

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 36/24

DETERMINATION

Before: -

| | | |
|----------------------------------|---|-----------------------|
| Shameer Janhangeer | - | Vice-President |
| Alain Hardy | - | Member |
| Awadhkoomarsing Balluck | - | Member |
| Divya Rani Deonanan (Mrs) | - | Member |

In the matter of: -

Mr Mohammad Fawaaz Haroon ACKBARALLY

Disputant/Complainant

and

BANK ONE LIMITED

Respondent

The present matter has been referred to the Tribunal for determination by the Supervising Officer of the Ministry of Labour, Human Resource Development and Training pursuant to *section 69A (2)* of the *Workers' Rights Act 2019* (the "WRA"). The Terms of Reference of the dispute read 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 Disputant was assisted by his Trade Union Negotiator, Mr I. Tan Yan and the Respondent was assisted by Mr H. Bansropun, Counsel. Both parties have submitted their

respective Statement of Case in the matter. During the hearing of the dispute, the Disputant was called to adduce evidence and he also called, as witnesses, Mrs V. Bunwaree, Chair of the Disciplinary Committee and Mrs S. Jany, the Investigating HR Officer. The Respondent adduced evidence thorough its representative and Head of HR, Mrs P. Mutty.

The Disputant's Trade Union Negotiator has put in written submissions in the matter. Firstly, regarding *section 64 (2)(b)(i)* of the WRA, which does not specifically mention the presumption of innocence, it is the clear intention of the legislator to protect the worker. The Disputant was called to answer charges which are not only simple acts of misconduct but are criminal offences. Reference has notably been made to the case of *Woolmington v DPP [1935] UKHL 1*. Secondly, concerning the investigation, as per *section 64 (3)* of the WRA, it must be into all the circumstances of the case. The investigation report of Mrs S. Jany has a resumé of the declaration of six employees leading to the first letter of charges dated 1 August 2023, whereas the Disputant had to answer to charges regarding five persons. Reference has been made to the case of *BTS v Burchell UK EAT (1978)*. After the Disputant's reply in writing, the Respondent formulated a new charge on 4 October 2023. This was outside the legal delay under *section 64 (2)(a)(i)* or *64 (3)* of the WRA. The law does not make provision for another charge to be laid after the reply in writing. If an investigation had been conducted into all the circumstances of the case, there would not have been two letter of charges. Moreover, if the Respondent had been guided by principles of natural justice as prescribed under *article 14 (1)* of the *Seventh Schedule* of the *Employment Relations Act* (the "Act"), the Disputant would not have been dismissed.

In relation to anomalies which occurred in the process of the disciplinary hearing, reference has been made to the case of *Chellen and Airports of Mauritius Co. Ltd (ERT/RN 98/23)* where the Tribunal stated that these cases can be determined by considering all relevant evidence including the termination of employment. From the Chairperson's notes of meeting, there are contradictions in the version of the accuser and the exchange about the CCTV footage does not tally with the accuser's initial statement. The Disputant's version that the accuser had a grudge against him and the bank was never investigated into but his explanations have resulted in a new charge against him on 4 October 2023. As per Professor Torul in *Dismissible Misconduct, Guide to valid, fair and reasonable termination*, allegations are not enough but must be argued and proved quoting the South Africa Labour Appeal Court case of *Dion Discount Centres v Rantlo (1996) 1 LLD 9*. The onus to prove the charge is on the employer and *article 14 (6)* of the *Seventh Schedule* of the *Act* should have guided the Head of HR in terminating the contract of employment.

It was further submitted that regarding *section 64 (2)(a)(iv)* of the *WRA*, the employer cannot in good faith take any other course of action. The Respondent has eight branches and the Disputant could have been transferred to any of those branches until the Police has determined the case against him. When charges are not proved, an employer cannot use the disciplinary hearing as a rubber stamp to terminate employment and reference has been made to the case of *Tyack v Air Mauritius Ltd [2010 SCJ 257]*; it appears that the employer has already decided the fate of the Disputant. As regards *section 64 (10)* of the *WRA*, the Respondent has a delay of 7 days to provide the Disputant with notes of meeting or *section 64 (5)* of the *WRA*, where particulars to the charge should have been provided to allow the Disputant to prepare his defence. The Disputant was only provided with the notes of meeting 24 hours before submitting its Statement of Case. The notes of meeting are the notes taken by the Chairperson and the transcript was annexed to the Respondent's Statement in Reply. As of yet they have not received the audio recording of the disciplinary committee. This is a manifestation of the Respondent's careless behaviour adopted during the disciplinary process. There was an objection by the Respondent to the use of the Employee Handbook.

The Disputant's final submissions are on the duration of the disciplinary committee contending that the oral hearing started on 18 October 2023 and the last session was on 29 February 2024. Reference has been made to labour laws being of public order as stated in *Cahoolessur and Seafarers' Welfare Fund (ERT/RN 104/23)*. From the Chairperson's notes of meeting, on 18 October 2023, it was asked from the Disputant whether he had served a *mise en demeure* on Mrs P. Gukhool resulting in another letter of charges being served on him. The Disputant is relying on the case of *Tyack (supra)* to insist that the Respondent cannot hide behind procedural tricks to decide when the oral hearing really started. The Disputant's termination of employment was abusive, unjustified and there was no breach of trust.

Counsel for the Respondent has put in Speaking Notes in submissions. The Respondent has notably responded to the eight grounds put forward in the Disputant's Statement of Case. The Respondent has given a background to the Tribunal's jurisdiction in matters of reinstatement and stated that the Tribunal should be careful not to encroach on the Industrial Court's exclusive jurisdiction to enquire into whether the dismissal was justified and that it can only enquire into whether reinstatement is justified. On the Disputant's ground that the Respondent used the disciplinary hearing as a rubber stamp, it was submitted that the disciplinary committee was chaired by an independent Chairperson; the Disputant had all the latitude to cross-examine witnesses, making use of company materials and evidence and giving his defence as he wished.

Reference has been made to the case of *Tranquille v P.R. Limited* [1996 SCJ 366] as an illustration of what a rubber stamp disciplinary process can look like. It has also been submitted that the question of presumption of innocence does not apply to an employer choosing to embark on a disciplinary process as provided under *section 64 (2)* of the WRA and referred to the judgment in *Pierre Louis & Anor. v Pointe Cotton Resort Hotel Co Ltd* [2023 SCJ 366].

On the issue that no exonerating enquiry was carried out in breach of *section 64 (3)* of the WRA, the Respondent submitted that there is no mandatory requirement to carry out an investigation or even less to carry out an exonerating investigation. What is required by law is for the worker to be given an opportunity to answer the charges against him in relation to the alleged misconduct in an oral hearing or in an oral hearing following his answer in writing, which is what the Respondent choose to do. It cannot also be overlooked that on the first day of the complaint, Mrs Mutty and Mr Doomun visited the Disputant asking his version. Reliance has been placed on the judgments in *Bundhoo v Mauritius Breweries Ltd* [1981 MR 157] and *Tirvengadam v Bata Shoe (Mauritius) Co. Ltd* [1979 MR 133] supporting lack of formality.

On the issue that charge was modified after the Disputant's written explanations, it was submitted that as from the particulars supplied on 23 August 2023, the Disputant was aware that charges were being reduced. What the employer cannot do is add charges outside the delay. The amended charge was not a new charge and four ladies were removed. The Industrial Court decision in *Hurdoyal v Constance Industries Ltd* (2016 IND 11) has been cited in support. Regarding the issue of the *mise en demeure* served by the Disputant resulting in an additional charge before the disciplinary committee, it was submitted that this arose out of the Disputant's employment as conceded by himself when cross-examined. This was a clear intimidation towards a witness and the charge levelled was justified. Regarding the ground that the Respondent has failed to discharge the onus of proving the charge against the Disputant, it has been submitted that the Industrial Court has exclusive jurisdiction to review disciplinary proceedings and the issue of whether the employer discharged the onus of proving the charge relying on *Lafresière v New Mauritius Hotels Ltd* [2022 PRV 23; 2023 UKPC 38].

On the ground concerning the duration of the disciplinary hearing, it was submitted that the Disputant conceded under cross-examination that the oral hearing started on 9 February 2024 and was completed on 29 February 2024. The law limits the time for the oral hearing only. Regarding the contention of a breach of *section 64 (2)(a)(iv)* of the WRA as in all good faith, the Respondent had other options other than dismissal, this pertains to the exclusive jurisdiction of

the Industrial Court. As for the issue of reluctance to furnish documents, the Respondent has always communicated documents requested by the worker and there is no evidence that a request was made save for the motion before the Tribunal for documents which was acceded to. For complete transparency, the Respondent went further than what is required of it in law by providing the transcript of the proceedings. The grounds and evidence before the Tribunal fall well short of establishing that reinstatement is justified.

As per the Terms of Reference of the dispute, the Tribunal has to determine whether the Disputant's termination of employment was justified or not and whether he should be reinstated. The Disputant was the Acting Branch Manager at the Respondent's Vacoas branch prior to his termination of employment. A complaint was made against him on 11 July 2023 by one Mrs Poonam Gukhool and following a visit from the Head of HR, he received a letter of suspension on 12 July 2023. By letter dated 1 August 2023, he was asked to answer to three charges in writing. There was a request for particulars from his Counsel dated 7 August 2023 and he submitted his written explanations on 25 September 2023. By letter dated 4 October 2023, he was convened to a disciplinary committee on 18 October 2023 and the charges laid against him were reduced according to the Respondent. Before the sitting of the disciplinary committee, upon his Counsel's advice, he had caused two *mise en demeures* to be served on each of his two accusers.

At the sitting of the disciplinary committee on 18 October 2023, the Disputant was asked about the *mise en demeure* and was immediately served with a second letter containing two charges relative to the notices served. After a few postponements notably on account of the Disputant having retained services of a new Counsel and further particulars being requested, the disciplinary committee was heard on 9, 19, 20 and 29 February 2024. On the latter date, the Disputant was called to give his version before the committee. On 5 March 2024, the Disputant was served with a letter of termination by the Respondent. The Disputant is now before the Tribunal seeking reinstatement after having reported a complaint to the Ministry of Labour, Human Resource Development and Training.

As has been previously noted, the Disputant has put forward eight grounds in his Statement of Case in praying for a determination of the Tribunal in favour of his reinstatement. Under the first ground, the Disputant contends that the Respondent has used the disciplinary hearing as a rubber stamp to terminate the contract of employment of the Disputant in breach of *section 64(2)(b)(i)* which establishes that an employer can put an end to the contract of employment of a worker who is subject to criminal proceedings after conviction of the latter.

This section of the law extends the constitutional protection to promote the presumption of innocence and also guarantees that the police enquiry is given priority over an in-house investigation.

In the present matter, following the complaint made by Mrs P. Gukhool against the Disputant on 11 July 2023, the Respondent proceeded with an investigation as per its letter dated 12 July 2023 and the Disputant was suspended. At the same, the Disputant was arrested by Police following a complaint made to them by Mrs P. Gukhool. The Disputant has invoked the concept of presumption of innocence. It is trite law that presumption of innocence applies to criminal matters as can be gathered from *section 10 (2)(a)* of the *Constitution* which provides that every person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty. The criminal nature of the concept of the presumption of innocence can also be gathered from the decision in *Woolmington v DPP (supra)*, which has been relied upon by the Disputant's Trade Union Negotiator.

Moreover, it is being contented that the disciplinary hearing has been used by the Respondent as a rubber stamp to terminate the Disputant's employment. It should be noted that in cases of alleged misconduct the *WRA* has set a clear procedure under *section 64 (2)(a)* and this notably provides for the worker to be given the opportunity to answer any charge against him in relation to the alleged misconduct in an oral hearing. It should also be noted that the employer is not precluded from proceeding with a disciplinary hearing against the worker despite the fact that the alleged misconduct could be the subject of a Police inquiry.

In this context, it is apposite to note the following from what was held in *Leger v Chue Wing & Co Ltd [2007 SCJ 26]* and which has been cited in the case of *Pointe Cotton Resort Hotel Co. Ltd (supra)*:

It is well settled by our case law and the provisions of section 32 of the Labour Act that when an employer is suspicious of an alleged act of misconduct by his employee, he should first give the latter an opportunity to give his explanation with respect to the alleged misconduct. Once he has heard the employee's explanation, the law allows him seven days to take a decision. Where the alleged misconduct is subject to criminal proceedings, the legislator has thought it fit to enable him to postpone his decision until a court of law would have considered the evidence and given judgment. However, he is under no obligation to wait for the outcome of the court case to take his decision. His disciplinary powers are not curtailed by the fact that the police are also enquiring into the matter. He may still carry out his own enquiry, hear the employee's explanation and take his decision within seven days of the hearing, which decision may still be

subject to review by the Court. (*vide Mamet & Fils v Victor [1980 MR 1] and Mauritius Meat Authority v Bissoon Mungroo [1991 MR 86].*)
(The underlining is ours.)

Furthermore, the following was noted on the issue in *Chouraj Merai v Indian Ocean International Bank Limited [2011 SCJ 140]*:

... the employer reserves an option de route. It is:-

- (a) either to initiate disciplinary proceedings; or
- (b) refer the matter to the police for enquiry; or
- (c) do both - refer the matter to the Police for enquiry and initiate proceedings.

*Whichever route the employer takes, he may only dismiss the worker within 7 days of the outcome at (a), (b) or (c), failing which he is deemed to have condoned the misconduct. As was rightly pointed out in the case of **Chellen v Mon Loisir [1971 MR 180], [SCR 116]**, it cannot be taken to mean that in every case the employer must wait until the court decides on a criminal issue before taking any action.*

(The underlining is ours.)

It is therefore clear that the Respondent was not precluded from proceeding with disciplinary action against the Disputant once it had become aware of the alleged misconduct in spite of the complaint made to the Police and the Disputant's subsequent arrest. It cannot also be said that *section 64(2)(b)(i)* of the WRA guarantees that the police enquiry should be given priority over the employer's right to take disciplinary action under *section 64 (2)(a)* of the WRA. The Tribunal cannot therefore find any merit in this particular ground raised by the Disputant.

Under the second ground put forward, the Disputant considers that as no exonerating investigation was carried out by the Respondent, the latter has acted in breach of *section 64 (3)* of the WRA; the law relieves the Respondent from a limiting timing of 10 days that shall not start to run until the completion of the investigation; and after the reply in writing from the Disputant, the charges have been modified and this would not have been the case if the investigation was made into all circumstances of the case.

In respect to this ground, it is apposite to consider what has been provided by *section 64 (3)* of the WRA. This provision reads as follows:

(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.*

It can clearly be seen that the employer has a discretion to carry out an investigation before a charge of alleged misconduct is levelled against the worker and the investigation shall be into all the circumstances of the case. It should however be noted that this provision does not place any requirement on the employer to carry out an exonerating investigation and therefore the Respondent cannot be said to be in breach of *section 64 (3)* in having failed out carry out what the Disputant has termed to be an exonerating investigation.

Although the Disputant has maintained, in his evidence, that no statement was taken from him in the Respondent's investigation, he did recognise, in cross-examination, that he denied the complaint made against him when visited by the Respondent's Head of HR, Mrs Mutty and Mr H. Domun on 11 July 2023. As per the evidence of Mrs S. Jany, this is the version of the Disputant recorded in her Investigation Report. In any event, *section 64 (2)(a)(ii)* of the *WRA* provides that the worker must be given an opportunity to answer any charge against him in an oral hearing or in an oral hearing following his answer in writing. It has not been disputed that the Disputant did give his written explanations dated 23 September 2023 and did also give his version before the disciplinary committee set up to hear the charges laid against him. This particular ground cannot therefore stand.

It is also being contended that the charges were modified following the Disputant's reply in writing dated 23 September 2023. From the charges laid in the letter dated 1 August 2023 and the letter dated 4 October 2023, it can be seen that the name of four female employees have been removed and only the name of Mrs P. Gukhool has been retained *quoad* the second charge. Save for this, the wordings of the charge have remained the same. It is thus clear that the second charge has only been amended by removing the names of the other employees. The Disputant has moreover recognised, when cross-examined, that the charges were reduced as per the letter of 4 October 2023 and that he only had to answer the charge regarding Mrs P. Gukhool.

The Disputant's Trade Union Negotiator has notably submitted that if, according to the Respondent, the charges were reduced, this could have been done during the sitting of the disciplinary committee on 18 October 2023. It must however be noted that the worker must be given at least 7 days' notice to answer any charge made against him in the oral hearing and the Respondent was bound to respect this statutory delay. It thus cannot be said that the Disputant

was made to answer to a new charge in the letter dated 4 October 2023. The Tribunal thus cannot find any merits in this ground.

Under his third ground, the Disputant considers that the Respondent acted in breach of *section 64 (1)(f)* of the *WRA* when he was made to answer to charges relative to a civil procedure he had engaged into against his accusers. It has not been disputed that the Disputant did cause a *mise en demeure* to be served on Mrs P. Gukhool on 17 October 2023, a day before the first sitting of the disciplinary committee was scheduled. *Section 64 (1)(f)* of the *WRA* reads as follows:

64. Protection against termination of agreement

- (1) An agreement shall not be terminated by an employer by reason of –
...
(f) a worker exercising any of the rights provided for in this Act or any other enactment, or in any agreement, collective agreement or award.

In relying on the aforesaid section, it is incumbent on the Disputant to show that the Respondent has acted in breach of same by demonstrating that his employment was terminated by reason of him exercising his rights under the *WRA* or any other enactment or any agreement, collective agreement or award. However, no evidence has been adduced by the Disputant nor any submissions offered on the application of *section 64 (1)(f)* of the *WRA* in relation to the *mise en demeure* served by the Disputant on Mrs P. Gukhool. Although, the Disputant contended that the *mise en demeure* was a civil matter, he did acknowledge that it was related to work when the contents of the *mise en demeure* were put to him by the Respondent's Counsel. The Tribunal cannot therefore find this ground to be valid.

Under the fourth ground, the Disputant considers that the rule established under *article 14 (6)* of the *Seventh Schedule* of the *Act* has not been observed in as much as the Respondent had the onus to prove the charge and that the latter relied only on the testimony of an accuser, namely Mrs P. Gukhool, who has not been consistent in her version and on witnesses relying on hearsay and incapable of confirming the statement of the accuser.

With regard to this ground, the Disputant is relying on *article 14 (6)* of the *Procedure Agreement* which is to be found at the *Seventh Schedule* of the *Act* and notably provides that that the onus to prove the charge rests with the employer and the worker shall be given the opportunity to rebut the charges as he deems appropriate. Although it has been admitted by the

Respondent's representative that there is a exists a Procedure Agreement with the recognised union at the Respondent, same has not been produced nor is it part of the parties' respective Statements of Case. The Tribunal cannot therefore ascertain whether the actual Procedure Agreement in force between the Respondent and its recognised trade union contains this particular provision and whether the Disputant forms part of the bargaining unit represented by the recognised trade union.

It is trite that the onus to prove the charge brought against the worker rests with the employer before the disciplinary committee. However, it must be noted that a disciplinary committee is an independent body set up under *section 64 (2)* of the WRA. As per *Tyack v Air Mauritius Ltd (supra)*, the purport of a disciplinary committee has been described as follows:

A Disciplinary Committee is not a teleguided machine to do the bidding of the employer. It is an impartial and independent body set up to determine whether disciplinary actions may be taken against an employee in a given situation.

Moreover, it is apposite to note the following from the decision in *Planteau de Maroussem v Société Dupon [2009 SCJ 287]* on the attributes of a disciplinary committee:

The aim of a disciplinary committee, as we have said, is merely to afford the employee an opportunity to give his version of the facts before a decision relating to his future employment is reached by his employer. It is no substitute for a court of law, nor has it got its attributes. Furthermore, the employer is not bound by the recommendations of the disciplinary committee and is free to reach its own decision in relation to the future employment of his employee, subject to the sanction of the Industrial Court.

As per the evidence adduced on record, the Disputant did recognise that his Counsel did put questions to the witnesses and that he did also give his version before the disciplinary committee. This is also evidenced by the Chair's notes of the disciplinary committee and the transcript thereof. Thus, the purpose of the disciplinary committee in affording the worker an opportunity to give his version has been satisfied. The Tribunal cannot therefore find any validity in the Disputant's arguments under this ground.

The Disputant is also contending that the Respondent did not complete the disciplinary hearing which started on the 18 October 2023 within the maximum limit of 60 days which is clearly established under *section 64 (11)(b)* of the WRA. As per the letter dated 4 October 2023, the Disputant was convened to a disciplinary committee on 18 October 2023. As noted, the

Disputant was served with an additional letter of charges and the committee was put for the 11 December 2023. The Chair of the committee, who was called as witness on behalf of the Disputant, was adamant that the oral hearing did not start on 11 December 2023, when the issue of further particulars was raised by Counsel for the Disputant and that the parties did agree that it was a procedural sitting. She also stated that there were three procedural sittings with the next being on 5 February 2023, that it was with the consent of both Counsel and parties that they were considered to be procedural hearings and that 9 February 2023 was the date of the first oral hearing.

Moreover, the Disputant did acknowledge that the oral hearing did start on 9 February 2023 with Mrs P. Gukhool as a witness and that it finished on 29 February 2023. Thus, the oral hearing lasted less than 30 days. This is in compliance with the provisions of *section 64 (11)(a)* of the *WRA* which notably provides that the disciplinary hearing must be completed within 30 days of the first oral hearing. The Tribunal cannot therefore find the disciplinary committee was completed more than 30 days as provided by law and this particular ground is set aside.

The Disputant is also asserting that the Respondent had in all good faith the possibility of choosing another course of action as specified under *section 64 (2)(a)(iv)* of the *WRA*. It is contended that both employees could easily be transferred to different branches to avoid any contact and apply the principal of precaution without terminating the contract of employment and a staff with more than 16 years of service with a clean record.

Section 64 (2)(a)(iv) of the *WRA* notably provides that no employer shall terminate a worker's agreement, for alleged misconduct unless the employer cannot in good faith take any other course of action. The following may be noted from the Judicial Committee of the Privy Council judgment in *United Docks Ltd v De Speville* [2019] UKPC 28 on the element of good faith in the context of termination of employment:

24. *A question whether the company had a valid reason to dismiss the respondent is obviously different from a question whether it could not in good faith take any other course than to dismiss him. The former asks only whether the misconduct was a ground for dismissing him. The latter asks whether in all the surrounding circumstances the only course reasonably open to the employer was to dismiss him. In other words, was it, as the Board said in para 17 of its judgment in Bissonauth v The Sugar Fund Insurance Bond* [2007] UKPC 17, "the only option"?

(The underlining is ours.)

As per the letter of termination dated 5 March 2024, the Respondent has notably stated that '*The proven charges amount to acts of gross misconduct for which the Company has no other option but in good faith to terminate your employment with Bank One Limited.*'. When questioned as to whether the Respondent had any other course of action other than to terminate the Disputant's employment, the Respondent's Head of HR, Mrs P. Mutty categorically stated that it was a matter of a very serious misconduct and that their Code of Conduct is very clear that the bank has zero tolerance for such cases. It was also stated that there were three out of four charges proved against the Disputant and that a decision had to be taken in line with their policies.

It can be noted that the letter dated 4 October 2023 did notably charge the Disputant with having sexually harassed Mrs P. Gukhool in his office on 10 July 2023 and that he failed to abide to the Respondent's Code of Ethics and Conduct. As noted, the second set of charges dated 18 October 2023 related to the *mise en demeure* served upon the witness a day prior to the disciplinary sitting on the same date. Despite the Disputant's contention that he could have been transferred to another branch or put to work in an open space, it has been established, in view of the nature of the charges proved against the Disputant, that the Respondent had no other course of action than to terminate his employment.

The Disputant has also put forward that it considers, in application of *section 64 (2)(a)(ii)(B)* of the *WRA*, that the charge that had been answered to in writing should not have been modified after it had been answered in writing. This practice is contrary to fairness and natural justice and the *Act* upholds those principles under *article 14 (1)* of its *Seventh Schedule*.

The contention of the Disputant with regard to the charge laid against the Disputant being modified has been considered by the Tribunal under the second ground put forward whereby it has been noted that the charges were only amended by removing the names of other employees and that the Disputant was not made to answer to a new charge in the letter dated 4 October 2023 convening him to the disciplinary committee. Moreover, it has not been disputed that the Disputant was given an opportunity to answer to charge laid against him before the disciplinary committee set up after the Respondent had received his written explanations on 25 September 2023 as is required under *section 64 (2)(a)(ii)(B)* of the *WRA*.

Although the Tribunal, as previously noted, is not aware of the contents of the existing Procedure Agreement between the Respondent and its recognised trade union and whether it incorporates *article 14 (1)* of the *Seventh Schedule* of the *Act*, the law does provide for the worker

to answer to the charge laid against him before a disciplinary committee (*vide section 64 (2) of the WRA*) and it has also been noted that a disciplinary committee is deemed to be an impartial and independent body.

It is also being contended that the Disputant considers that Respondent has consistently been reluctant to provide information relative to the charge as clearly established in his Statement of Case and that this behaviour and attitude is in breach of *section 64 (5) of the WRA*. The aforementioned subsection reads as follows:

(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.

The evidence on record has borne out that the Disputant was provided with particulars following the Respondent's letter dated 1 August 2023 asking the Disputant to provide his written explanations. These particulars asked for by his Counsel were duly furnished by the Respondent as per letter dated 23 August 2023 as recognised by the Disputant except for a video recording which he latter had the opportunity to view with his Counsel. Moreover, it has been borne out that during the sitting of the disciplinary committee of 11 December 2023, the Disputant's Counsel did request new particulars to be furnished and that the committee did not start on that day. The Disputant was also provided with the Chairperson of the disciplinary committee's notes of meeting following a request made before the Tribunal before submitting its Statement of Case. As rightly submitted by the Respondent, there is no evidence of any prior request from the Disputant requesting the proceedings of the disciplinary committee. The Tribunal cannot therefore find this particular ground to be valid.

Having considered the evidence on record and each of the grounds put forward by the Disputant in the present matter, the Tribunal cannot find that the Disputant's termination of employment was unjustified and that he should be reinstated. The claim for reinstatement is therefore not justified.

The dispute is therefore set aside.

.....
SD Shameer Janhangeer
(Vice-President)

.....
SD Alain Hardy
(Member)

.....
SD Awadhkoomarsing Balluck
(Member)

.....
SD Divya Rani Deonanan (Mrs)
(Member)

Date: 31st May 2024

