAMALIE *Plaintiff*

AND

BARBADOS TURF CLUB *Defendant*

Before the Honourable Mr. Justice Sherman Moore, Judge of the High Court.

2004: March 9, 18 and 29

Mr. M. Goodridge for both Plaintiffs.

Mr. Hal Gollop and Miss Vere Brathwaite for the Defendant in both cases.

DECISION

[1] Before me are two summonses seeking an order (1) to quash the decision of the defendant whereby the defendant's stewards, suspended the plaintiffs' licences for thirty days and imposed on each plaintiff a fine of one thousand dollars; and (2) for costs.

[2] These cases arose out of the same facts and were tried together.

[3] The plaintiffs are jockeys. On the 14th day of February, 2004 they were scheduled to ride in a number of races organised by the defendant. Some of the jockeys, upon inspection of the track, decided that it was unsafe and refused to ride. The result was that all races for that day were cancelled. The plaintiffs were scheduled to ride in Trinidad and Tobago on the 20th day of February, 2004. They went to the stewards' room and requested their clearance certificates. They were informed that they would not be issued with clearance certificates and that their licences were suspended for 30 days and that a fine of \$1,000.00 had been imposed on each of them.

[4] On the 16th day of February, 2004 Mr. Goodridge wrote the defendant

in the following terms:

"February 16, 2004

Barbados Turf Club

Garrison

ST. MICHAEL.

Dear Sirs

We act on behalf of Mr. Hanif Emamalie, a registered Jockey who resides in the Republic of Trinidad and Tobago.

Our instructions are that on Saturday, the 14th February, 2004 you notified our client that his jockey licence was suspended for a period of thirty (30) days and that he was fined a sum of \$1,000.00. Further, you refused to give our client a Clearance Certificate to enable him to ride in Trinidad.

Based on our instructions, both the procedure and method adopted by you were in breach both of your rules and the principles of natural justice and were accordingly wrong in law.

As a consequence of your actions, our client was forced to notify the owners and trainers in Trinidad on Sunday of his unavailability to ride in Trinidad during the period of his suspension.

We are therefore calling on you to do the following with immediate effect:-

- 1) Reinstate our client's licence and quash the said fine;
- 2) Issue our client with a Clearance Certificate.

We will be prepared to meet with you or your legal representative to discuss the measure of damages payable to our client for the loss and damage suffered as a consequence of your said wrongful acts.

Unless we hear from you, we will be forced to seek an injunction in the High Court for redress on behalf of our client.

Yours faithfully

(Signed) Mark W. Goodridge

cc: Mr. Hanif Emanalie"

The defendant replied as follows:

19th February 2004

Messrs. Jones & Goodridge

Attorney-at-Law

Venus House

Pinfold Street

Bridgetown

For the attention of Mr. Mark Goodridge

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Dear Sirs,

Hanif Emamalie/The Barbados Turf Club

Further to our (Goodridge-Brathwaite) telephone conversation earlier today and to our letter to you bearing instant date, which we believe is by now in your possession, we sought to obtain our client's preliminary instructions and now write to advise you that the penalties imposed against your client have been suspended by our client, pending a further investigation into the circumstances of the matter.

We are further instructed to inform you that this decision has been communicated to your client as well as to the relevant racing authority in Trinidad and Tobago. A clearance certificate has been issued and has been forwarded by facsimile to that authority. Our client understands that your client is still in Barbados and the original Certificates with respect to himself and Mr. Brian Harding will be handed to your client for delivery in Trinidad.

We thank you for your accommodation in this matter and shall revert to you after having received further instructions.

Yours faithfully,

(Signed) Vere P. Brathwaite"

Mr Goodridge again wrote the defendant as follows:

"February 18, 2004

Hampton Chambers,

Attorneys-at-Law

41 Roebuck Street

Bridgetown.

Attention Ms. Vere Brathwaite

Dear Sirs,

Re: Hanif Emamalie/The Barbados Turf Club

Your letter of even date in connection with the matter under reference is hereby acknowledged.

We note your statement that the penalties imposed against our client have been suspended.

However, we would draw to your attention that persons including appellate Stewards of the Barbados Turf Club were present and in consultation with the Stewards of the Meeting before the said penalties were imposed on our client who was never told of any charge or offence which he is alleged to have committed nor was he given a hearing prior to his licence being suspended and a fine

imposed on him.

In the circumstances, unless we have in writing by mid-day tomorrow (Thursday) a revocation of the penalties imposed, our client will seek redress through the High Court without further recourse to you.

Yours faithfully

Sgd. Mark W. Goodridge.

MWG:csw

cc: Mr. Hanif Emamalie

The defendant again replied as follows:

"February 19, 2004

Messrs. Jones & Goodridge

Attorneys-at-Law

Venus House

Pinfold Street

Bridgetown

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For the attention of Mr. Mark Goodridge

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Dear Sirs,

Our recent correspondence with respect to the subject matter, resting with yours to us of yesterday's date, refers.

We are instructed to confirm to you that the penalties imposed against your client have been suspended pending a hearing before the Stewards of The Club, to whom the matter has been reported.

Yours faithfully,

Signed: Vere P. Brathwaite.

- [5] There was similar correspondence between the parties in respect of the plaintiff Harding.
- [6] At the hearing the defendants admitted that the plaintiffs were not given a hearing before the penalties were imposed on them. Mr. Goodridge for the plaintiffs contended that the failure of the defendants to hear the plaintiffs in their defence was a breach of the audi alteram partem principle and therefore the imposition of the penalties was null and void. He cited the following cases in support of his contention:

Wright V The Jockey Club, TLR June 16, 1995

Demerara Turf Club and others V Phang (1960) 3 WIR 454.

- [7] On the contrary, Mr. Gollop contended that paragraph 134 of the Rules of Racing confers a right of appeal on the plaintiffs and they ought to have exhausted their rights under the Rules of Racing before seeking relief in the court. In the circumstances, he argued that since the right to a hearing is available at the appellate stage the

plaintiffs were not entitled to a hearing before the imposition of the penalties, and therefore, the failure of the defendant to give the plaintiffs a hearing was not a breach of the audi alteram partem principle and consequently the imposition of the penalties on the plaintiffs was valid. In support of his contention Mr. Gollop cited the following cases:

Rees and others V Crane [1994] 1 ALLER 832

Griffith V. Commissioner of Police and the A.G.

[1994]30 Barb. L.R. 416

[8] Paragraph 134 (a) of the Rules of Racing of the Barbados Turf Club provides as follows:

“Any owner, trainer, authorised agent, registered agent or jockey of a horse in a race the subject of an objection or inquiry under these Rules who is aggrieved by the Stewards’ decision, or any person upon whom any form of fine or other penalty has been imposed by the Stewards shall be entitled to appeal to the Appellate Body”.

[9] Christopher Joseph Armond, the defendant’s secretary, deposed at paragraphs 4, 5 and 6 of his affidavit (common to both cases), as follows:

“That horse racing in Barbados is administered by the Barbados Turf Club (“hereinafter referred to as the “Club”), the Defendant herein, under the rules and regulations adopted by The Barbados Turf Club and contained in the document entitled “Rules of Racing of the Barbados Turf Club (hereinafter referred to as to “the said Rules”) and , in accordance with the said Rules, the Club” scheduled a race meeting on the 14th day of February 2004.

That the said Rules set out various procedures to deal with various offences. Included in the procedures is a right of appeal, as contained in Section 134 of the said Rules, to the Appellate Body of the Club by any person upon whom any form of fine or other penalty has been imposed by the Racecourse Stewards of the Club.

That the Plaintiff has not instituted any appeal to the Appellate Body of the Club in respect of any of the matters set out in his Affidavit”.

[10] (a) *Griffith v. Commissioner of Police and the Attorney General*: Griffith was an Assistant Superintendent in the Royal Barbados Police Force. He was suspended from duty. He sought Judicial review on the grounds that he was suspended without a hearing and Waterman J. held, inter alia, that

(i) The applicant’s subsequent suspension was done in the interest of good administration and was not done to punish him, but was merely a holding operation until the Commission determined whether or not disciplinary charges ought to be instituted;

(ii) There was no need for the court to imply a right to be heard at the stage before a recommendation was made by the Commission to the Governor-General to suspend the applicant as there was no unfairness at that stage. There was also no unfairness when the Commissioner formed his opinion. The principles of natural justice did not apply at the suspension stage, but at the tribunal stage.”.

(b) In *Rees v. Crane*, the respondent was a puisne judge in Trinidad

and Tobago, he was suspended from duty without a hearing. The Judicial Committee held, inter alia, that “Although natural justice would not normally require that a person be told of the complaints against him and given an opportunity to answer them if the investigation into the complaints was purely a preliminary inquiry and the person affected was entitled to be heard at a later stage of the inquiry or investigation, there was no universal rule to that effect. Nor did it follow that because the rules of natural justice applied to the procedure as a whole they did not have to be applied at every stage. The courts were not bound by rigid rules as to when the audi alteram partem rule applied and would have regard to all the circumstances of the case.” In that particular case the Judicial Committee decided that having regard to the serious nature of the charges against the respondent, the publicity surrounding his suspension and the damage to his reputation and position as a judge, he ought to have been given the opportunity to reply to the charges before representation was made to the President.

[11] The defendant in the present case is a domestic tribunal whose relationship with the plaintiffs is contractual. In *Wright v The Jockey Club* Sir Hayden Tudor Evans held that the powers of the Jockey Club derived from the contractual relationship between the club and those agreeing to be bound by its rules of racing and that the club had to act fairly.

[12] The contention that the plaintiffs ought to have exercised their right of appeal under the Rules of Racing was considered by the Judicial Committee of the Privy Council in *Annamunthodo v. The Oilfields Workers Trade Union* and by Megarry J in *Leary v. National Union of Vehicle Builders*. In *Annamunthodo v. The Oilfields Workers Trade Union* [1961] AC 945 the appellant was expelled from the union without a hearing and he appealed under the rules of the union to the Annual Conference of Delegates which affirmed his expulsion. He sought relief before the Supreme Court of Trinidad and Tobago and the Federal Supreme Court. Both courts dismissed his claim. He appealed to the Judicial Committee. His appeal was allowed and in the course of his judgment, Lord Denning at 956 said,

"The third question is whether Walter Annamunthodo has lost his right to complain by appealing to the Annual Conference of Delegates. As soon as he knew of his expulsion by the General Council, he gave notice of appeal under rule 11 (7). He had the opportunity to put before the Annual Conference of Delegates all his objections to his expulsion. He does not complain of any failure of natural justice by that body. And they affirmed his expulsion. So can he now complain? This reasoning was accepted by Archer and Wylie JJ. They held that, by appealing, he had lost his right to complain of rule 11 (7) being invoked. Indeed, he himself invoked rule 11 (7) so as to appeal under it. So how can he now repudiate it? Their Lordships recognise the force of this reasoning, but they cannot agree with it. Even if the order of expulsion were capable of being affirmed or disaffirmed their Lordships cannot regard an appeal as an act of affirmation. On the contrary, it is a disaffirmance – a complaint against the order of expulsion. If he had not appealed, it might have been said that he should have done so, that he should have exhausted all internal means of redress, before having recourse to the courts. Such a plea was upheld in the special circumstances that prevailed in *White v. Kuzych*. It was therefore quite proper for him to appeal to the Annual Conference before coming to the courts, even though he was not bound to do so. But, having appealed and failed, he does not by so doing forfeit his right to redress in the courts. If the original order was invalid, for want of observance of the rules of natural justice, he can still complain of it, notwithstanding his appeal"; and

(b) In *Leary v. National Union of Vehicle Builders* [1971] 1ch. 34, the plaintiff was a member of the defendant union. He was expelled contrary to the rules of natural justice. He appealed to the appeals council where he was given a full hearing and his appeal was dismissed by the council. Mr. Leary then brought an action against the defendant seeking declarations and interlocutory injunctions. On the question whether an unjust trial can be cured by a fair appeal, Megarry J at pp 48 and 49 said:

"If a man has never had a fair trial by the appropriate trial body, is it open to an appellate body to discard its appellate functions and itself give the man the fair trial that he has never had?"

That is not all. If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

[13] The *Griffith* case and the *Crane* case can be distinguished from the present case because they are both circumscribed by statutory rules. The *Griffith* case was decided in the special circumstances of the Police Act and the Police (Discipline) Regulations. The *Crane* case fell within the provisions of the Constitution of Trinidad and Tobago and in any event the Judicial Committee held that in the special circumstances of that case Crane J. should have been heard at the suspension stage.

[14] I conclude that the contractual obligations of the Turf Club in exercising its functions were to act fairly and to apply the Rules of Racing and act in accordance with the law. The Turf Club was obliged to give the plaintiffs a hearing at the trial before the Racecourse Stewards. It failed to do so. In light of *Annamunthodo* and *Leary* I hold that a failure of natural justice at the trial by the Racecourse Stewards cannot be cured by a sufficiency of natural justice in the appellate body of the Turf Club. I therefore find for the plaintiffs.

[15] In their summonses the plaintiffs have asked the court to quash the decision of the defendant. The defendant is a domestic tribunal and the court cannot supervise such a body. In the circumstances I hold the decision of the stewards null and void.

[16] The plaintiffs shall have their costs to be taxed if not agreed.

Sherman Moore

Judge of the High Court.