

EMPLOYMENT RELATIONS TRIBUNAL

DETERMINATION

ERT/ RN 98/23

Before

Indiren Sivaramen	Acting President
Marie Désirée Lily Lactive	Member
Karen K. Veerapen	Member
Ghianeswar Gokhool	Member

In the matter of:-

Mr Dewananda Chellen (Complainant)

And

Airports of Mauritius Co Limited (Respondent)

The above case has been referred to the Tribunal under the direction of the Supervising Officer acting under Section 69A(2) of the Workers' Rights Act, as amended. Both parties were assisted by Counsel. The point in dispute in the terms of reference reads as follows:

“Whether the termination of employment of Disputant is justified or not in the circumstances and whether Disputant should be reinstated or not.”

The Tribunal proceeded to hear the case and the Complainant deposed before the Tribunal. He stated that he made an application for reinstatement following the termination of his employment as Deputy Chief Executive Officer at Respondent. He stated that just after a Board meeting held on 17 August 2022 where negotiations to be held with the trade union were considered, the Chairperson of the Board had a debrief meeting with the Company Secretary and himself. He averred that the Chairperson told him to get the Collective Agreement to be signed as soon as possible with the trade union. When referred to an extract of the summary of the Board decisions of 17 August 2022 (Annex D to the Statement of Case of Complainant), he stated that the Board gave its “in principle” approval, among others, for all scales to be extended by one increment, if need be to reach Collective Agreement. He understood “to reach Collective Agreement” as meaning to sign a Collective Agreement with the union. He stated that the “in principle” approval of the

Board was detailed. He suggested that the Board approved in principle because (1) management had to check the application of a law in relation to Respondent following a change in its shareholding structure in October 2021; and (2) because the agreement was subject to the approval of the trade union. He stated that the Company Secretary informed him that certain positions in relation to the organisation structure had not yet been approved by the Board and that he had to remove these in proposals. It was only when these required amendments were made that documents were circulated with the union. He averred that the Company Secretary was involved with him in reviewing the suggestions made to the union. He stated that there was a meeting with the union on 24 August 2022. On 29 August 2022, there was another meeting with the union, and he made a counter proposal to the union which was this time accepted by the union. The Collective Agreement was thus signed on 30 August 2022 by the Manager, Human Resources and himself on behalf of Respondent (Annex E to the Statement of Case of Complainant). He accepted that there was a public press coverage of the signature of the Collective Agreement.

Complainant stated that management thereafter stated that it would renege the Collective Agreement. However, according to him, another Collective Agreement was later signed between the union and Respondent, and the agreement bore exactly the same terms as Annex E (see above). Since there was no CEO at the Respondent, he had been designated as Officer-in-Charge. However, on 2 September 2022, he heard that he was no longer Officer-in-Charge. He received a letter (dated 2 September 2022 – Annex F to the Statement of Case of Complainant) on 7 September 2022 informing him that his temporary appointment as Officer-in-Charge at the Respondent shall cease with immediate effect. The Head of Safety and Security, who was, according to him, at a lower level than him in the organigram of the Respondent was appointed as the new Officer-in-Charge. He was later informed at around 20.15 hrs by a letter dated 7 September 2022 that he was suspended from his duties as Deputy CEO pending completion of an investigation which was initiated by the Respondent in relation to events surrounding the negotiation and signing of the Collective Agreement with the union. He then received a letter of charges dated 23 September 2022 (Annex K to the Statement of Case of Complainant) and was also informed therein that he would be convened before a disciplinary committee. He was informed by way of a letter dated 30 September 2022 (Annex M to the Statement of Case of Complainant) of the dates for the hearings of the disciplinary committee. He attended the disciplinary committee and was legally assisted. The hearing proceeded on several dates and the last date the disciplinary committee actually sat was on 23 November 2022. He received his letter of dismissal on 14 December 2022.

Complainant referred to the Procedural Agreement (Annex L to the Statement of Case of Complainant) and the Collective Agreement. He stated that these would also apply to him and he referred to paragraph 2 at page 8 of 12 of the Procedural

Agreement. According to this paragraph, in an alleged case of gross misconduct, the relevant employee must be asked to give a statement in writing. He stated that he was not asked to give such a statement so that there was a breach of the Procedural Agreement and of his terms and conditions of employment.

Complainant averred that all the changes brought to the then existing Collective Agreement were approved by the Board except for the Review of Organisation Structure which was left out from the Collective Agreement which was eventually signed because he did not have the mandate of the Board in relation to same. He suggested that he acted according to the mandate of the directors. He stated that the last date of the disciplinary committee was 23 November 2022. He however conceded that his counsel sent written submissions in relation to the disciplinary committee on 9 December 2022. He stated that by way of a letter dated 30 September 2022 he was requested to appear before the disciplinary committee on 5 October 2022. He stated that he was not requested to give his statement in writing. The Complainant suggested that the termination of his employment was unjustified and prayed for his reinstatement.

In cross-examination, Complainant did not agree that he was not covered by the Procedural Agreement or Collective Agreement. Complainant did not agree when it was put to him that there was no need to record a statement from him. He stated that the consultant was invited to make a presentation on all matters pertaining to the Collective Agreement. There were deliberations of the Board in the absence of the consultant. Some members needed more time to study the recommendations, but he averred that this was only in relation to the Organisation Structure. He suggested that Annex H to his Statement of Case is a fake document to frame him. He did not agree that an "in principle" approval was given to start negotiations. He agreed that he was informed of the charges which remained the same throughout the disciplinary committee, was given all latitude to give his explanations and all latitude was given to his counsel in cross-examination. When asked about the mandate to agree on payment of arrears, the Complainant stated that this was approved by management in the budget. He did not agree that he had no mandate to announce the payment of arrears. He accepted that Annex 1 to the Collective Agreement (Annex E to the Statement of Case of Complainant) refers to "Heads" as the job title with the highest salary scale at Respondent. In re-examination, Complainant suggested that though it was not mentioned, the CEO or Deputy CEO would fall under "Heads".

The previous Chairperson of the Respondent then deposed as a witness, and he confirmed that he was the Chairperson of the Board meeting of 17 August 2022 at the Respondent. He stated that after the meeting, he had a briefing session with the Officer in Charge and the officers present. He agreed that instructions were to start and close negotiations with the union. He stated that he requested actions to be taken promptly. He added that the review of salary and of terms and conditions of employment was long overdue and that it was a pleasure for him to get it done and approved. He was shown Annex D to the Statement of Case of Complainant and he

believed the draft minutes were sent to him on his email. In cross-examination, he stated that he was in full transition to occupy the post of General Manager of the Central Water Authority when the draft minutes were sent to him.

Counsel for Respondent at the close of the case for Complainant wanted to raise a plea in limine litis in relation to a jurisdictional challenge. The Tribunal took note of the plea in limine litis but observed that the case for Complainant was already heard and closed and bearing in mind the strict delay of 60 days which was granted to the Tribunal to determine the matter as from the date the case was referred to it, it would not be proper at that stage to hear the plea in limine litis which could be taken in submissions at the close of the case for Respondent.

The Head of Corporate Services of the Respondent then deposed on behalf of Respondent and he confirmed under solemn affirmation the contents of the Statement of Reply filed on behalf of the Respondent. He referred to the Board meeting of 17 August 2022 and stated that there were discussions about giving a mandate to Complainant in relation to an impending labour dispute. He averred that Annex D was sent by email to the Chairperson of that Board meeting but that there was no reply from the latter in relation to same. He stated that no mandate was given by the Board for the signing of a Collective Agreement. He stated that at that meeting, the Board took cognizance of the recommendations of the consultant. He added that the directors needed more time to analyse the impact on the organisation and employees. The Board thus gave an 'in principle' approval to negotiate with the union whilst the directors would have more time to look at the recommendations and organisation structure proposed for the Respondent. He stated that the application made by Complainant should be set aside for reasons given in the Statement of Reply of Respondent.

In cross-examination, the Head of Corporate Services stated that Complainant was mandated to negotiate for a salary increase of up to 12.4%. He stated that he was the one to take the notes of meeting. He suggested that he used the same source, that is his notes and his recollection when he prepared Annexes D and H to the Statement of Case of Complainant. When asked if there were any differences between Annexes D and H (see above), he stated that these were by nature different documents. He stated that he could not issue the extract of minutes (Annex H to the Statement of Case of Complainant) earlier because it had to be approved first by the Board. He stated that he did not participate in the meeting with the union. He was present at the signature of the Collective Agreement on invitation of the Officer in Charge. He stated that there was a Board meeting on 2 September 2022 but that the Board did not consider the minutes of the Board meeting of 17 August 2022. He stated that the minutes were not ready and that the draft minutes were not submitted to the Board. There were, according to him, also Board meetings on 7 and 8 September 2022. He accepted that the Collective Agreement was signed a second time under the same terms and conditions. He stated that the Board took legal advice and it was informed that the Respondent would have to comply with the terms

and conditions of the Collective Agreement. He suggested that the Board made a proposal for an increase in salary of 8% but following the tense situation, the Board decided to comply with the proper procedures and sign the Collective Agreement anew.

The Tribunal has examined carefully all the evidence on record and the submissions of both counsel. The plea in limine taken on behalf of Respondent reads as follows:

After having heard the evidence led by the Applicant, Respondent moves that the present application be set aside, as no one iota of evidence has been adduced under section 70(A) of the Employment Relations Act to show that “reinstatement is justified”. But rather, the Applicant wants the Tribunal to enquire into matters which are within the exclusive jurisdiction of the Industrial Court which this Tribunal cannot do under Section 70(1) of the Employment Relations Act.

It is apposite to note that the employment of the Complainant was terminated with immediate effect on the ground of serious misconduct and breach of trust on 14 December 2022 as communicated to the Complainant by way of a letter of even date (Annex N to the Statement of Case of Complainant). As per the referral to the Tribunal, the Complainant registered a complaint with the Supervising Officer of the Ministry of Labour, Human Resource Development and Training on 16 December 2022 contesting his termination of employment and made a claim for his reinstatement.

Section 69A of the Workers’ Rights Act, as amended by The Finance (Miscellaneous Provisions) Act 2023 (Act No. 12 of 2023) reads as follows:

69A. Reinstatement

(1)Where an employer terminates the employment of a worker for any reason, other than reasons related to reduction of workforce or closure of enterprises under Sub-part III, the worker may, instead of claiming severance allowance under section 69(4), register a complaint with the supervising officer to claim reinstatement.

(2)The supervising officer shall enquire into the complaint and where he is of the opinion that the worker has a bona fide case for reinstatement, he may refer the complaint to the Tribunal.

(2A) (a)The supervising officer shall not, unless good cause is shown, refer any complaint to the Tribunal under this section where the worker registers the complaint after 15 days of the date of termination of his employment.

(b)The supervising officer shall refer the complaint to the Tribunal not later than 30 days after the date of registration of the complaint.

(c)In paragraph (a) –

“good cause” means illness or injury certified by a Government medical practitioner.

(3) In this section –

“reinstatement” means the reinstatement of a worker, by his employer, back to the worker’s former position before the termination of his employment for any reason, other than reasons related to reduction of workforce or closure of enterprises under Sub-part III of this Part.

The complaint was registered with the Supervising Officer before the amendments brought to the Workers’ Rights Act by Act No. 12 of 2023. Section 127(6B) of the Workers’ Rights Act (as added by the same Act No. 12 of 2023) provides as follows:

(6B) Any complaint registered under section 69A which is pending before the Ministry prior to the commencement of this section, shall be referred to the Tribunal within 30 days of the commencement of this section.

The matter was indeed referred to the Tribunal within 30 days of the commencement of the above section. The present matter shall be dealt with procedurally by the Tribunal as per the relevant provisions of the Workers’ Rights Act and of the Employment Relations Act, as amended by Act No. 12 of 2023.

Section 70A of the Employment Relations Act, as amended by Act No. 12 of 2023 reads as follows:

70A. Referral by supervising officer

(1) Where the supervising officer refers a complaint to the Tribunal under section 69A of the Workers’ Rights Act 2019, the Tribunal shall proceed to hear the case and give its determination.

(2) Notwithstanding this Act or any other enactment, the Tribunal shall give its determination under subsection (1) within 60 days of the referral.

(3) Where the Tribunal finds that the claim for reinstatement of a worker is justified, the Tribunal shall –

(a) subject, to the consent of the worker; and

(b) where it has reason to believe that the relationship between the employer and the worker has not irretrievably been broken,

order that the worker be reinstated in his former employment and, where it deems appropriate, make an order for the payment of remuneration from the date of the termination of his employment to the date of his reinstatement.

(4) Notwithstanding subsection (3), where the Tribunal finds that the claim for reinstatement of a worker is justified but the Tribunal has reason to believe that the relationship between the employer and the worker has irretrievably

been broken, it shall order that the worker be paid severance allowance at the rate specified in section 70(1) of the Workers' Rights Act 2019.

(5) Where the Tribunal makes an order under this section, the order shall be enforced in the same manner as an order of the Industrial Court.

(6) In this section – “reinstatement” has the same meaning as in section 69A of the Workers' Rights Act 2019

The legislator does not legislate in vain, and a close examination of section 69A of the Workers' Rights Act (added by Act No. 15 of 2022 and later amended by Act No. 12 of 2023) and section 70A of the Employment Relations Act (added also by Act No. 15 of 2022 and amended by Act No. 12 of 2023) shows that the intention of the legislator was to provide substantive provisions for the Tribunal to be able to exercise jurisdiction in relation to reinstatement of workers in cases of termination of employment for any reason, other than reasons related to reduction of workforce or closure of enterprises.

It is apposite to note that the legislator has even amended the Industrial Court Act by amending the First Schedule to the said Act (by Act No. 15 of 2022). Section 3 of the Industrial Court Act provides as follows:

3. Establishment of Industrial Court

There shall be an Industrial Court with exclusive civil and criminal jurisdiction to try any matter arising out of the enactments set out in the First Schedule or of any regulations made under those enactments and with such other jurisdiction as may be conferred upon it by any other enactment.

Act no. 15 of 2022 has amended the First Schedule to the Industrial Court Act by deleting the “Workers' Rights Act” and replacing same by “Workers' Rights Act 2019 in so far as it does not relate to section 69A”.

Now the jurisdiction of the Tribunal to find that “reinstatement” of a worker is justified or not emanates from section 70A of the Employment Relations Act. Counsel for Respondent conceded that he had difficulty to find examples where the Tribunal could find that reinstatement was justified without considering whether the termination of employment was justified or not. The Tribunal will refer to the case of **Meetoo H.S v Employment Relations Tribunal 2018 SCJ 133** where the Supreme Court stated the following (prior to the amendments brought by Act No. 15 of 2022 and Act No. 12 of 2023) :

“Section 71 (a) of the Employment Relations Act 2008 specifically provides that the Tribunal shall not enquire into any labour dispute where the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court. Section 3 of the Industrial Court Act provides that the Industrial Court has exclusive jurisdiction to try any matter arising out of the enactments specified in the First Schedule to that

Act. And the Employment Rights Act is so specified in that Schedule. In that connection, Mr S. Mohamed submitted on behalf of Mrs Meeto that, whilst the Industrial Court has admittedly sole jurisdiction to deal with cases of unjustified dismissal under the Employments Rights Act, the dispute before the Tribunal was not about unjustified dismissal but about reinstatement. We are unable to accept that contention. The Tribunal could not consider reinstatement without hearing evidence, and making a determination, on the issue of unjustified dismissal, an exercise which would be in breach of Section 3 of the Industrial Court Act.

The Tribunal finds that unlike the Industrial Court, the jurisdiction of the Tribunal will be triggered only where there is a claim for reinstatement which has been referred to the Tribunal as per the requirements of the law. The Complainant will necessarily have to plead and pray for reinstatement (as opposed to merely averring that the termination of employment was unjustified) before the burden shifts on the employer to show, for example, that the termination of employment was justified so that reinstatement does not arise. In assessing whether reinstatement of a worker is justified, the Tribunal will have to consider some evidence in relation to the termination of employment. As per section 69A of the Workers' Rights Act, section 70A of the Employment Relations Act and the amendments brought to the Industrial Court Act (see above), the only plausible interpretation is that the legislator wanted to give jurisdiction to the Tribunal to hear "reinstatement" cases. The Tribunal finds that these cases can only be determined by considering all relevant evidence including the termination of employment. The Tribunal thus does not agree with the plea in limine as taken and finds that it can hear some evidence on the issue of whether the termination of employment was justified or not, so long as this relates to section 69A of the Workers' Rights Act. For the reasons given above, the plea in limine is thus set aside.

The Tribunal will now consider the procedural issues which have been raised on behalf of the Complainant in relation to the termination of his employment. Reference was made to a Procedural Agreement (Annex L to the Statement of Case of Complainant) and more particularly to Article 11 – Disciplinary procedures, paragraph 2 where an employee shall be asked to give a statement in writing whenever the Company becomes aware of a serious misconduct. Complainant was Deputy Chief Executive Officer when he was suspended from duty pending the investigation in relation to events surrounding the negotiation and the signing of the Collective Agreement with the trade union. The Tribunal has not been provided with the full Procedural Agreement and it cannot thus ascertain who signed the agreement on behalf of Respondent. The Procedural Agreement at Article 3 provides that the Respondent recognises the union as sole bargaining agent for the bargaining unit composed of all categories of employees covered by the Collective Agreement. The Tribunal is not in presence of the Collective Agreement entered into prior to the one signed in 2022. However, from a perusal of the 2021 Collective Agreement, it is clear that, and for obvious reasons, top management such as the

CEO or Deputy CEO would not be covered by the Collective Agreement. In fact, the top most job title would be 'Heads' with salary scale going up to a maximum of Rs 232,375 (as per Annex B, as of 2019, the salary of a Deputy CEO was higher). Also, all throughout the Collective Agreement, many facilities, items and applications have to be approved by the CEO. The Tribunal is not satisfied that Complainant as Deputy CEO was covered by the Procedural Agreement in the sense that he should necessarily have been asked to give a statement in writing and only then could an enquiry be conducted. The Tribunal finds nothing wrong under this limb.

As regards the disciplinary committee, the Tribunal will refer to the law as it stood at the relevant time. Section 64 of the Workers' Rights Act (as it was before the amendment brought by Act No.12 of 2023) provided as follows:

(1) ...

(2) *Subject to subsection (3), no employer shall terminate a worker's agreement –*

(a) for reasons related to the worker's alleged misconduct, unless –

(i) the employer has, within 10 days of the day on which he becomes aware of the alleged misconduct, notified the worker of the charge made against the worker;

(ii) the worker has been given an opportunity to answer any charge made against him in relation to his alleged misconduct –

(A) in writing;

(B) in an oral hearing; or

(C) in an oral hearing following his written explanations;

(iii) the worker has been given at least 7 days' notice to answer any charge made against him;

(iv) the employer cannot in good faith take any other course of action; and

(v) the termination is effected not later than 7 days after the worker has answered the charge made against him –

(A) in writing;

(B) in an oral hearing; or

(C) in an oral hearing following his written explanations. whichever is applicable;

(aa) where, for the purpose of paragraph (a)(iii), the worker is given an opportunity to answer any charge in an oral hearing following his written explanations,

the 7 days' notice shall be counted only in respect of the written explanations;

(b) unless, where at the time the employer becomes aware of the conviction of the worker by the Court of first instance in respect of a charge of alleged misconduct which was the subject of criminal proceedings, the worker was in employment or under suspension –

(i) the employer, has within 10 days of the day on which he becomes aware of the conviction of the worker by the Court of first instance, notified the worker of the charge made against the worker;

(ii) the worker has been given an opportunity to answer any charge made against him in relation to his alleged misconduct –

(A) in writing;

(B) in an oral hearing; or

(C) in an oral hearing following his written explanations;

(iii) the worker has been given at least 7 days' notice to answer the charge made against him; and

(iv) the termination is effected not later than 7 days after the worker has answered the charge made against him –

(A) in writing;

(B) in an oral hearing; or

(C) in an oral hearing following his written explanations, whichever is applicable.

(ba) for the purpose of paragraph (b)(iii), where a worker is given an opportunity to answer any charge in an oral hearing following his written explanations, the 7 days' notice shall be counted only in respect of the written explanations;

(c) in cases not covered by paragraph (a) or (b) unless the termination is effected not later than 7 days after the day the employer becomes aware of the misconduct.

(3) Before a charge of alleged misconduct is levelled against a worker, an employer may carry out an investigation into all the circumstances of the case and the period specified in subsection (2)(a)(i) or (b)(i) shall not commence to run until the completion of the investigation.

(4) Where an investigation carried out under subsection (3) discloses a suspected misconduct, the employer may formulate a charge against the worker.

- (5) *For the purpose of an oral hearing, the employer shall, at the request of the worker, make available for inspection to him or his representative, prior to the holding of the disciplinary hearing, such information or documents, as may be relevant to the charge, which the employer intends to adduce in evidence in the course of the hearing.*
- (6) ...
- (7) *Where the opportunity afforded to a worker to answer any charge made against him under subsection (2)(a)(ii) or (b)(ii) or (6)(a) is the subject of a disciplinary hearing, he may have the assistance of –*
- (a) a representative of a trade union or a legal representative, or both; or*
 - (b) an officer, where he is not assisted as specified in paragraph (a).*
- (8) *The worker and the employer may, during disciplinary hearing referred to in subsection (7), negotiate for the payment of a compensation to promote a settlement.*
- (9) *Any written statement acknowledging guilt by a worker obtained at the instance of his employer shall not be admissible as evidence before a disciplinary hearing, or any authority or any Court.*
- (10) *An employer shall, within 7 days of the receipt of a written request from or on behalf of the worker, give a copy of the minutes of proceedings of the disciplinary hearing –*
- (a) to the worker who has appeared before a disciplinary hearing; and*
 - (b) to the person assisting the worker in the disciplinary hearing.*
- (11) (a) *The disciplinary hearing initiated against a worker under this section shall be completed within 30 days of the date of the first oral hearing save and except, and subject to paragraph (b), where owing to the illness or death of any of the parties or witnesses, or the reconstitution of the disciplinary panel or change in the legal or other representatives of the parties, such hearing cannot be completed during that delay.*
- (b) *The parties may agree to extend the delay referred to in paragraph (a), provided that the disciplinary hearing is completed not later than 60 days of the date of the first oral hearing.*

In the present case, there was a letter of charges dated 23 September 2022 (Annex K to the Statement of Case of Complainant) with the terms of the charges levelled against Complainant which was sent to Complainant. He was also informed in writing that he would be convened before a disciplinary committee to provide his explanations. According to Annex K to the Statement of Case of Complainant, this

document was delivered on 24 September 2022 by a registered usher Mr Z.A Eddoo. This is not challenged before us. Complainant was by letter dated 30 September 2022 informed that the disciplinary committee mentioned in the letter of 23 September 2022 would be heard on 5 and 6 October 2022. The letter of charges of 23 September 2022 is the notice to answer charges and even bearing in mind the date the letter was actually delivered, the Tribunal has no hesitation in finding that Complainant had been given at least 7 days' notice to answer the charges made against him. There was thus no breach of section 64(2)(a)(iii) of the Workers' Rights Act.

As regards the alleged fatal flaw in the disciplinary process as averred in paragraph 17 of the Statement of Case of Complainant in relation to the meeting which had been convened on 6 October 2022 by the Ministry of Labour, Human Resource Development and Training whereas the disciplinary committee was scheduled for 5 October 2022 and 7 October 2022, this was, rightly so, not insisted upon. The Tribunal finds that there is no merit in that argument.

As regards the requirement under section 64(2)(a)(v) of the Workers' Rights Act (as it was then), the Tribunal finds that the 'oral' hearing of submissions forms part of an 'oral hearing'. At the relevant time, the relevant provision of the law enabled an employer to decide depending on the particular circumstances of the case, whether this opportunity to answer any charge made against the worker should be in writing, in the form of an oral hearing or in an oral hearing following the written explanations of the worker. The Tribunal bears in mind that the legislator not only uses the term "hearing" but goes further to refer specifically to an oral hearing (underlining is ours) so that the relevant section 64(2)(a)(v) reads as follows: "*the termination is effected not later than 7 days after the worker has answered the charge made against him -*

(A) in writing;

(B) in an oral hearing; or

(C) in an oral hearing following his written explanations. whichever is applicable;"

It is trite law that this delay of 7 days is mandatory and that though there may be reasonable grounds for the termination of employment of a worker, non-compliance with this provision of the law will render the termination of employment to be unjustified. As per the evidence adduced, the last day of 'oral' hearing was on 23 November 2022 before the Committee set up for that purpose (though Complainant in his Statement of Case referred at one point to the last day of oral hearing being on 24 November 2022). At this stage, it is apposite to refer to part of the submission made by Counsel for Complainant before the Tribunal. He submitted the following:

"Point (v) [meaning paragraph 48(v) of the Statement of Case of Complainant] is in fact two-fold, either the last hearing was on the 24th of November and then obviously

the seven day period not complied with. The last hearing was on the 9th of December, it would be outside the mandate to 60 days which started on the 5th of October. So, whichever way you look at it *pile je gagne, face je ne perds pas ...*”

For ease of reference, section 64(11) of the Workers’ Rights Act is reproduced below (as it still reads):

11)(a)The disciplinary hearing initiated against a worker under this section shall be completed within 30 days of the date of the first oral hearing save and except, and subject to paragraph (b), where owing to the illness or death of any of the parties or witnesses, or the reconstitution of the disciplinary panel or change in the legal or other representatives of the parties, such hearing cannot be completed during that delay.

(b)The parties may agree to extend the delay referred to in paragraph (a), provided that the disciplinary hearing is completed not later than 60 days of the date of the first oral hearing.

The law as it stands is that the disciplinary hearing must be completed not later than 60 days of the date of the first oral hearing. This applies to all disciplinary hearings initiated against a worker under section 64 of the Workers’ Rights Act including in the present matter. It is undisputed that the Complainant and his counsel appeared before the disciplinary committee on the first sitting of the committee on 5th of October 2022. The Chairperson and members of the disciplinary committee and the Respondent are presumed to know the law, and the disciplinary hearing should have been completed by 3 December 2022 latest. Bearing in mind section 64(11) of the Workers’ Rights Act, the fact that the Respondent chose to proceed by way of an oral hearing as opposed to opting to request the Respondent to answer the charges in writing or at least to seek written explanations initially, the Tribunal finds that in the present matter, the Complainant had answered the charge made against him in an oral hearing (underlining is ours) on the last day that the oral hearing was scheduled and where Complainant was present, that is, on 23 November 2022. There is no evidence why oral submissions were not insisted upon and within the delay/s imposed by section 64(11) of the Act. Once the Respondent chose to give Complainant an opportunity to answer the charges made against him in relation to the alleged misconducts in an oral hearing, the oral hearing should be completed as per the provisions of the Workers’ Rights Act. There could not be a switch from one form of this opportunity to answer the charges to another form unless expressly provided for under the Workers’ Rights Act, the more so where the delay of seven days under section 64(2)(a)(v) may be circumvented.

The termination of employment of Complainant was effected by way of letter dated 14 December 2022 (Annex N to the Statement of Case of Complainant). Clearly, the termination was more than 7 days after that the Complainant had answered the charge made against him in an oral hearing. In the circumstances, the Tribunal finds

that the termination of employment of the Complainant was unjustified. The Tribunal thus finds that the claim of the Complainant for reinstatement is justified.

However, the Tribunal bears in mind the post which Complainant was occupying and his reporting line with the CEO and necessary interactions with the Company Secretary and the Board of directors. The Tribunal takes note of the charges levelled against Complainant and the averments made by Complainant himself in relation to the absence of trust which he had in relation to certain officers or members of the Board of directors. The Tribunal bears in mind very importantly the degree of trust required at the top-tier level of the Respondent including with the Board of directors and vice versa, and has reason to believe, in the light of all the evidence adduced before it, that the relationship between the Respondent and the Complainant has irretrievably been broken. The Tribunal thus orders that the Complainant be paid severance allowance at the rate specified in section 70(1) of the Workers' Rights Act.

(SD) Indiren Sivaramen

Acting President

(SD) Marie Désirée Lily Lactive

Member

(SD) Karen K. Veerapen

Member

(SD) Ghianeswar Gokhool

Member

27 September 2023