

EMPLOYMENT RELATIONS TRIBUNAL

DETERMINATION

ERT/ RN 58/24

Before

Indiren Sivaramen	Acting President
Alain Hardy	Member
Chetanand K. Bundhoo	Member
Ghianeswar Gokhool	Member

In the matter of:-

Mr Gerard Jean Bernard Yvan Hurrydoss (Complainant)

And

**Beijing Construction Engineering Group Co Ltd
(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 swore that the contents of his Statement of Case were true. In cross-examination, he agreed that he was employed as Project Coordinator. He agreed that he had sent the emails of 2 April 2024 (copies produced on document marked Doc C) which was a working day for him. He stated that he was very upset when he wrote these emails. He stated that his vehicle was damaged during cyclone Belal and that he just wanted to obtain a meeting. He agreed that he used his work email signature when he sent the emails. He agreed that the Civil and Structural Engineer of New Social Living Development Ltd (NSLD) made a complaint (Doc L) but he did not agree with the said complaint. He accepted that he was informed by way of a suspension letter dated 16 April 2024 that Management had initiated an inquiry pertaining to acts of misconduct which he may have committed. He stated that his laptop was examined

and that he did not object thereto. He stated that this was how the relevant emails were retrieved. He agreed that before the Respondent could take a decision in relation to the inquiry initiated by Management, he sent an email on 26 April 2024 to the Respondent (Doc D) copied to other parties. He did not agree however that the said email caused immense embarrassment to the Respondent. He stated that his email was not a threatening one. He accepted that following his email of 26 April 2024 (Doc D), the investigation was ended, and a charge letter was issued to him.

The disciplinary committee was chaired by an independent barrister who was not an employee working at the Respondent. The Complainant was assisted by a barrister, and he disagreed with the charges levelled at him. He gave his explanations before the disciplinary committee. He stated that he is not aware if the Chairperson of the disciplinary committee found all four charges against him proved. He did not agree that in his case there was a breakdown in the relation of trust which must exist between an employee and an employer. He did not agree that the Respondent had no alternative than to terminate his contract of employment. He was questioned in relation to text messages which he would have sent to the HR Manager, Ms Mandy Liu, after his dismissal and he stated that he had a burn out, was panicked, and referred to the situation in which his family found itself. He did not agree when it was put to him that the grounds which he is invoking for his reinstatement have absolutely no merits whatsoever. He did not agree that the termination of his contract of employment was fully justified.

The representative of Respondent then deponed before the Tribunal and he stated that the contents of the Statement of Reply on behalf of Respondent were true. He stated that he is the one who deponed on behalf of the Respondent before the disciplinary committee in relation to the present matter. He deponed in relation to the four charges which were levelled against Complainant. He confirmed that 2 April 2024 was a normal working day for Complainant and that the relevant emails were sent by Complainant during normal business hours. He explained that the New Social Living Development Ltd (NSLD) has been tasked by Government for a project concerning 8000 housing units around the country. In this project, the Respondent has to build 400 housing units at Cote D'Or and Valetta, which is in the constituency of the Prime Minister. He stated that the NSLD project was a politically sensitive project and that there was a big time constraint and pressure to complete the project before the completion date. Complainant was the Project Coordinator for the NSLD project on the sites of Cote D'Or and Valetta. He stated that the name and logo of the Respondent were used on the emails sent by Complainant.

The representative of Respondent stated that the issue which the Respondent had was that an employee was trying to influence third parties to obtain a meeting using the company's background. On 5 April 2024, the Respondent received an email from the Project Manager of NSLD asking about the email which Complainant had sent to the "PMO" which, as agreed, stands for the Prime Minister's Office in this particular case. The Respondent initiated an investigation and suspended the Complainant.

The laptop of Complainant was examined, and the relevant emails sent by Complainant where the work email signature of Complainant had been used were retrieved. On 26 April 2024, the HR Manager of Respondent and other recipients received an email from Complainant (Doc D). The representative of Respondent referred to a paragraph in the email and stated that this consisted of threats and an ultimatum, and that the Respondent believes that this caused prejudice to it since the email was copied to other parties including those whom the Respondent deals directly with on a professional basis. This had an adverse effect on the Respondent and affected its reputation. He stated that in view of the nature of the email of 26 April 2024 from Complainant, the investigation in the case of Complainant was ended and a charge letter was issued to the Disputant by post and email on the same day.

The representative of Respondent stated that the Complainant was called to appear before a disciplinary committee on 6 May 2024 to answer the charges. The hearing was postponed to 11 May 2024 and the Complainant gave his explanations. He stated that the explanations provided by Complainant however did not justify any of the acts of Complainant as per the Charges levelled against him including the use of his position at the Respondent to obtain an appointment with the Prime Minister or the use of threats and giving an ultimatum to the Respondent. The Chairperson of the disciplinary committee found that all four charges against Complainant had been proved. Since all the charges were found proved, the Respondent found that there was a breach of trust which had broken the employment relationship and that it was impossible to continue working with Complainant. In cross-examination, he stated that as per the email of Complainant, the house of the latter was flooded, and the car of the latter was damaged. The representative however insisted that the concern of the Respondent was that the Complainant was using his position to obtain an appointment. He did not agree that there has never been any threat, duress, blackmail, embarrassment or influence whatsoever and that only an appointment in relation to a personal matter was sought by the Complainant.

The Tribunal has examined carefully all the evidence on record and the submissions of both counsel (including speaking notes filed on behalf of Respondent). Preliminary objections were taken on behalf of Respondent, and they read as follows:

A. PRELIMINARY OBJECTIONS

2. The Respondent respectfully states that the Employment Relations Tribunal (the “**Tribunal**”) does not have the jurisdiction to determine the disputed issues and the Disputant’s case is an abuse of process inasmuch as:
 - (a) After the termination of employment of the Disputant, the latter harassed the employees of the Respondent in order to obtain a form of *ex-gratia* payment from the Respondent which the Respondent declined;

Snapshots from wechat messages dated 20th May 2024 sent by the Disputant to Ms Mandy Liu, the Respondent's Human Resource Manager is herewith enclosed and marked as **Document 1.**

- (b) The Respondent was also appraised of the fact that the Disputant is actively on the search for a new job at a different company and sought the Respondent's employees assistance in obtaining same;

Snapshots from wechat messages dated 05th June 2024 sent by the Disputant to Mr Cao Jinkui, the Respondent's Director is herewith enclosed and marked as **Document 2.**

- (c) The Disputant failed, in utter bad faith, to disclose the severity and seriousness of the charges levelled against him and found to be proved by the Chairman of the Disciplinary Committee.
- (d) The charges (the "**Charges**") are faithfully reproduced as follows:

Charge 1

On or about 02 April 2024, a working day, you sent about three emails containing your work email signature for a personal matter, and this during normal business hours. An extract of the said email(s) is reproduced as follows:

"Dear Madam/Sir

I would like to have an appointment with the PM as I am actually working on the NSLD project at cote D'Or and Valetta.

It personal matter please treat as urgent".

Charge 2

On or about 02 April 2024, you used your position and/or employment with Beijing Construction Engineering Group Co Ltd and/or your role, work and/or involvement in the NSLD project at Cote D'Or and Valetta as an influence to attempt to obtain an appointment with the Prime Minister of Mauritius.

Charge 3

On or about 26 April 2024, you sent an email dated 26 April 2024 to Beijing Construction Engineering Group Co Ltd and/or its staff member(s)/employee(s) and/or your colleague(s) wherein you made/wrote, inter alia, the following statements which are tantamount to threats, duress and/or blackmailing:

"I wish to informed [sic] you that if by today Friday 26th of April 2024 no reply is being given to this email i will have no other alternative that[sic] to move forward and informed[sic] all intuitions[sic] concerned and the chineses[sic] embassy, radio, newspaper etc..

I make sure that all parties involved (Client, PMO, BCEG) to answer."

Charge 4

On or about 26 April 2024, you put third party(ies) in copy into the aforementioned email dated 26 April 2024 referred to under Charge 3, thus embarrassing, inter alia, Beijing Construction Engineering Group Co Ltd, its staff member(s)/employee(s), your colleague(s) and/or third parties.

A copy of the charge letter dated 26 April 2024 is herewith enclosed and marked as **Document 3**.

- (e) The Statement of Case, on its face, utterly fails to disclose any valid, proper or *bona fide* explanation or defence to the Charges levelled against the Disputant who conveniently omitted to disclose same to the Tribunal.
- (f) In light of the Charges which were found to be proved by an independent Chairman, the decision of the Ministry of Labour, Human Resources Development and Training to refer this matter to the Tribunal can only be qualified as Wednesbury unreasonable and utterly wrong.

A copy of the Terms of Reference dated 29 May 2024 issued by Mrs W. Heetun, Supervising Officer of the Ministry of Labour, Human Resources Development and Training [sic] is herewith enclosed and marked as **Document 4**.

- (g) The Disputant's unapologetic complaint is thus not a genuine case for reinstatement but an abuse of the Tribunal's process. The case of the Disputant constitutes a mere sham and colourable device in the sense that he is merely trying to short circuit his way into obtaining a quick award for severance allowance, instead of proceeding before the Industrial Court.
3. The Respondent therefore moves that the present matter be dismissed. With Costs.

It is apposite to note that it was agreed that the preliminary objections would be taken together with the merits of the case. The preliminary objections were taken only under paragraph 2 of the Statement of Reply on behalf of Respondent and paragraph 1 of the Statement of Reply provided as follows:

1. *The Respondent company has taken cognizance of the undated Statement of Case submitted by the Disputant. Save as hereinafter expressly admitted by the Respondent, all the averments set out in the Statement of Case are denied.*

However, there was no objection to the preliminary objections being considered by the Tribunal. The Tribunal thus proposes to deal with the 'preliminary objections' raised on behalf of Respondent.

The Respondent suggests that the Tribunal does not have the jurisdiction to determine the disputed issues and that the Complainant's case is an abuse of process. Several reasons have been given as to why the Complainant's case would allegedly constitute an abuse of process. Section 69A of the Workers' Rights Act provides 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 ...
(b) ...*

(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.

Section 70A of the Employment Relations Act provides 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

Once a dispute is referred to the Tribunal by the supervising officer in accordance with section 69A of the Workers' Rights Act, the Tribunal shall proceed to hear the case and give its determination. The Tribunal has no jurisdiction to enquire into the reasonableness of the referral or whether there was indeed a bona fide case for reinstatement. So long as the procedural steps as provided for in section 69A of the Workers' Rights Act have been followed, the Tribunal shall proceed to hear the case and give its determination. The fact that the Complainant may have been actively on the search for a new job and rightly or wrongly sought whatever assistance he thought he could or that he may have tried to obtain a form of ex-gratia payment cannot affect the matter which has been referred to the Tribunal by the supervising officer of the Ministry of Labour, Human Resource Development and Training under section 69A of the Workers' Rights Act.

Also, the suggestion that the Complainant would have allegedly failed to disclose the severity and seriousness of the charges levelled against him and found to be proved by the Disciplinary Committee is something which can be considered on the merits of the case. Averments made in relation to the preliminary objections are matters which the Tribunal has to determine when hearing the case on its merits and cannot be disposed of at the stage of preliminary objections. Despite paragraph 1 of the Statement of Reply on behalf of Respondent, for the purposes of the preliminary objections, the averments of the Complainant in his Statement of Case are deemed (underlining is ours) to be accepted. The preliminary objections cannot stand, and the Tribunal will consider the merits of the case referred to it.

The employment of the Complainant was terminated with immediate effect on the grounds of misconduct on 16 May 2024 as communicated to the Complainant by way of a letter of even date (Document 11 to the Statement of Case of Respondent). The

same letter also mentions that “*Your acts and doings have led to the breakdown of the relationship of trust that must necessarily exist between an employee and a worker.*” There is no suggestion that there is any ‘procedural defect’ in relation to the disciplinary proceedings against Complainant and there is no evidence of any such defect on record. A charge letter dated 26 April 2024 was issued to the Disputant and he was convened to appear before a disciplinary committee on 6 May 2024. Subsequently, the disciplinary was held on 11 May 2024. The disciplinary committee was chaired by an independent Chairperson. The Complainant was given the opportunity to give his explanations on and to answer the charges levelled against him. He was given all the latitude to cross-examine witnesses and he was assisted by Counsel. All four charges were found to be proved by the Chairperson of the disciplinary committee. The Chairperson of the disciplinary committee issued its report to the Respondent on 14 May 2024. On 16 May 2024, the Respondent eventually terminated the contract of employment of Complainant with immediate effect on the grounds of misconduct (Doc H).

The Complainant has filed a Statement of Case before the Tribunal which reads as follows:

STATEMENT OF CASE

1. The point of dispute before the Employment Relations Tribunal is whether the termination of my employment is justified or not in the given circumstances and whether I should be reinstated or not.
2. I confirm that I was employed by the Respondent as Senior Technical Engineer Project Coordinator.
3. I have always acted in the interests of the Respondent as an employee.
4. Following the passage of cyclone Belall, my house was flooded, and my car was damaged.
5. I have reported the matter to the relevant authorities for assistance.
6. On several occasions I have contacted the relevant authorities to enquire about the progress of my complaints and whether a financial assistance will be provided to me as promised by the relevant authorities.
7. Having noted that there was no progress made on the part of the relevant authorities in relation to the damaged (sic) I suffered, I decided to contact the Prime Minister’s Office because I live at Morcellement VRS II, Lot 103, Providence, Quartier Militaire and the Prime Minister is an elected member of Parliament for my constituency.

8. I requested a meeting with the Prime Minister only to explain to the latter the problems I encountered following the passage of cyclone Belall which caused damaged (sic) to my house and my car.
9. When the Respondent became aware of the fact that I was seeking an appointment with the Prime Minister, I was suspended, and an enquiry was conducted for alleged acts of misconduct.
10. Subsequently, a disciplinary committee was held on the 11th of May 2024 whereby I gave evidence in relation to the appointment I was seeking with the Prime Minister and the nature of the said appointment which do not involve in any manner whatsoever the Respondent because the said appointment was being sought only for personal reasons.
11. On the 16th of May 2024, the Respondent terminated my employment with immediate effect on the grounds of misconduct.
12. I must be reinstated and that for the following reasons:
 - (a) Seeking an appointment with the Prime Minister to inform him of the damages I suffered following the passage of cyclone Belall do (sic) not at all justify the termination of my employment.
 - (b) The Respondent had wrong apprehensions which are not justified at all in the present and given circumstances.

In the case of **Mr Vikash Cahoolessur And Seafarers' Welfare Fund, ERT/RN 104/23** the Tribunal stated the following:

"It is trite law that, in civil cases, a court cannot travel outside the pleadings (vide *Compagnie Sucrière de Bel Ombre Ltée v Bungaroo & ors*[1996 SCJ 334]). Moreover, the following may be noted from what was held in *Tostee v Property Partnerships Holdings (Mauritius) Ltd* [2015 SCJ 41]:

Counsel for the petitioner is, in view of those authorities, right in his submission on it not being possible for a party or permissible for the Court to rely on evidence on matters not pleaded in order to come to a finding of fact.

...

In practice, our courts have also been guided by French and English authorities to reach the conclusion that the court should only consider matters which have been introduced in the pleadings. It is the responsibility of the defendant/respondent to aver matters in its plea that will enable the respondent to avail himself the benefit of having his version considered by the court, especially if it is a matter of fact which is supported by the law.

Although the Tribunal is not strictly a court of law, it has been equated to a court of law by the Supreme Court in *Sooknah v CWA* [1998 SCJ 115]. Moreover, in *Greedharee v Mauritius Port Authority* [2016 SCJ 111], it was notably held that the decision of the Tribunal is, for all intents and purposes, a judgment.”

The Tribunal is of the view that this principle is very relevant, especially in cases of reinstatement which have been referred to the Tribunal by the Supervising Officer under section 69A(2) of the Workers’ Rights Act, as amended.

In his speaking notes, Counsel for Respondent suggested that the Complainant has a duty of full and frank disclosure before the Tribunal. The Tribunal will leave open the question whether there is such a duty, and if there is, to what extent such a duty exists before the Tribunal but closely connected with this issue is the burden of proof (“la charge de la preuve”) which lies on a Complainant whose case has been referred to the Tribunal under section 69A (2) of the Workers’ Rights Act, as amended. For ease of reference, section 70A(3) of the Employment Relations Act is reproduced below:

70A. Referral by supervising officer

...

(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.

The Complainant thus has to show that the claim for reinstatement is justified (underlining is ours). The Complainant must provide appropriate grounds for the Tribunal to find that his reinstatement in his former employment is justified. In the present case, the Complainant has averred that:

13. *I must be reinstated and that for the following reasons:*

(c) Seeking an appointment with the Prime Minister to inform him of the damages I suffered following the passage of cyclone Belall do (sic) not at all justify the termination of my employment.

(d) The Respondent had wrong apprehensions which are not justified at all in the present and given circumstances.

In so doing, the Complainant clearly does not answer or provide any valid defence or explanation for any of the charges as levelled against him. The Complainant has not

provided in his Statement of Case any explanation or justification at all in relation to any of the Charges 1, 2 3 and 4 which had been levelled against him. In cross-examination, he stated that he sent the email of 26 April 2024 because he was suspended and wanted to know what he was accused of. He accepted that he sent the emails of 2 April 2024 and the email of 26 April 2024. His email of 26 April 2024 is what ultimately triggered the setting up of the disciplinary committee. The Tribunal notes that the representative of Respondent has placed much emphasis on the email of 26 April 2024 and more particularly the last part of that email. The relevant part of Complainant's email reads as follows:

I wish to informed (sic) you that if by today Friday 26th of April 2024 no reply is being given to this email i (sic) will have no other alternative that (sic) to move forward and informed (sic) all intuitions (sic) concerned and the chineses (sic) embassy, radio, newspaper etc.

I make sure that all parties involved (Client, PMO, BCEG) to answer.

This email was sent not only to the Respondent but was copied to other recipients including the Prime Minister's Office, the NSLD (the client of Respondent) and another entity which allegedly is a potential client of the Respondent. There is no explanation as to why such terms and ultimatum were used in the email nor explanation as to why the email was copied to all those parties. It is apposite to note that just like an employer has a duty to act in good faith and thus, for example, ensure that a fair, equitable and just opportunity is given to a worker to provide explanations in relation to any charge which may be levelled against the latter, a worker too has obligations towards his employer. Thus, at section 40 of the Code of Practice (Fourth Schedule to the Employment Relations Act), it is provided that:

40. The individual worker has obligations to his employer, to the trade union to which he belongs and to his fellow workers. He shares responsibility for the state of employment relations in the establishment where he works and his attitudes and conduct can have a decisive influence on them.

In relation to Charge 2 levelled against Complainant and as rightly put to him by Counsel for Respondent, the latter could have simply stopped after asking for an appointment with the Prime Minister. However, Complainant quite strangely wrote:

I would like to have an appointment with the PM as i am actually working on the NSLD project at cote D'Or and Valetta (underlining is ours)

Though Complainant averred that he was dealing with a personal matter, he conceded that he had inserted his work email signature on all three emails which he sent on 2 April 2024 (Doc C).

The Complainant stated in his Statement of Case that he decided to contact the Prime Minister's Office because he lives in the constituency where the Prime Minister is an elected member. Yet this is not mentioned in his emails where he is seeking the

appointment with the Prime Minister. From all the evidence on record, the Tribunal finds nothing wrong with the finding of the Chairperson of the disciplinary committee to the effect that all four charges had been proved against Complainant.

Evidence has been adduced on behalf of Respondent and accepted by Complainant that the Respondent was handling a sensitive and important project for the NSLD in the constituency of the Prime Minister where there were high expectations and a tight deadline. Complainant accepted that it was very important for the said project to go as smoothly as possible. Complainant also agreed that the Civil Structural Engineer of the client of Respondent, that is, of NSLD sent an email in relation to the urgent meeting which Complainant was seeking with the Prime Minister. The Tribunal finds that in the light of the evidence on record there is nothing to suggest that the Respondent acted in bad faith in investigating the matter. There is no evidence on record of any other reason or motive for the Respondent to have acted as it did (apart from a mere allegation which was not substantiated before the Tribunal) and investigated the matter. The Tribunal will however hasten to add that though Charges 1 and 2 had been proved against Complainant, these two charges only might not have been enough for the Respondent to show that it could not in good faith take any other course of action than to terminate the employment of the Complainant. However, Charges 3 and 4 together with Charges 1 and 2 which had all been proved against Complainant and which the Tribunal has found no reason to interfere with bring a different complexion to the charges altogether against Complainant.

The Respondent has averred that the acts and doings of the Complainant have led to the breakdown of the relationship of trust which must necessarily exist between an employer and a worker.

In Introduction au Droit du Travail Mauricien, 1/ Les Relations Individuelles de Travail, 2eme edition, Dr D. Fok Kan writes the following at pages 398-399:

1/ La Perte de Confiance

Si tout fait qui porte atteinte au bon fonctionnement de l'entreprise peut éventuellement justifier un licenciement alors même que ce fait ne constitue point une faute de l'employé, la perte de confiance en elle-même peut-elle constituer un juste motif de licenciement? Dans la mesure où un contrat de travail est un contrat conclu intuitu personae, donc fondé sur une relation réciproque de confiance, un fait ou un comportement qui vient détruire cette confiance et met ainsi un obstacle au maintien des relations de travail devrait justifier le licenciement de l'employé. Vue sous cet angle, la perte de cette confiance est un juste motif de licenciement. Et c'est ce qu'avait décidé depuis longtemps la jurisprudence française.

Cette absence de confiance était auparavant souvent fondée sur un élément purement subjectif. La Cour de Cassation décide maintenant "qu'un licenciement pour une cause inhérente à la personne de salarié doit être fondé sur des éléments objectifs : que la perte de confiance alléguée par l'employeur ne constitue pas en soi un motif

de licenciement.” Cette jurisprudence semble ainsi dorénavant exiger que des faits objectifs, précis et vérifiables soient établis, donc extérieurs à la subjectivité de l’employeur et que ces faits soient imputables à l’employé lui-même et non, par exemple, à son conjoint. Ce n’est qu’alors que la perte de confiance, qui doit ainsi rendre impossible la poursuite des relations de travail, peut justifier un licenciement.(…)

The Tribunal will also refer to the case of **City Sport (Maurice) Ltee v B S Bundhoo 2024 SCJ 282** where the Supreme Court stated the following:

It was submitted by learned Counsel for the respondent that *perte de confiance* cannot amount to gross misconduct. This submission, however, fails to take into consideration the observation of the Supreme Court in **Barbe J.B v. Shell Mauritius Ltd [2013 SCJ 202]** that

“We agree that breach of trust can in itself be a cause for dismissal as is made apparent from the following extract of Dalloz-Contrat de Travail à Durée Indéterminée (Rupture-Licenciement pour motif personnel: conditions) Janvier 2014, Note 434-

«En attachant ses services à un employeur, le salarié s’engage à avoir un comportement loyal et honnête. Le manquement aux obligations qui déroulent de cet engagement peut constituer une cause réelle et sérieuse de licenciement.»

In the case of **Roberts Francois Rhainsley Remy v Trait D’ Union Ltee 2023 IND 63** (with persuasive value only and where the Industrial Court was dealing with the law as it was previously under the repealed Employment Rights Act), it was alleged that the plaintiff who was employed had used words of racist connotation. It was alleged that he used the following words: *“Dix ans mone travail ar blanc mais ici li different avec 1 noir. Et j’ai quitte une compagnie de blanc pour travailler avec un noir. »*

The Industrial Court stated the following:

The question to be answered is whether the utterance of these words amount to a gross misconduct? It is to be remembered that the Plaintiff was an employee at the Defendant company. He was in the midst of a meeting, in the presence of many employees when he used words which held a totally improper and racist connotation. I find that the acts and doings of the Plaintiff amount to a serious fault, which constitute enough evidence to prove the charges levelled against the Plaintiff at the disciplinary committee and which establishes a gross misconduct on the part of the Plaintiff. I find that the Defendant has established on a balance of probabilities that the Plaintiff committed a gross misconduct.

...

In the present case, the use of words which held an improper and racist connotation amounted to a “cause réelle et sérieuse” which held a bearing on the employer-employee relationship to the extent that it brought “un trouble profond dans le fonctionnement et la marche de l’entreprise”. (JURISCLASSEUR TRAVIAL (sic), FASC 30, NOTE 163). The employment relationship could no longer continue to exist. In the circumstances, the Defendant could not in good faith take any other action, except than a dismissal. (SBI (MAURITIUS) LTD VS ROUSSEY J B (2021) SCJ 420)

In the present case, the Tribunal has examined carefully the evidence given and the post occupied by the Complainant as Project Coordinator and the own evidence of Complainant as to the responsibility he assumes in projects of the Respondent. The Tribunal bears in mind the admission made by Complainant himself as to the importance of the project undertaken by the Respondent for the NSLD which was the client of the Respondent for a project which was sensitive with a tight deadline and with high expectations, and where, above all, it was very important for the Respondent for the project to go as smoothly as possible. The Tribunal also bears in mind that Complainant did not limit himself to send the email of 26 April 2024 to the Respondent but copied same to third parties including the Prime Minister’s Office, and other recipients including one who was allegedly a potential client of Respondent. It is apposite to note that the last part of the email of Complainant (in Doc D) included words to the effect that:

I make sure that the Prime Minister’s Office to answer.

This email has no doubt embarrassed the Respondent, and possibly other parties including the client of Respondent, that is, the NSLD. Now, the reference made by Complainant to the effect that “if by today Friday 26th of April 2024 no reply is being given to this email” he would have no other alternative than to inform all institutions concerned and the Chinese embassy, radio and newspaper etc. can be reasonably interpreted as a threat to damage the employer’s reputation or cause public embarrassment.

The Charges levelled against Complainant have not been seriously challenged or denied before the Tribunal. The Tribunal finds that the Respondent was perfectly entitled, based on the facts which existed at the time the decision to terminate the contract was taken, including the four Charges which had been found to be proved by the Chairperson of the disciplinary committee, to find that the acts and doings of Complainant had led to a breakdown of the relationship of trust that must necessarily exist between an employer and a worker. In the light of all the evidence on record, the Tribunal finds that the Charges (taken collectively) proved against Complainant did constitute “une cause réelle et sérieuse” which held a bearing on the employer-employee relationship to the extent that it brought “un trouble profond dans le fonctionnement et la marche de l’entreprise.”

For all the reasons given above, the Tribunal finds that the termination of employment of Complainant is not unjustified. The Complainant has failed to show on a balance of probabilities that he should be reinstated. The matter is thus set aside.

(SD) Indiren Sivaramen

Acting President

(SD) Alain Hardy

Member

(SD) Chetanand K. Bundhoo

Member

(SD) Ghianeswar Gokhool

Member

24 July 2024