

EMPLOYMENT RELATIONS TRIBUNAL

DETERMINATION

ERT/ RN 128/24

Before

Indiren Sivaramen	Acting President
Greetanand Beelattoo	Member
Chetanand K. Bundhoo	Member
Divya Rani Deonanan	Member

In the matter of:-

Mrs Fawzia Auckle (Disputant)

And

National Women's Council (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 Disputant deposed before the Tribunal. She stated that she joined the Respondent in 1998 and that it was in the year 2000 that she started doing field work. She deposed in relation to the work she was doing as field work from 2000 to 2010. As from 2010, she was posted in the office and then in 2014 she was transferred to the dressmaking unit whereby she had to go all throughout the island. In 2016, she went to do office work with the Program Coordinator. She followed a course on how to write creole language and then in 2017 she went to work in the adult literacy section. She then had the opportunity to teach how to write creole until the year 2020. She then stated that on 11 November 2020 she was suspended from her work. She was only informed that it was following two complaints received against her. She was told that she would be convened for a meeting later, but she waited for two years, and she was not contacted by the Respondent. She then contacted the new Secretary of the Respondent, and the latter

informed her that she would not be able to do anything for her. She then went to her trade union and the Ministry (of Labour) because she said “*mone ale rode mo droit*”. She was finally reinstated in her work, and she was posted in the secretariat of the Women Association Unit where she was doing typing work and photocopies. She added that when she resumed, the work she was doing was different but that she did not mind since she had been reinstated. She stated that she did not have any problems at work when she resumed and that it was only in 2023 that she had problems. When she resumed, she was told that she would be on probation for a period of six months. She averred that three months after she was reinstated, the Manager started to hold meetings where the latter suggested that she was getting all sorts of complaints against her. She stated that she was told that she was misbehaving and that she was using filthy words. She stated that she told the Manager that she had come back and did not want to have to leave again. She suggested that she was being provoked, and she stated that colleagues who were sitting near to her and whom she did not know well were saying things to provoke her. Then, she averred that though she did not report them, the latter would have (instead) reported her. She suggested that the Manager laid all types of allegations against her every month. She stated that she was requested to change her seat no less than seven times since she had resumed work at the Respondent. She stated that she was sitting near a man with whom she had had no problems, and yet she was told that allegedly she had a problem with the latter. She was requested to sit with two other colleagues, and they in turn averred that “*mo pas coze bien*”. She stated in relation to these two colleagues that “*Ene journee banla coze nonsense, mo pas pran zotte conte kan meme zotte cose nonesense*”. She was asked to sit at the reception desk and she suggested that every time the Manager and HR would come and insult her in front of everyone. She averred that every time the Manager would denigrate her. She stated that she reported the matter to the then Ministry of Labour, Human Resource Development and Training.

Disputant averred that one Mrs Reedoye from the Ministry of Labour told her that the Manager of the Respondent did not want her to work at the Respondent but that they would try to talk with the Manager to convince her that she had to allow the Disputant to work free from any disturbance. She even suggested that “*Ziska meme manager fine faire bane attendant harcele moi sexually*”. She then referred to one officer who allegedly pushed the door when she was leaving the office and injured her on her hand. She stated that she did not want to go to the Police however. She then averred that one Mrs Persand, who had allegedly caused her life to become a misery at work and who was working in the same office as her, would take her photo, spit on her, swear at her and insult her. She stated that when she complained about same to HR, they did not believe her. She stated “*mo capave dire ou inn faire moi couma enn esclave*”. She stated that the said Mrs Persand did not order any filing cabinet for her, did not allow her access to the internet, and that she had to use her own cellular phone. She also stated the following whilst referring to the said Mrs Persand: “*deux fois linn mette la main dans mo sac, linn coquin mo l’argent, ler mo debouter mo guette*”

li, li dire moi mo même sa, ki to capave faire ? Li danser...” She even stated that when she complained about her money which had disappeared, the Manager would have caused a police corporal to come at the office and would have threatened to cause her to be handcuffed for false denunciation. She stated that she continued to work there and as from July 2024 she was sent to work at Khoyratty Community Centre. She suggested that she went to work at Khoyratty Community Centre because otherwise she would have had to sit with the said Mrs Persand in the same office. After three months at Khoyratty Community Centre, she had to appear before a disciplinary committee. She stated that she explained that she would not be able to do team work and that everything had changed and that she did not know how to do field work. She stated that she refused to do the work since she could not do field work. She stated that after the disciplinary committee she received a termination letter. She prayed to be reinstated in her work and stated that it was because “li enn best place, mo ena mo compétence et mo satisfait avec travail là. Couma mo dire ou, d’après mo compétence monn aprann beaucoup kitsoz”. (underlining is ours)

In cross-examination, the Disputant stated that she obtained her letter of appointment as Family Support Officer in 2000 and was confirmed in that post in 2001. She agreed that she is stating that she was appreciated by everyone. She agreed that she is averring that there was no complaint made against her during all that time except that as from 2022 complaints were made against her. She agreed that a letter was addressed to the Ministry in relation to an alleged incident involving an attorney-at-law and her but she did not agree that she had an “altercation” with the latter. She did not agree that already as from 2003 there were complaints against her in relation to her behaviour at work. She agreed that there was a complaint made against her leading to her suspension in 2020, but she averred that the complaint was “baseless” since it emanated from her colleagues with whom she was in good terms. She agreed that she was both verbally and in her letter of reinstatement informed that she would be on probation and that her work and attitude would be monitored. She averred that she was being harassed but she stated that she did not make any complaint in writing to management but that she only complained about same verbally. She agreed that only in October 2023 she made a complaint in writing to the Ministry of Labour. She agreed that she was called in meetings to give her explanations and version in relation to complaints made against her. She however suggested that the complaints were in fact false allegations. She stated that in October 2023, the Manager and HR came in her office and reproached her that she was swearing on the telephone. She did not agree that she was swearing and stated that on the other hand, she was speaking with her family on the phone and was crying since there was a tragedy in the family.

Disputant stated that as from February 2023, the Manager held various meetings and levelled all types of allegations against her. She suggested that she did not make any written complaints in relation to same and only did so verbally. She suggested that she first gave a letter to HR in October/November 2023 and then wrote to the Ministry of Labour. She did not agree that she was asked to change her seat seven times

because of complaints which Management had received from her colleagues against her. She viewed this as a harassment. She then stated that apart from Mrs Persand, she had had no dispute with anybody else. She stated “*Mo ti envi faire ressortir ki jamais monn gagne dispute ek personne apart li. Zot tout ti cool avec moi. Zotte zot capav dire les autres dimounes inn mette allegations mais mo pas inn gagne dispute ek personne. Au contraire, zotte bien apprécier mo travail et apprécier moi. Nou en bon relations.*” (underlining is ours) She suggested that all her other colleagues were “cool” with her. On further cross-examination, the Disputant however replied that she did not have problems with her other colleagues but that, on the other hand, “*zot [meaning her colleagues] ki rode problem avec moi*”.

Disputant agreed that she had stated that on 8 March 2024 it was Women's Day and that she was harassed in front of members of the public. She agreed that the Women's Day was in fact celebrated on 25 February 2024. She was confronted with paragraph 9 in her Statement of Case, but still she denied categorically that she had mentioned that the incident occurred on 8 March 2024. She was then cross examined in relation to her own letter dated 14 May 2024 (annexed to her Statement of Case as Annex E) where she referred to an alleged incident which would have occurred on Women's Day on 8 March. She referred to having been the victim of harassment and insults in front of members of the public. She did not agree that her averments were not true but added that it was only the date mentioned therein which was not in order. She averred that she wrote to the Ministry of Labour after the incident to claim her right. She agreed that in July 2024, she received a severe reprimand, but she suggested that she had given her explanations verbally to the Programme Assistant and also in writing. She did not have a copy of the said letter with her however, and did not agree that she did not give any explanations despite being given the opportunity to provide same. She averred that she was transferred to Khoyratty Community Centre because she did not want to sit near to Mrs Persand who was harassing her a lot. She stated that everything was “*correct*” at Khoyratty Community Centre but later after further cross-examination she stated that even there, there was an incident. She stated that she wrote to the Program Assistant to inform the latter that her new colleagues were attempting to hinder her rights. She agreed that on 16 October 2024 she appeared before an independent disciplinary committee accompanied by two labour officers. She confirmed that she received a letter informing her of the charges levelled against her, was given the opportunity to be assisted by a labour officer or counsel if she wanted to, given the opportunity to provide her version in relation to the charges and that the labour officers were given the opportunity to put questions and to conduct her case before the disciplinary committee.

When cross-examined in relation to the charges levelled against her, Disputant conceded that she refused to follow the instruction she had received from her supervisor to report for duty on 25 September 2024 at the Head Office. She stated that she had her reason for refusing to follow the instruction. When asked if she was aware that refusing to follow the instructions of a supervisor may have consequences,

she bluntly stated “*Non, mo pas koner*”. As regards the second charge, the Disputant stated that she knew that she had a monthly report to submit. She however stated that she did not submit to her supervisor, Mrs Dhunnoo, any report in relation to her work for the month of September 2024. As regards the third charge, the Disputant agreed that the attendance was registered in an official document. She stated that she could not remember if she had left office at 14.45 hrs on the day put to her nor whether she had signed her departure time as being 16.00 hrs on that same day. However, she agreed that inserting in the attendance records a time different from the time one actually leaves office is a serious matter. She suggested that this is why she has never done so. She stated that the disciplinary committee found the charges against her proved despite the justifications she provided. She then averred that the charges levelled against her were not serious charges. She agreed that she received the letter of termination from the Respondent, but she stated that she does not agree with the decision taken by the Respondent.

The Manager of the Respondent then deponed on behalf of Respondent and she solemnly affirmed to the correctness of the Statement of Defence of the Respondent. She stated that the Disputant started as Family Support Officer in the year 2000 and was confirmed in her appointment in August 2001. She stated that the Disputant was suspended from her work in November 2020 and the board had decided at that time that an independent disciplinary committee should be set up to investigate the matter. The Manager was not working at the Respondent at that time, and she stated that she understands that there were two letters received from two colleagues of the Disputant where there were some allegations made against the Disputant. The Disputant was reinstated in November 2022, but the board decided that the performance, conduct and attendance of Disputant would be monitored for a period of six months. She stated that the Disputant was informed of same in her letter of reinstatement and that the Human Resource Officer and she also reminded the Disputant of same. To a question from Counsel for Respondent, she stated that in a meeting held on 4 October 2023 with the Disputant, the latter was informed that the Respondent had received several complaints but of a similar nature from different officers of the Respondent. The complaints were to the effect that Disputant would use vulgar words, that she had a very difficult attitude and used filthy words towards them. She stated that there was even a complaint from a person who was responsible for the building where they were working and who complained that Disputant had uttered quite vulgar words towards him. Disputant was informed at the meeting of the several complaints, and she was asked to change her attitude towards her colleagues and to behave properly in the office. She stated that Disputant denied everything but her attention was drawn to the fact that many of her colleagues were making complaints of very similar nature against her, and that she had to stop with her attitude.

The Manager stated that the Disputant made a complaint to the Ministry of Labour by way of a letter. She stated that the Disputant mentioned several names in that letter including herself and made many allegations including that photos of her were being

taken. She stated that one Mrs Reedoye from the relevant Ministry came to their office and met with the persons whose names had been mentioned by the Disputant. She stated that one year has since elapsed and the Respondent is not in presence of anything, up to now, to suggest that what Disputant had stated was true or that there was need for any immediate action at the Respondent. She stated that she was not aware of the letter dated 13 December 2023 emanating from the Disputant and that she was on leave during that period. She averred that when she resumed in January 2024, explanations were sought from Mrs Persand, and the latter provided her explanations and even reported the matter to the police. She stated that in relation to complaints received from members of the staff against the Disputant, the latter was (also) requested to provide her explanations, and everything was reported to the board of the Respondent.

When questioned in relation to the alleged incident which occurred on Women's Day, the latter stated that Women's Day was celebrated on 25 February 2024. She stated that there was no incident on the day of the celebration of Women's Day. She stated that she was there and did not witness any incident. She stated that there were more than 8000 persons and that there were VIPs present on that day. She suggested that an incident as alleged by the Disputant could not have occurred. She stated that the explanations of the Disputant were sought in relation to the complaints received against her and then were sent to the HR Committee which referred same to the board. She averred that in March 2024, the Disputant was given a verbal warning for attending office late without her supervisor being made aware. She stated that the Disputant continued to come late at the office. A letter was sent to the Disputant with details of the relevant dates and times and the latter furnished her explanations. The board was not satisfied with her explanations and the Disputant was given time to show cause why a severe reprimand should not be issued to her. The latter did not reply to same, and a severe reprimand was issued to the latter in July 2024. She stated that the board took cognizance of a report which she had drawn in relation to the Disputant, and the board decided that the latter should be immediately transferred to Khoyratty Community Centre.

The Manager stated that at Khoyratty Community Centre, one Mrs Dhunnoo, Programme Assistant, was the immediate supervisor of the Disputant. She averred that even there, there were incidents reported against the Disputant but that these were reported only verbally. The Disputant was given time to adapt since field duty was new for the latter after such a long time. She stated that after the Respondent had received a copy of the Statement of Case in the present matter, they ascertained from Mrs Dhunnoo if she had received the letter dated 22 August 2023 from the Disputant but the latter replied in the negative. She stated that the Disputant was informed in writing of the charges levelled against her. The Manager deponed in relation to the charges and suggested that though the Disputant was requested to report for duty at the Head Office on 25 September, the latter refused. As regards the second charge levelled against the Disputant, she stated that all Family Support

Officers working on field must submit a monthly report in relation to the activities they have carried out and places they have visited. This is a long standing practice and is used for the purposes of paying travelling allowances to the officers. She stated that the immediate supervisor of the Disputant had asked the Disputant, who had joined field duties since July 2024, for her monthly report on several occasions but the Disputant systematically refused to submit same. As regards the third charge levelled against the Disputant, she stated that Mrs Dhunnoo was trying in vain to reach the Disputant to inform her that she had to report for duty on 25 September 2024. Mrs Dhunnoo phoned another Family Support Officer in the centre who confirmed that the Disputant was not in her post. The attendance book was verified at around 14.45 hours and the departure time for the Disputant was already inserted as being 16.00 hours for that very same day. The attendance book was secured immediately and was brought to the Head Office on the next day.

The Manager stated that the Disputant appeared before the disciplinary committee and was accompanied by two labour inspectors. She stated that the board after taking cognizance of the report of the chairperson of the disciplinary committee decided to terminate the contract of employment of the Disputant with immediate effect. She stated that it would not be a good idea if the Disputant is reinstated in his post.

In cross-examination, the Manager stated that when she joined the Respondent, the Disputant had already been suspended. She stated that the board wanted a disciplinary committee to be set up and the parent Ministry was contacted. However, there was the Covid 19 pandemic and when an independent body was set up to consider the matter, it found that there was a lacuna in relation to the procedures which had to be followed for a disciplinary committee to be able to enquire into the matter, and that the Disputant had to be reinstated. She stated that she met with the Disputant when the latter was reinstated. She stated that the Disputant did not have a clean record and that there had been several complaints against the latter from members of different women's associations already. However, she stated that the Disputant reassured her that she would work properly to avoid complaints. She stated that the Disputant was told that her performance would be monitored. She added that first there were complaints from some colleagues of the Disputant to the effect that she was disturbing them by using vulgar and filthy words. She suggested that the complaints from the various colleagues were more or less the same. The explanations of the disputant were sought, and the latter did provide her explanations. She stated that the complaints were generally from officers in the office where the Disputant was working. She conceded that the Disputant was requested to change her seat seven times, and she replied positively when she was asked if the transfers were, so to say, for the own benefit of the Disputant. She did not agree that this was a form of punishment. She confirmed that the Disputant was performing the tasks given to her.

The Manager agreed that there was an element of stress during the event organised for Women's Day, but she stated that she did not see persons pushing or harassing the Disputant. She stated that she saw the Disputant during that event but that the

latter was there as a member of the public. She stated that there were no complaints made against the Disputant in relation to what happened during this event. She then stressed that the Disputant made a complaint only two months after the event. She stated that the situation in the office was just like a fight between the Disputant and the staff, and that she believes that the Disputant had personal issues with her colleagues. She did not agree that it was possible that it was the way that Disputant's colleagues behaved towards the Disputant which triggered the incidents. She suggested that management would have noticed a similar conduct vis a vis some other colleagues, and not only the Disputant, if the problem was, in fact, with a colleague or colleagues of the Disputant. She stated that the decision to convene the Disputant before a disciplinary committee and to transfer her with immediate effect to Khoyratty Community Centre was a decision of the board following a report she had drawn. She stated that there was a system of performance appraisal at the Respondent and that she had seen the performance appraisals carried out for the Disputant. She stated that the first appraisal was not good and the Disputant was informed of same. The Disputant gave an assurance that she would improve. She stated that the second performance appraisal of the Disputant was better than the first one.

The Tribunal has examined all the evidence on record including the submissions of both counsel. The Disputant has the burden to show that she should be reinstated in her former employment. In the present case, there is unchallenged evidence that the contract of employment of the Disputant was terminated following a decision of the board of the Respondent following the determination of the chairperson of the disciplinary committee held on 16 October 2024 in relation to the charges levelled against the Disputant. The Disputant was communicated the decision of the Respondent by way of a letter of termination of employment dated 22 October 2024 (copy annexed as Annex I to the Statement of Case of the 'Complainant'- Disputant). The Disputant was duly convened to appear before the disciplinary committee on 16 October 2024 by way of a letter dated 2 October 2024 (Annex H to the Statement of Case of the Disputant). The three charges levelled against the Disputant were clearly laid down in the said letter with details or particulars of the charges. The Tribunal notes that the said letter dated 2 October 2024 refers to "the charge letter dated 27th September 2024 remitted to you [meaning the Disputant] on the same day" but both the Disputant and the Respondent have not made any reference or averments in relation to that charge letter dated 27 September 2024. Instead, reference was made to a letter dated 30 July 2024 (copy annexed as Annex F to the Statement of Case of the Disputant) on behalf of the Disputant and to a board decision taken on 26 July 2024 that the Disputant be convened to a disciplinary committee. The charges mentioned in the said letter dated 30 July 2024 are different from the charges which appear in the letter dated 2 October 2024 and curiously there is no explanation on record, be it from the Disputant or the Respondent, as to what had happened to the charges as per the initial letter of 30 July 2024. However, what matters in the present case is that the charges as they appear in the letter dated 2 October 2024 (Annex H to the Statement of Case of the Disputant) refer to alleged incidents which occurred

after 30 July 2024 and thus relate to new charges levelled against the Disputant. There is no single averment before the Tribunal that there was any procedural defect or shortcomings in relation to the 'new' charges levelled against the Disputant up till the completion of the disciplinary hearing and communication of the termination of her employment to the Disputant by way of letter dated 22 October 2024. *Ex facie* the evidence adduced before the Tribunal, there is nothing to suggest that there was any procedural defect in relation to the termination of the employment of the Disputant. There is evidence that the Disputant received a letter informing her of the charges which were levelled against her, was given the opportunity to be assisted by a labour officer or counsel if she wanted to, given the opportunity to provide her version in relation to the charges and that the labour officers who assisted the Disputant were given the opportunity to put questions and to conduct her case before the disciplinary committee. There is also no evidence of any breach of mandatory statutory time limits.

The Tribunal will now deal specifically with the charges which were levelled against the Disputant. These charges no doubt relate, at least, to "*fautes sérieuses*", whether taken individually or collectively. The three charges read as follows:

Charge 1 : Insubordination – Refusal to Comply with Supervisor’s instruction

Details : On 23 September 2024, you, Mrs Fawzia Salaroo, was instructed by your Programme Assistant, Mrs N. Dhunnoo, to report to the National Women’s Council (NWC) head office on 25 September 2024. You refused to comply with this lawful instruction, constituting insubordination.

Charge 2 : Refusal to Submit Monthly Work Report

Details : As per National Women’s Council established practices, all officers, including yourself, are required to submit monthly work activity reports. Despite being repeatedly instructed to submit your report for September 2024, you refused, demonstrating a clear breach of duty. This information was escalated to management on 24 September 2024.

Charge 3 : Falsification of Attendance Records

Details : On 19 September 2024, you left your workplace at 14.45 hrs without your immediate supervisor’s permission and inserted 16.00 hrs as your departure time in the attendance register at Khoyratty Community Centre, which is an act of falsification of official records.

After carefully examining the evidence adduced before it, including the complaints which the Disputant had also made against various officers of the Respondent, the Tribunal found the Disputant to be a very cunning witness with much experience gathered in her work at the Respondent. She wanted the Tribunal to believe that she had problems or issues with only very few specific officers at the Respondent and that her life allegedly became miserable because of these officers but she had to concede

ultimately that there were many more issues involving her and many more officers and even people who were not employees of the Respondent. In her quest to show that she likes her job and wanted essentially to be reinstated in her work, she averred that her other colleagues (apart from Mrs Persand) were “cool” with her. Later, when further confronted with the above averment, she stated that she was saying so since she was not having problems with her colleagues but that nevertheless the latter were the ones having problems with her. She wanted to depict the Manager as being the main source of her problems at the Respondent but was quite economical in her evidence in relation to the causes of her suspension at work for a long period of time at the Respondent even before the said Manager had joined the Respondent. She was not very elaborate when questioned in relation to the complaints which led to her suspension back in the year 2020. She stated that “*Oui zot pas ti dire moi ki plainte, nek zot suspan moi. Après quand zot fine dire moi mo trouve li baseless parski mo ban collègue sa. Nous en bon terme parski mo pas croire ki aucun institution ban camarade pas gagne ene ti bizbiz mais nous relation li toujours la.*” (underlining is ours) However, the same Disputant in her letter dated 10 October 2023 (Annex A to the Statement of Case of the Disputant) stated the following:

“The manager Mrs Naeck, also forced me to socialize and talk to those staffs who had put false allegations against and that I should indulge into conversations with them. But I tried to explain that I cannot socialize with them as I fear them because they were reasons for my two years suspension.” (underlining is ours)

The Disputant did not challenge the evidence adduced on behalf of Respondent that no action could finally be taken against her in relation to the complaints made against her in 2020, and she was reinstated in 2022 because of procedural defect/s such that disciplinary proceedings could not be proceeded with against her. After an inordinate period of suspension and despite her long period of service for years at the Respondent, the Disputant accepted to be reinstated and placed on probation at the Respondent for a period of six months. She even stated that she knew that she had to behave well to avoid risking further issues at work.

Disputant initially denied that she had referred to or mentioned in her Statement of Case the 8th of March 2024 as being the date when she was allegedly subjected to harassment at the event organised on the occasion of Women’s Day. After being subjected to further cross-examination on this issue, the Disputant became most evasive and answered in a vague manner trying to hint that this may have been wrongly recorded by someone else, notably an officer of the then Ministry of Labour, Human Resource Development and Training. However, the Disputant could not answer when she was confronted with a letter dated 14 May 2024 signed by her and addressed to “The Honourable Minister of Labour, Industrial Relations, Employment and Training Mr Callichurn Soodesh Satkam” where it was clearly averred once again that the said alleged incident occurred “During the occasion of Women’s Day, on 8th of March”.

Though the Disputant suggested that she had made complaints and even reported alleged incidents to the then Ministry of Labour, Human Resource Development and Training yet no witnesses were called on behalf of the Disputant in relation to such complaints. The Disputant instead tried by all means to justify answers she had given previously to questions put to her before the Tribunal. She stated the following: “*Ti ena enn l’autre allegations contre Madame Persand. Mo ti envi faire ressortir ki jamais monn gagne dispute ek personne apart li. Zot tout ti cool avec moi.*” Upon further cross-examination, when questioned about her averment in relation to this ‘cool’ relation with other colleagues apart from Mrs Persand, she stated that she was referring only to Family Support Officers. She even went on to say that “attendants” were not her colleagues and that the latter were doing their duties. The Disputant has made all sorts of allegations, including some very serious ones, against so many persons, and even referred in one of her letters (Annex E to the Statement of Case of the Disputant) that at a meeting with the Manager and HR, a police officer would have shouted at her and threatened her with a stick. She also wrote that daily, she [meaning Mrs Persand] chases her and runs after her when she goes to the toilet. (underlining is ours) The Tribunal, though bearing in mind the long period of service of the Disputant at the Respondent, has not been impressed at all with her testimony. The latter has cut a poor figure in the witness box and has not impressed the Tribunal as being a witness of truth. The Tribunal can only deal with matters which have been specifically pleaded between the parties, and will, for that reason, abstain from referring to the return of the Court Usher in relation to the summons issued on the Disputant in the present matter.

The Disputant accepted readily in relation to the first charge levelled against her that she did not comply with the instruction which her supervisor had given her to report for duty at the Head Office. She averred that she feared that Mrs Persand, who would be at the office, would harass her. The Disputant is not challenging that there was a lawful instruction from her superior officer for her to report for duty at the Head Office. The Tribunal has not been impressed with the reason given by the Disputant for refusing to follow the instruction given to her by her superior officer, the more so that there is no evidence that she formally informed the Respondent of that reason before refusing to report for duty at the Head Office of the Respondent on the material day. She also very disconcertingly stated that she did not submit the monthly work report, at least for September 2024. She hinted that this was because she could not do field work and did not know how to do field work. The same Disputant, in reply to a question from her Counsel as to why she only wants to return to work at the Respondent, stated “*Parski li enn best place, mo ena mo compétence et mo satisfait avec travail là. Couma mo dire ou, d’après mo compétence monn aprann beaucoup kitsoz.*” She also stated “*..a travers mo carriere de sa 22 ans la mo fine aide boucou dimounes, bane madame lor terrain.*”

As regards the third charge, there is simply no explanation or denial of the charge by the Disputant. She simply stated that she could not remember if she indeed left the

office at 14 45 hours on the material day or if she had signed on the attendance book that her departure time from work on that day was four o'clock. She even stated "*mo fine dire ou ki mo pas rappel sipa mo fine falsifier*". Then, she alleged that her colleagues "*tous les jours zotte falsifier attendance sheet*". She added «*Juste pou moi ki falsifier, les autres dimounes, non.*» She was most hesitant to accept that the charge, if true, was a serious offence and could constitute falsification of attendance records.

The Tribunal has no hesitation in finding that all three charges had indeed been found to be proved against the Disputant by the chairperson of the disciplinary committee. The Tribunal finds that the charges taken collectively in the particular circumstances of this case did amount to gross misconduct. The Tribunal finds nothing wrong that the Respondent found that it could not, in good faith, continue with the employment of the Disputant. The Disputant's attitude of insubordination in the present circumstances constituted a threat to the good running of the Respondent. An employee may comply under protest but he cannot refuse to follow a lawful and reasonable order from his superior without a valid and genuine reason. The Tribunal is satisfied that this is a case where there were not only valid reasons for the termination of employment of the Disputant but also where the Respondent could not, in good faith, take any other course of action than to terminate the employment of the Disputant. For the reasons given above, and without having to consider any other complaints against the Disputant or sanctions previously taken against the Disputant, the Tribunal finds that the termination of the employment of the Disputant was justified and that the Disputant has failed to prove on a balance of probabilities that she should be reinstated in her employment.

For all the reasons given above, the present case is set aside.

(SD) Indiren Sivaramen

Acting President

(SD) Greetanand Beelattoo

Member

(SD) Chetanand K. Bundhoo

Member

(SD) Divya Rani Deonanan

Member

7 February 2025