



CSAC Appeal 018/2019 – Record of Decision

Appeal 018/2019 was received on 23 December 2019, from the Appellant’s legal representative against the following decisions of the Respondent (communicated to the Appellant on 10 December 2019):

- 1) to assign additional duties to the Appellant “indefinitely”; and
 - 2) to not award a Duty Allowance in respect of the additional assigned duties.
- on the grounds of unreasonableness and illegality.

Following receipt of submissions from the Respondent an Appeal Hearing was held on 18 March 2020. It is noted that Chairman Huw Moses along with members Stacey Vandevelde, Jennifer Skinner and Kimbert Solomon participated in the Appeal Hearing. CSAC subsequently considered the written and oral submissions/evidence of both parties along with the relevant sections of the PSML.

CSAC noted that its task was not to make its own decision on the Appellant’s workload or his entitlement to a duty allowance but rather to consider whether the Respondent had, in reaching the decisions, acted in an unfair or unbiased way or in a manner inconsistent with the PSML and the PSML Regulations.

Jurisdiction

Counsel for the Respondent argued as a preliminary issue that CSAC did not have jurisdiction to hear the appeal since the subject matter of the appeal was not a decision of a Chief Officer made “under this Part” (referring to Part VII of the PSML). Counsel for the Appellant asserted that CSAC had jurisdiction by reference to s.43(1) and s.43(3). After hearing arguments from both sides, CSAC concluded that it did have jurisdiction to hear the appeal since:

1. The jurisdiction in s.54 extends to decisions made under Part VII of the PSML. Part VII is sub-titled “Authority to Appoint, Remunerate and Dismiss Staff”. The legislative intent was clearly to define the powers and duties of the Chief Officer in Part VII as they pertain to these matters. “Remuneration” is specifically defined widely in the PSML to include allowances and any benefits and accordingly “remuneration” must include any duty allowance paid. Therefore, a refusal to award a duty allowance is a decision of a Chief Officer relating to remuneration and under the jurisdiction of CSAC.
2. S.40(2) in Part VII provides the general authority of the Chief Officer “from time to time” to establish the duties of a staff member. It follows that any decision to change the duties of a staff member is a decision that can be the subject of a s.54 appeal.

3. The Grievance Procedure set out in the PSML (Regulation 51 of the Personnel Regulations (2019 Revision) (“PSML Regulations”)) does not encompass a refusal to grant a duty allowance. To not allow an appeal under s.54 would therefore mean the staff member would have no recourse short of a judicial review application to the Grand Court.

Grounds

The Appellant asserted that the decision of the Respondent was **unreasonable** as:

1. The decision was made without a clear understanding of the nature and scope of the Appellant’s duties or without regard to those duties:

CSAC concluded that the Respondent did have sufficient understanding of the Appellant’s duties before assigning the additional duties and had taken into consideration a number of factors set out in his first statement including the fact that several projects which had previously been time consuming had effectively concluded and had significantly reduced the time the Appellant spent on such matters and that at least one duty had been completely withdrawn. It was also clear that at the time of making the decisions the Respondent was aware that the Appellant had also been assisting a Senior Manager who had been temporarily seconded to another Government Department and that this had added to his duties. CSAC took account of the fact that the Respondent (directly and via a Deputy Chief Officer) had engaged with the Appellant prior to the official assignment of the additional duties and as a result the Respondent had only assigned the Appellant 3 of potentially 17 new duties discussed with him. This ground of unreasonableness was not made out in the opinion of CSAC.

2. The decision was inconsistent with the ordinary practice within the Ministry to grant a duty allowance in the event of additional duties being undertaken by the officer:

The Appellant failed on the evidence to establish to the satisfaction of CSAC that such a “usual practice” existed. Further CSAC considered on the evidence (although such matters are for the Respondent to consider rather than CSAC) that the criteria for the award of a duty allowance set out in the PSML Regulations (at Schedule 1 para 3(g)) were not established. Namely, it was not established on the evidence that the additional duties were “substantially in excess of, or substantially more onerous than, those of his normal position”. CSAC itself questioned the Appellant as to what work and responsibilities each of the three additional assigned duties would entail (given that the Appellant had not yet commenced those duties) but the Appellant appeared to be unaware of the obligations involved yet asserted they were substantially in excess or more onerous than his other duties. The Respondent adduced evidence to the fact that the additional duties were relatively minimal in nature and that the Appellant was capable of absorbing those additional duties into his workload. The Respondent explained the process by which actual tasks were assigned by him to staff and the regular meetings held to review progress, both of which enabled him to know what work was assigned to each staff member and to monitor their progress. For the avoidance of doubt

CSAC found there was no breach of s.43(1) of the PSML, which provides for remuneration to be agreed.

3. No reasonable Chief Officer could have made the decision that this Chief Officer did having regard to the matters set out:
CSAC's conclusions on the above points led it to conclude that a Chief Officer acting reasonably could have reached the decisions the Respondent did in fact reach.

The Appellant asserted that the decision of the Respondent should be set aside for **illegality** in that the Respondent breached s.4 of the PSML by:

1. Failing to consult with the Appellant before assigning additional duties:
CSAC was satisfied on the evidence that an adequate consultation process was undertaken before the memorandum of 10 December 2019 was sent.
2. That the consultation was meaningless as the Appellant's responses were disregarded:
CSAC concluded on the evidence that the Appellant's responses during the consultation process were not in fact disregarded and led to only a small number of the duties that could have been assigned being assigned as of 10 December 2019. CSAC found on the evidence and the legal submissions that there was no breach of the principles of natural justice on the part of the Respondent.
3. The decision to not award a duty allowance was inconsistent with Ministry practice and therefore illegal as being discriminatory:
CSAC concluded on the evidence there was no "Ministry practice" and that as such the decisions made could not be regarded as discriminatory.
4. The Ministry failed to engage in proper communication and co-operation within the workplace:
CSAC found no evidence to support such alleged lack of communication or co-operation. CSAC noted that the Memorandum of 10 December 2019 recorded that the Appellant had agreed to undertake the additional duties. The Appellant denied that he had "agreed" yet failed to communicate this fact to the Respondent, other than by filing his appeal with CSAC.

Other Matters

1. CSAC concluded, after a review of the Appellant's Job Description, that the assigned duties were not outside the scope of that Job Description. Further CSAC accepted the proposition that the expertise of such an employee was general and therefore applicable to any and all subject matters. CSAC did not consider the assignment of duties with different underlying subject matters to be unreasonable and were clearly within the remit of the Ministry.

2. In line with the general obligation on all concerned, CSAC would expect that the Appellant would advise the Chief Officer (the Respondent), in writing, if in fact, on commencing the additional duties (or any other duties which may be assigned in the future) there is any difficulties incurred (for whatever reason). The Appellant has a duty to follow the Chief Officer's guidance and instructions set out in the decision letter and in particular to use the resources identified by the Chief Officer. The Respondent made it clear in his evidence that he envisaged an on-going re-organisation of duties/subject areas and responsibilities (following future recruitment exercises) and that the Appellant's assigned duties might again change in the future.
3. Breach of s.55(1) of the PSML, requirement to provide good and safe working conditions: There was no certainty from the evidence that undertaking the additional duties would result in a stressful or unsafe working environment. Without any evidence of actual stress or any medical evidence CSAC concluded that the decision of the Respondent is not in breach of the PSML on the grounds it created an unsafe working environment or undue stress to the Appellant. When asked by a Member if the Appellant would be willing to undertake the additional duties if he received a duty allowance, the Appellant answered "yes", which suggested to CSAC that the Appellant himself did not actually believe that the additional duties would create an unsafe working environment for himself.

Decision

CSAC found for the Respondent and upholds his decision to assign the additional duties set out in the 10 December 2019 Memorandum and noted that a failure to carry out the additional assigned duties could result in disciplinary action. Further, CSAC upheld the Respondent's decision not to award a duty allowance in respect of the additional duties assigned.

Award

CSAC made no award and no order as to costs.

CSAC's decision was duly issued on 27 March 2020 to both the Appellant and the Respondent's legal representative.



Huw St. J. Moses OBE
CHAIRMAN
CIVIL SERVICE APPEALS COMMISSION