

**THE PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

Octavius A. Gaba,)
 Complainant/Appellant,)
))
 v.))
))
The Presbytery of Eastern Virginia,)
 Respondent/Appellee.)

**DECISION and ORDER

Remedial Case 215-4**

The General Assembly Permanent Judicial Commission (GAPJC) finds that it has jurisdiction, that the Appellant has standing to appeal, that the appeal was properly and timely filed, and that the Appellant states one or more grounds for appeal found in D-8.0105.

History

This remedial case comes before the GAPJC on appeal from a decision of the Permanent Judicial Commission of the Synod of the Mid-Atlantic (SPJC).

Appellant Octavius A. Gaba is a minister member of the Presbytery of Eastern Virginia (Presbytery). On October 24, 2000, the Presbytery authorized its moderator to appoint a seven-member administrative commission to work with Covenant Presbyterian Church, Norfolk, Virginia (Covenant), of which Appellant was the pastor. The administrative commission was directed to visit the session, the pastor and others necessary to evaluate the situation at the church, its financial situation, and its mission; to inquire into and settle any differences among the session, pastor, and presbytery; to assume original jurisdiction, if they judged it necessary to carry on the work of Covenant ensuring compliance with G-9.0505b (G-11.0103s); and to report any recommendations it had as soon as possible. The administrative commission was not given authority to dissolve the pastoral relationship. The administrative commission investigated the situation at Covenant in considerable detail, and received testimony concerning many serious problems in the congregation, in the pastor’s conduct and performance of his duties, and with the pastoral relationship.

On April 7, 2001, the administrative commission met with Gaba and informed him that it would recommend to the Presbytery that the pastoral relationship be dissolved. The administrative commission presented Gaba with an ultimatum that he either resign, in which case he would receive some severance, or that it would assume original jurisdiction, place Gaba on administrative leave, and provide Gaba no severance. Gaba was issued a dissolution agreement. He requested the opportunity to confer with counsel before signing. That request was refused. He was then given a notice placing him on administrative leave, which he also refused to sign.

On April 24, 2001, the administrative commission presented a recommendation to the Presbytery that the pastoral relationship between Gaba and Covenant be dissolved based on the allegations that Gaba was not fulfilling his ordination vows. Gaba was not timely furnished with a “short and plain statement of the matters at issue,” (G-9.0505b) even though he had requested it at the April 7, 2001 meeting. The charges of violations of ordination vows were not furnished until the presbytery meeting at which the report was to be presented. The Presbytery heard the report of the administrative commission, which included statements from current and former members of Covenant. Gaba was permitted to address the Presbytery, but was not effectively informed of the amount of time that he had to present his response to the findings of the administrative commission. Gaba’s counsel, a corresponding member of Presbytery, was not permitted to address the Presbytery on Gaba’s behalf. Members of Covenant who were not elders were not permitted to address the Presbytery. The Presbytery voted to dissolve the pastoral relationship.

Gaba initiated a remedial complaint against the Presbytery on May 9, 2001 with the Synod of the Mid-Atlantic. He alleged a number of violations of due process in the actions taken by the administrative commission and in the action of the Presbytery in dissolving the pastoral relationship on April 24, 2001. SPJC determined that there were no violations of due process, but ordered the Presbytery to amend the minutes of the April 24, 2001 meeting “to include an explicit reference to this ruling by the SPJC at the point in the text of the minutes where the motion by the administrative commission appears,” because it found “that the administrative commission erred in that the form of the motion to Presbytery at its stated meeting of 24 April 2001 was inappropriately worded since it inferred (*sic*) a disciplinary rather than an administrative action.”

Specifications of Error

Appellant alleges injustice in the decision, and four errors in constitutional interpretation by the SPJC, which may be condensed and restated as two.

I. The SPJC erred in failing to rule that the administrative commission denied due process to Gaba by failing to act within the authority granted it by Presbytery, and by failing to grant him a hearing under G-9.0505d before placing him on administrative leave. (Appellant’s specifications 1 and 2)

This specification of error is sustained.

SPJC ruled that because the action to dissolve the relationship was administrative in nature, the provisions of G-9.0505d do not apply.¹ G-9.0505d states, in part:

¹ This case is governed by the 2000-2001 edition of the *Book of Order*, the edition in effect at the time of the alleged irregularity. In 2002, amendments were adopted which provide greater procedural specificity in cases of dissolution of the pastoral relationship.

in any case where allegations or assertions concerning individuals are determined to be of such seriousness that their consequence, if proven true, could be the removal from office or position, discipline, or other serious result for the individual, those concerned shall be given the right to face their accusers, and to hear from them the allegations or assertions against them, and be given sufficient time to prepare and make a reasoned defense, including the cross-examination of witnesses. This paragraph shall apply whether or not formal charges under the Rules of Discipline have been filed or anticipated.

While this Commission previously ruled in *Bower v. Presbytery of Pittsburgh* (2000, 584, 12.140) that when an administrative commission is not granted the power to dissolve a relationship, a hearing under G-9.0505d is not required, *Bower* does not apply in the instant case. The administrative commission concluded and reported to the Presbytery that it had “found that... Gaba had conducted his ministry in a manner inconsistent with his ordination vows,” and proceeded to represent eight specific allegations as its “findings.” SPJC correctly ruled that these findings implied a disciplinary action. As such, the administrative commission was bound by the provisions of G-9.0505d. There is nothing in the record to indicate Gaba was notified of the specific allegations against him, or provided an opportunity to prepare a reasoned defense, or to cross-examine witnesses of the alleged misconduct. The administrative commission’s failure to provide these requirements undermined the reliability of its findings and rendered them out of order in the Presbytery action to dissolve.

Moreover, Presbytery specifically instructed the administrative commission to conduct fair hearings under G-9.0505b as part of its charge. G-9.0505b requires:

When an administrative commission has been appointed to settle differences within a church, a governing body, or an organization of the church, it shall, before making its final decision, afford to all persons to be affected by the decision fair notice and an opportunity to be heard on the matters at issue. (See G-9.0503a(4), a(6), G-9.0505b-d) Fair notice shall consist of a short and plain statement of the matters at issue as identified by the commission and of the time and place for a hearing upon the matters at issue. The hearing shall include at least an opportunity for all persons in interest to have their positions on the matters at issue stated orally....

While the administrative commission acted diligently in many ways, the fair notice provision of G-9.0505b was not met either prior to its decision of April 7, 2001 to exercise original jurisdiction over the session, or prior to its decision to recommend dissolution of the pastoral relationship. The purpose of this provision is not merely a matter of fairness or information-gathering, but an exercise of pastoral oversight of churches by a presbytery to facilitate reconciliation. In the instant case, the failure to provide this opportunity not only deprived the parties of procedural safeguards, but also compromised any determination that the dissolution of the pastoral relationship was imperatively demanded under the ministry of the

Word. Not only this, but the action of the administrative commission to issue an ultimatum demanding Gaba's resignation without fair notice of the specific allegations against him constituted an abuse of the commission's authority and an injustice.

II. The SPJC erred in characterizing the action of Presbytery to dissolve the relationship as an administrative action, thus depriving the appellant of due process provisions and a fair hearing under G-9.0505d. (Appellant's specifications 3 and 4)

This specification of error is sustained in part and not sustained in part.

The action of a presbytery to dissolve a pastoral relationship is by nature an administrative action. And, a presbytery is empowered to dissolve a pastoral relationship "when the ministry under the Word imperatively demands it." (G-11.0103o) However, when the relationship is dissolved without the concurrence of the pastor or the congregation, the presbytery is required to provide procedural safeguards to the church and pastor. In *Lewis v. Presbytery of New York City* (1995, 133, 11.066) this Commission found, "The presbytery... in making such a decision is obligated to treat all parties fairly and provide them with an opportunity to present their positions. The test is fundamental fairness – the opportunity to be heard and a consideration of their respective positions without prejudice."

In the instant case, the actions of the administrative commission and Presbytery failed to meet this standard of fundamental fairness. The report of the administrative commission presented as "findings" allegations of pastoral misconduct that themselves had never been established through the provisions of G-9.0505b and d. Moreover, the specific allegations being made were intentionally withheld from both the pastor and the congregation until the day of the presbytery meeting, thereby depriving them of the opportunity to prepare a reasoned response to the motion to dissolve. While Presbytery was not obligated to provide a full hearing under G-9.0505d at the meeting, it was obligated to provide the interested parties fair notice and a reasonable opportunity to be heard on the matters at issue.

Upon review of the record of the Presbytery meeting of April 24, 2001 we find that the report of the administrative commission was so tainted with procedural error as to compromise a proper debate by the Presbytery. Thus, a determination that "the ministry under the Word imperatively demands" the dissolution of the pastoral relationship could not have been fairly and reliably established at that time. SPJC therefore erred in ruling that the dissolution of the pastoral relationship was in order under G-11.0103o. Consequently, Gaba was deprived of whatever benefits the Presbytery customarily accords a pastor whose pastoral relationship is dissolved involuntarily.

While the relationship was dissolved improperly, appellant is no longer requesting a reinstatement of the pastoral relationship.

ORDER

IT IS THEREFORE ORDERED that the SPJC decision be reversed in conformity with this decision.

IT IS FURTHER ORDERED that the dissolution effected by the Presbytery on April 24, 2001 be allowed to stand, and to remand to the SPJC the responsibility of determining fair and equitable terms of dissolution for Gaba that are consistent with the customary practice of Presbytery in cases in which the pastoral relationship is involuntary dissolved. The Presbytery shall be responsible for fulfilling these terms.

IT IS FURTHER ORDERED that the findings in the report of the administrative commission entered in the minutes of the Presbytery on April 24, 2001 are invalidated and out of order, and that the Presbytery so note this at the place it is entered in the minutes.

IT IS FURTHER ORDERED that nothing in this case shall compromise the ministerial status of appellant, or inhibit the free and orderly transfer of his membership to another presbytery; and that the Presbytery be enjoined from transferring Appellant's name to the inactive roll of the presbytery for any reason for a period of one year from the date of this decision.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Mid-Atlantic report this decision to the Synod at its first meeting after receipt, that the Synod enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Eastern Virginia report this decision to the Presbytery at its first meeting after receipt, that the Presbytery enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

The following member of the Commission was not present and took no part in the deliberations or decision: Fane Downs.

Dated the 14th day of July, 2002.

CERTIFICATE

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 215-4,

Octavius Gaba v. Presbytery of Eastern Virginia, made and announced at Phoenix, AZ on July 14, 2002.

Mary Lou Koenig, Moderator
Permanent Judicial Commission of the General Assembly

Ernest E. Cutting, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Phoenix, AZ on July 15, 2002.

Archibald Wallace, Esq., Counsel for Complainant
Andrea Phelps, Esq., Counsel for Respondent
Donald F Bickhart, Stated Clerk, Presbytery of Eastern Virginia
Barry VanDeventer, Stated Clerk, Synod of the Mid-Atlantic
General Assembly Permanent Judicial Commission (regular mail)

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on July 14, 2002.

Ernest E. Cutting, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly at Phoenix, AZ on July 14, 2002 in Remedial Case 215-4, Octavius Gaba v. Presbytery of Eastern Virginia and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Phoenix, AZ on July 14, 2002.

C. Laurie Griffith
Manager of Judicial Process and Social Witness