

**COMMONWEALTH OF THE BAHAMAS  
PUBLIC SERVICE BOARD OF APPEAL**

**B E T W E E N**

**IN THE MATTER of the termination of the  
Contract of service of  
MALACHI DEAN**

Appellant

**VS.**

**THE PUBLIC SERVICE COMMISSION**

Respondent

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**BEFORE:** Her Ladyship Senior Justice Anita Allen – Chairman  
Mrs. Zelma Dean – Member  
Mr. William McDonald – Member

**APPEARANCES:** Mr. Lightbourne for the Appellant  
Ms. S.Thompson-Williams for the Respondent.  
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**DECISION:**

The appellant appeals against his retirement in the public interest, pursuant to regulation 45 of the Public Service Commission Regulations, which took effect 1 January 2010.

2. The appellant was a Chief Customs Officer and when retired, he had served over thirty-eight years with the Customs Department.

3. By letter of 6 April 2009, the Acting Comptroller of Customs wrote to the appellant advising him: “ **Enclosed please find a cancelled cheque for**

**Two Thousand Four Hundred Dollars (\$2400.00) that appear to have been paid to you by Elsmere Investment Limited, Cave Cay, exuma. The payment was presumably for services rendered before or after normal working hours.**

**With regard to the foregoing, you are requested to submit your written comments to this office within fourteen (14) days of the receipt of this letter.”**

4. The cancelled cheque, which is dated 15/10/2001 and is issued to the appellant by Elsmere Investments Ltd., also notes:“ **For: Customs Attendance Equip. Inspection.**”

5. The appellant was informed by letter of 21 April 2009 that he would be recommended to be superseded in the promotion exercise for 2009 as a result of the ongoing investigation into the cheque to which the appellant replied on 24 April 2009 that the department had already judged him by their action.

6. On 29 July 2009, he was issued a show cause letter:

**“Count 1: Misconduct to the proper administration of government business pursuant to General Order 1041. That you, Malachi Dean, on or about 15 October, 2001 dishonestly misappropriate government revenue for your personal use by way of tendering a cheque made payable to you by Elsmere Investment Limited, Cave Cay, Exuma in the amounts of \$2400 and for services rendered before or after normal working hours...”**

7. The appellant was interdicted two days after and responded to the show cause letter stating he was not guilty of misconduct to the proper administration of government business as charged. He stated that he did not take any government revenue, taxes or fees and said he did not do anything relating

to the valuation of any head or item. He also stated that there was no overtime involved in any transaction. He also denied he dishonestly misappropriated any government revenue for his personal use.

8. He further protested that the charge was an evil act designed to destroy his reputation, but offered to retire provided he was given his full pension and gratuity.

9. By letter dated 2 November 2009, the respondent wrote the appellant advising that a recommendation to retire him in the public interest was made and by letter of 24 November 2009 he was further advised that the decision was made to retire him in the public interest with half pension and gratuity. By letter of the same date the appellant's counsel made another offer on his behalf to resign provided he was given full pension and gratuity. Having regard to subsequent correspondence, it is clear that the appellant's letter of 24 November 2009 was sent prior to the receipt of the letter of the same date from the respondent .

10. A statement attributed to the Prime Minister and published in the Nassau Guardian of December 15 2009, indicated the government's intention to allow interdicted custom officers to resign with full pension and benefits was one of the documents in the dossier before us. On 22 December 2009 the appellant resigned and stated that he was doing so on the understanding that he would be given full pension and benefits. However, that was not accepted and the appellant appeals against the decision to retire him in the public interest.

11. The grounds of appeal pressed before us were that the appellant was not provided with sufficient particulars of the charges against him, he was therefore unable to properly defend himself and as a consequence the process was flawed. The appellant further charged that the charge, whatever it was, was not proven and the decision ought not stand.

12. Counsel for the respondent in attempting to defend the decision indicated that although the cheque was dated in 2001, the respondent only became aware of it in early 2009. She conceded however that the charge as framed does not indicate what services the appellant is alleged to have provided 'before and after working hours', the date on which it was alleged he performed such services and how he misappropriated funds of the government.

13. **'Misconduct'**, according to General Order 1041 includes, inter alia, any act contrary either to specific rules or regulations of the public service, or against the proper administration of government business. The term includes acts of corruption, dishonesty, false claims, falsification or suppression of documents etc.

14. The appellant was dismissed pursuant to regulation 45 of the Public Service Commission Regulations, the relevant parts of which provide:

**“(1) If a permanent Secretary or Head of department considers that it is desirable in the public interest that a public officer serving in his department should be required to retire from the public service on grounds which cannot be suitably be dealt with under any other regulation, he shall report the matter to the Establishment Secretary.**

**(2) The Establishment Secretary may obtain from any public Officer under whom such public officer has served a report as to his work and conduct, and may allow any such officer to show cause why he should not be retired from the public service and to make a written statement, if he so desires.**

**(3) If the Establishment Secretary after considering the officer's statement and having regard to all the circumstances of the case, is of the opinion that such officer should be retired from the public service in the public interest he shall forward to the Chairman any report obtained under the**

**preceding paragraph and the statement of the officer together with his own recommendation. The Commission shall recommend to the Governor whether or not the officer should be retired...”**

15. Having considered this appeal, we are of the view firstly that this matter ought to have been dealt with under regulations 40 and 41 of the Public Service Commission Regulations. Secondly, this officer served for thirty eight years during which time he was commended on a number of occasions, the last occasion being March 2009 for his leadership, judgment and general behaviour and is not the kind of officer who would be retired in the public interest under regulation 45.

16. Thirdly we accede to the submissions made on behalf of the appellant that the show cause letter of 29 July 2009 did not sufficiently particularize the charges against the appellant to give him an opportunity to adequately respond and defend himself. Fourthly, given the evidence on which the respondent relied to prove the charge, whatever it was, we are of the view that the charge of misconduct was not made out and the decision retiring him not justified.

19. In the premises, we find the charge has not been proven and we therefore allow the appeal and set aside the decision retiring the appellant in the public interest. We further order the reinstatement of the appellant with effect from 1 January 2010.

DATED this 8 day of October 2010.

*Anita Allen*

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Her Ladyship Senior Justice Anita Allen  
CHAIRMAN

*Z. E. Dean*

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Mrs. Zelma Dean  
MEMBER

*W. McDonald*

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Mr. William McDonald  
MEMBER