



**TRINIDAD AND TOBAGO:**  
**ST. NO. 12 OF 2006**

**IN THE INDUSTRIAL COURT**

Between

**ESTATE POLICE ASSOCIATION - PARTY NO. 1  
OF TRINIDAD AND TOBAGO**

And

**PETROLEUM COMPANY OF - PARTY NO. 2  
TRINIDAD AND TOBAGO  
LIMITED**

**CORAM**

Her Honour Ms. E.J. Donaldson-Honeywell	- Chairman
Her Honour Mrs. J. Rajkumar-Gualbance	- Member
Her Honour Mrs. V. Harrigin	- Member

**APPEARANCES:**

Mr. C. Robertson )  
1<sup>st</sup> Vice President ) for Party No. 1

Mrs. Florence Mulchansingh )  
Attorney-at-Law ) for Party No. 2

**DATED: MAY 22<sup>ND</sup>, 2009**

**JUDGMENT**

**Delivered by Her Honour Ms. E.J. Donaldson-Honeywell**

This dispute concerning the failure to promote Estate Constable Michael Kennedy [*the Constable*] was reported to the Honourable Minister of Labour Small and Micro Enterprise Development on April 18, 2005. The said report identified October 3, 2003 as the date when the issue giving rise to the dispute arose. Accordingly, as the six-month period for reporting a dispute had elapsed, the Association was granted an extension of time under Section 51 (3) of the Industrial Relations Act Chapter 88:01 [*IRA*].

Efforts to have this matter resolved in conciliation bore no fruit. Thereafter, this Tribunal's hearing of the dispute commenced on March 20, 2009.

The Association's contention is that the Constable's employer, Petroleum Company of Trinidad and Tobago Limited [*the Employer*] failed to consider him for promotion to the rank of Sergeant when there were vacancies. It was further contended that this failure, in view of the Constable's years of service, seniority in rank, qualifications, excellent performance appraisals and ability, was harsh, oppressive and contrary to the practice of good industrial relations.

The Association's case, as fully detailed in the evidence and submissions before this Tribunal, is that there was neither a standard procedure for the promotion of Estate Constables by the Employer nor any transparency in the selection of officers for promotion. In these circumstances management's prerogative was exercised unreasonably in failing to consider the Constable for promotion.

The Constable was first employed with the Employer in December 1977. His promotion to the rank of Corporal came within two years thereafter. However, he remained at the same rank from 1980 to 2006, a period of twenty-six years. During this period, the

Constable, from as early as 1982, acted in the senior position of Sergeant. His recorded Acting Profile from 1989 reveals that he acted as Sergeant for the following periods.

1989	approximately	1 month
1992	"	1.5 months
1993	"	6 months
1994	"	3 months
1995	"	1.5 months
1999	"	2 months
2000	"	2 months
2001	"	2 months
2002	"	1.5 months
2003	"	5 months
2004	"	4 months
2005	"	1 month

The Employer's response to the Association's challenge regarding failure to consider the Constable for promotion is that his conduct from July 1997 was "***not in keeping with the standards expected of an Estate Police Officer.***" This was one reason put forward for not promoting the Constable.

The Employer further contended that the Constable's seniority alone was not sufficient basis for promotion. Additionally, a number of the vacancies for the position of Sergeant in relation to which the Constable was not considered were "***Specialist***" positions. Accordingly, in keeping with an alleged practice the vacancies were not advertised. They were filled from within the department by "***officers who had the special knowledge and competence.***" Finally, the Employer contended that the Constable's prior request for a transfer from a particular location, Guayaguayare, resulted in his not being considered for a vacant position at that location in 2003.

#### **The Relief Claimed**

The Association did not in this dispute seek an order directing that the Constable be promoted effective October 3, 2003. The

Constable is alleged to have been involved in an incident after that date which was the subject of disciplinary proceedings. These allegations arose in August, 2005 several months after the instant dispute was reported by the Association and are not relevant in the instant dispute.

The Constable's duties as a precepted officer were discontinued as from January 7, 2008. He was transferred from the Security Department to the Well Servicing Department at the Employer's Santa Flora Field.

In these circumstances, the Association's claim is for compensation as the Tribunal sees fit, ***"In lieu of the Company's failure to consider"*** the Constable for promotion.

#### **The Evidence**

The parties each presented one witness in the hearing before this Tribunal. The Association's witness was the Constable. In his testimony the Constable reviewed a list of officers promoted from Corporal to Sergeant over the period 1983 to 2003. The said list was part of the written statement of Evidence and Arguments filed herein by the Employer. There were nineteen such promotions.

The Constable made adverse comments in relation to some of the pre-2003 promotions. He did not agree that the three promotions in 1989, 1991 and 1996 were in ***"Specialist"*** positions.

He also pointed out that one of the officers promoted in 1998 was junior to him in rank. Junior in rank referred to the fact that the Constable had a longer tenure in the rank of Estate Corporal than the promoted officer. There was however no evidence of a grievance raised or dispute reported in relation to the Constable's not being promoted on any of these occasions.

The Constable admitted that he attended for an interview by a panel in 1998. He said that he explained to the panel that he would have liked to have the interview rescheduled. He was not in a frame of mind to participate in the process because his wife was then terminally ill. As a father of five children, including those taking the Common Entrance Examination and a baby, he faced domestic challenges. He therefore also took the opportunity to explain to the panel that at that time he was seeking a transfer from Guayaguayare to Siparia which was closer to home. He needed this because his family life was in chaos.

Five other officers who were interviewed by the panel were promoted in 1998. The following year, on or about August 8, 1999 the Worker's request for transfer to the Santa Flora Field was granted.

In 2003 there were four vacant positions for Sergeant that were filled. The Constable's evidence was that only one of the promoted officers was his senior. He claimed that after the 1998 panel interviews he was not contacted again in relation to any vacant positions. No reason for his exclusion was given to him by the Employer.

Evidence of the Constable's excellent performance as documented in appraisals, was entered through the Constable. His performance was summarized as **"above average"** in 1999. For the period October 2002 to September 2003 it was noted that the Constable **"acts regularly at the higher rank and with additional training should be able to hold his own."** It was further observed that the Constable was then the most senior Corporal in the department.

Expressions of the Employer's satisfaction were seen in all subsequent appraisals. There was, however, no indication that the Corporal was being trained or even considered for promotion. The

Constable's concerns about not being considered for promotion were recorded in his written appraisals for the period October 2003 to September 2005.

Under cross-examination, the Constable was questioned, *inter alia*, about the 2003 promotions. One such promotion was to the rank of Sergeant in Guayaguayare. The Constable admitted that it was filled by the most senior officer stationed there at that time. He agreed that it was possible that he could have been considered for that promotion had he not transferred from Guayaguayare in 1999. He did not agree, however, that his move to Santa Flora excluded him from consideration for the Guayaguayare position.

The Constable did not agree with suggestions put to him that the other three promotions in 2003 were to "**Specialist**" positions. He said that only one such position in the Marine Section was specialized. He did not agree that there were special requirements for the remaining two positions, including knowledge of the SAP system, knowledge/experience in accounts and/or management. He said no such requirements were advertised and that the positions of Sergeant in the Chief Clerk and Stores Quarter Master areas were not "**Specialist**" ones.

The Constable also gave evidence on his qualifications, including training as a Police Officer at the St. James Barracks.

In his testimony the Constable gave an explanation of his knowledge of the Employer's procedure for promoting Estate Police Officers. In essence, he said, there were no set criteria for promotion and no appraisal system for promotion. There may or may not be interviews. The procedure adopted depends on the decision of the Superintendent of each area.

The Constable indicated that the Superintendent would convey his decisions to the Chief Security Officer ["CSO"]. He was unaware of any promotion procedure applied by the CSO.

The Employer's witness was Superintendent R. Sylvester. Interestingly, his employment commenced in the same year as the Constable's. They were both among the few officers, about six to eight in total, who were trained at the police barracks over a five year period. The Constable completed his training before Superintendent Sylvester.

Superintendent Sylvester was a member of the Employer's panel that interviewed Estate Police Officers for promotions in 1998. He testified that he was present when the Constable said that he was in no frame of mind for the interview. His evidence, however, was that the Constable gave no reason for his said condition. He admitted that he did not ask the Constable about the reason for his frame of mind. Superintendent Sylvester had knowledge, however, of the ill-health of the Constable's wife. He said he learned of the illness when he visited with the Constable at his home after his wife's death in 2002.

Superintendent Sylvester in his testimony explained his understanding of the Employer's procedures for promoting Estate Constables. At the time when the issue giving rise to this dispute arose there was no provision in any Agreement between the Employer and the Association governing these procedures. However, he said that the Employer's policy was to consider abilities, performance and then seniority, in years of service not rank, as the last criterion.

The Employer's reasons for not considering the Constable for May 2003 vacancies for the post of Sergeant were given in evidence by Superintendent Sylvester. He testified that he was not considered

for the Guayaguayare promotion because he had been granted a transfer from that location in 1999 based on complaints of hardships suffered.

He said the Constable was not considered for the other three positions because they were specialist positions. Specialist positions he explained are not advertised, they are filled by the incumbents. These incumbents, he said, did not need to submit any certificates to establish that they met any criteria.

According to Superintendent Sylvester, they would have the experience from working in the particular department for a long time. Training for these specialist positions was offered only to officers within the departments where the positions existed.

On the question of the Constable's conduct, Superintendent Sylvester said that as he moved up in the ranks he had responsibilities to supervise the Constable and his supervisors over the years. His assessment was as follows:-

***"Mr. Kennedy had always had problems with being supervised. He always had problems with being supervised by different seniors to him. Mr. Kennedy would have issues with promotion and he would always allow that issue to cloud his better judgment, to cause him to make irrational decisions and take actions that would always bring him into an ill-disciplined environment. In 1998 Mr. Kennedy was suspended from duty for dereliction of duty, being absent without leave, without permission ..... In 1998 he was served a warning letter, .... for dereliction of duty, being absent without permission."***

Superintendent Sylvester in further stating what led to the formation of his conclusions on the Constable's conduct referred at length to an incident in relation to which he was suspended in 2006.



### Findings

Counsel for the Employer, in her closing submissions, underscored that Industrial Court Judgments have recognized that promotions are essentially within the prerogative of the Management of a Company. ***"The Court will only interfere with an employer's decision concerning the promotion of employees in exceptional circumstances and only if a strong case is made out justifying its intervention."*** Trade Dispute No. 236 of 1986 SWWTU and Port Authority of Trinidad and Tobago delivered on 12<sup>th</sup> May, 1989.

The Association's representative did not challenge the accuracy of this statement of the Court's position on promotion disputes. He argued that the Employer's ***failure to consider*** the Constable for promotion represented an unreasonable exercise of the Management's prerogative. As such he urged that there was basis for a finding of exceptional circumstances meriting the Tribunal's intervention.

The Tribunal having duly considered the evidence and submissions in this dispute concludes that the Association's submission was well founded. In so finding the Tribunal makes the following observations.

### Observations

One of the stated reasons for not considering the Constable for promotion ***after 1998*** was alleged shortcomings in his conduct. There was however, no evidence that he was notified of these shortcomings or as to any steps being taken to address these concerns. Instead the Constable's appraisal records indicate the Employer's satisfaction with his performance with no adverse comments on his conduct.

The one relevant disciplinary action taken against the Constable was a warning letter for one week's absence without leave in 1997. This cannot be relevant to the Employer's failure to consider him for promotion after 1998, as in 1998 he was in fact considered and invited to an interview. Additionally, the Employer's reliance on the Constable to act in the position of Sergeant for extended periods belies any lack of confidence in his ability to conduct himself in keeping with expected standards for the higher position. The 2006 disciplinary action though relied upon by the Employer as justifying the continued non-consideration of the Constable for promotion could not have been relevant to such considerations in 2003.

Another explanation given by the Employer was that the Constable could not be considered for a vacancy in Guayaguayare because he had requested and been granted a transfer from that location some three years earlier. There was no evidence that the difficulties that caused the Constable to request that transfer existed to the extent that he could not resume duties there in the higher position in 2003.

There was no cogent evidence on the basis for the alleged "**Specialist**" nature of many of the vacant Sergeant positions. In circumstances where there was no transparency in the establishment of requirements for these positions, there is no basis for a finding that decisions regarding these positions were reasonable. On the evidence the positions were merely filled by virtue of the fact that the officers selected were then assigned to the area where the vacancies arose. There was no evidence that ability, general performance or seniority in rank were taken into account by the Employer. Additionally, the Employer did not present any evidence on whether and, if so, how eligible officers could be trained for promotion in these allegedly "**Specialist**" positions.

There was no evidence of any consistent or transparent procedure governing the Employer's promotion decisions in relation to Estate Police Officers in 2003. In T.D. No. 36 of 2003 between the Oilfields Workers' Trade Union and this Employer delivered on February 27, 2009 the Court determined that as it related to a promotion in the Supervisory Technicians Bargaining Unit 3, represented by the said union, the Employer adopted an acceptable "**procedure and process**" to fill a particular vacancy.

The Employer's actions in relation to the above-mentioned promotion, in a position not within the promotional ranks applicable to Estate Police Officers bears striking contrast to the absence of procedure and transparency seen in this case. His Honour Mr. Rabathaly in his Judgment highlighted at page 22 the Employer's emphasis there on evaluating all suitable candidates to achieve "**in their opinion transparency and fairness, and ostensibly the best candidate.**" There was no evidence of such an approach in this case.

In view of the above-mentioned observations the Tribunal cannot find in favour of the Employer's contention that Management's prerogative was properly exercised in failing to consider the Constable for promotion. On all the facts the Employer acted unreasonably in excluding the Constable from consideration after domestic hardships made him unable to participate in the 1998 interviews.

Although, the Association has led uncontroverted evidence on the Constable's qualifications and experience, there is insufficient basis for a determination that **had he been considered** for promotion he would have been the best candidate to fill any of the 2003 vacancies.

The Tribunal's finding, however, is that the Employer's failure to consider the Constable effectively excluded him from being selected. This exercise of Management's prerogative was unreasonable and unjust. The Tribunal therefore finds in favour of the Association's claim for compensation. The Tribunal's determination is that the said Award will address compensation only for the failure to consider the Constable.

#### The Award

In exercising the mandate to "*act in accordance with equity, good conscience and the substantial merits of the case before it having regard to the principles and practices of good industrial relations*" [Section 10 (3) (b) of the IRA] the Tribunal deems it fair and just that the Constable be paid one third of the difference between his salary and benefits at the rank of Corporal and that of the salary applicable to the rank of Sergeant. This compensation is to be paid for the period October 3, 2003 to January 7, 2008.

Parties are required to attend before the Tribunal on May 28, 2009 to provide evidence on salary and benefit particulars for finalization of the award.

**E.J. Donaldson-Honeywell**  
Chairman

**J. Rajkumar-Gualbance**  
Member

**V. Harrigin**  
Member