



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2023: No. 51

BETWEEN:

CALVIN SIMONS

Plaintiff

V

THE PUBLIC SERVICE COMMISSION

and

THE MINISTER OF PUBLIC WORKS

Defendant

JUDGMENT

*In the matter of the Appointment of
Standards and Enforcement Officer, and in the
Matter of recommendations made by the Minister of
Public Works, and a Decision of the Public Service
Commission pertaining to the position of Standards
and Enforcement Officer*

DATE OF HEARING: 26 JUNE 2026

DATE OF JUDGMENT: 29 July 2026

JUDGMENT of Elkinson AJ

1. Mr. Simons has brought an application for Judicial Review against both the Minister of Public Works and the Public Service Commission. His application arises from previous proceedings, against the Minister of Public Works which I heard on 19 July 2021 and reasons were delivered in respect of the *ex tempore* decision on 21 July 2021. This was an unsuccessful strike-out application by the Minister of Public Works. I determined that there was no basis under Order 18 rule 19 of the Rules of the Supreme Court 1985, to strike out the Statement of Claim in those proceedings for the reasons set out in that Judgment. As I said at that time, “*It is clear that the power to strike out is a draconian remedy and should only be employed in clear and obvious cases.*” Calvin Simons v The Minister of Public Works [2021] Bda LR 123
2. Subsequent to that Ruling, there were without prejudice discussions between the parties to that action, the terms of which Mr. Simons says were not complied with.
3. An offer was made by the Attorney General on behalf of the Ministry of Public Works by way of letter of the 9 June 2022. In that letter, in exchange for Mr Simons discontinuing all legal action, it was offered on behalf of the Minister to write to the Public Service Commission to request that the vacancy for the post of Standards Enforcement Officer within the Ministry of Labour and Economy should not be advertised and that a recommendation would be made to the Public Service Commission that Mr. Simons be considered for the post of the officer.
4. Importantly it was set out in the correspondence by the Attorney General that the Public Service Commission is an independent body and not subject to directions from the Government.
5. In a letter from Mr. Simons then attorneys, Cox Hallett & Wilkinson Limited, of 14 June 2022, the terms on which the matter would be compromised were as follows: -
 - i. the Government would facilitate Mr. Simons’ permanent transfer to the role of Standards and Enforcement Officer (“the Post”)
 - ii. he would remain in his seconded role pending his transfer to the Post being approved
 - iii. a serious proposal would be made in respect of the premium claimed by Mr. Simons
 - iv. a serious proposal would be made in respect of his claim for lost wages
 - v. a serious proposal would be made in relation to a contribution to his reasonable costsI shall refer to this as the “Compromise Agreement”

6. The parties have waived the contents of the without prejudice discussions – Mr Simons says that the Compromise Agreement as reached was not complied with, in particular as he did not get the Post. The Respondents say that they did what was required of them. Mr Simons, in so far as he relies on there being a breach of the Compromise Agreement, says that the Minister did not comply with the Compromise Agreement and that, as a result, he has not been given the Post which he has sought which he says that he is well qualified for.
7. The correspondence to which the court was referred includes a letter from the Department of Workforce Development to the Public Service Commission of 5 June 2022 seeking, in relation to Mr Simons' appointment to the Post in that Department, that the interview process be waived. It was complimentary about his abilities and that the Department believed that he had the equivalent educational qualifications/requirements for the Post.
8. This request was refused by the Public Service Commission – there was to be no waiver of an interview and the Public Service Commission made a statement, that based on the documents which were before them, Mr Simons was not qualified for the Post
9. The relief sought by Mr Simons in this Judicial Review Application, issued on 6 February 2023, is made up of Declarations as follows: –
 - a. That the Public Service Commission acted unreasonably in refusing to waive the interview process and denying the Applicant the position and did so without giving reasons.
 - b. The Second Respondent failed to correct the errors and take proper steps to have the Applicant's appointment facilitated.
 - c. Accordingly, the decision to refuse the appointment was unlawful.
10. A part of the Applicant's frustration and his belief that he could only get recourse through the courts arises from the extensive and inordinate delay in his being certified as a level 4 Automotive Technician. Mr. Simons was looking for the Post which he believed he was well qualified for. He had applied to be a level 4 Technician and much to his chagrin, and which should be embarrassing for the Government is that, despite being recommended to be at that grade, staffing challenges, covid pandemic issues and it even being mistakenly listed that he was certified in that way, it took approximately four years for the paperwork to eventually reach the relevant person and it was only then that qualification at that level was acknowledged.
11. However, despite having had legal representation at an earlier stage, Mr Simons now advances his case himself. His action is to require the Minister of Public Works and the Public Service Commission to

provide him with the Post which he seeks even though, even on his own case, that was not exactly was agreed in the Compromise - there was no guarantee that he would be given the Post and further, he was expected to meet any requirements of the Public Service Commission which they may have had.

12. At the hearing of this action, a central focus for Mr Simons was his focus that there should have been a waiver of the interview process. On a human level, one can understand the frustration of Mr Simons, who has experienced frustrations with the delays which I have referred to and his belief that as a result of the first set of proceedings being compromised, he would proceed to be appointed to the Post.
13. This frustration translated into what I believe was an unjustified resentment to any suggestion that he should go for an interview as, in his belief, this would have no utility. However, the evidence from the Director for the Department of Workforce Development, in particular the second affidavit of Mrs. Malika Cartwright sworn on 20th March 2025, is clear in showing that, at the time of the swearing of the affidavit, he was not an **approved** Automotive Service Technician, Level 4 – he only had Level 3. On the papers, he did not have the required equivalent educational requirements.
14. In 2020, he had submitted an application for an upgrade to Level 4, it was approved and recommended by the Industry Assessment Panel and Occupational Advisory Committee in letters dated 6 June 2020 and 19 August 2020 respectively but those letters never were presented to the National Training Board. It was only that entity which could certify. This process is required under the Bermuda National Occupational Certification Act 2004. So it was that he was not certified at the relevant time to the Level 4. Ms. Carlita O'Brien, who in 2022 was then the Secretary to the Public Service Commission, provided evidence by way of an affidavit dated 11 August 2023. She explains that at the time of receipt of the letter from Mrs Cartwright to the Public Service Commission requesting waiver of the interview, they did not accept that he had the necessary educational qualifications which was why they did not waive the interview requirement. In so far as he ever did have an interview previously, it was not for this advertised post.
15. As regards to the educational requirements, as far as the Public Service Commission was concerned on what they had before them, Mr Simons did not have the appropriate educational qualification for the Post. Mr Simons says they had a duty to find out the history of his application to Level 4 and that he had been recommended, that the National Training Board had simply not given the approval. I do not agree that they had such a duty. The fact that they did not have before them evidence of his Level 4 qualification in itself justifies their decision not to waive the interview.

16. If I am wrong on this, the other legal obstacle which I find that Mr Simon's faces is that he flatly refused to attend the interview process. This is a disqualifying event by the Regulations. Ms. O'Brien in her evidence stated that in so far as he didn't have the educational requirements, he was being asked to attend an interview for **this** Post.
17. The interview process is a requirement under section 14(b) of the Public Service Regulations 2001 – *The Commission may require any applicant to ...(b) attend for such interview, examination and tests as, in the opinion of the Commission, are necessary to establish that the applicant is qualified for and capable of performing the functions of the office to which his application relates'.*
18. Following this requirement is a sanction for not complying – section 20 under the heading '**DISQUALIFICATION**' provides that at (c)... *"any person who fails to attend for such interview, examination or tests as are reasonably required by the Public Service Commission ...shall be disqualified for an appointment to an office."*
19. Having been offered an interview in July 2022, and Mr Simons not attending, the Department of Workforce Development then offered him a second interview (a phone call with him and a follow-up email of 21 July 2022). Mr Simons did not respond to the email despite the email setting out that if there was no response then the Department would take it that he no longer wished to pursue the application to the Post. Mr Simons did not respond. He did not attend the interview.
20. I find that Mr Simons refusal to attend an interview was unreasonable in the context of the Department trying, as I find from the evidence, that they were being considerate and co-operative in trying to find a way to allow him to achieve success in getting the Post. I find that Mr Simons, although he may not have realized it at the time, disqualified himself from the Post by not attending the first interview and, despite there being no obligation on the Department which sought to provide another opportunity for his attendance at an interview on a later date, this was also rejected by Mr Simons.
21. As regards to the relief sought that the Public Service Commission acted unreasonably in refusing to waive the interview process and denying the Applicant the position and did so without giving reasons, I find that this case is not made out. The failure to present to them the proper educational requirements was sufficient justification for them to reject the waiver request for an interview. What appears to be a strong possibility is that, had the interview taken place, Mr Simons could have clarified the situation about the Level 4 and cured the problem of the educational requirements. The refusal to attend the interview resulted in a loss of that opportunity and, by operation of the Regulations, in disqualification

from the Post. I can find no basis for establishing any duty on the Public Service Commission, as argued by the Applicant, to go find out the exact level of qualification that Mr Simons had.

Conclusion

22. I can find no basis to support the claim of Mr Simons that the Minister of Public Works failed to take 'proper steps' to have the Applicant's appointment facilitated. I am satisfied that in reading the Compromise the Minister did what was required of him. The Minister had forewarned that the appointment to the Post would be subject to the processes of Public Services Commission.
23. In all the circumstances set out above, the Applicant's claims for relief fail. I shall hear the parties as to the appropriate award of costs.

Dated this 29th day of July 2026



A handwritten signature in black ink, appearing to read 'J Elkinson', written over a horizontal line.

MR. JEFFREY ELKINSON
ASSISTANT JUSTICE