

*Calleea R. v Mauritius Freeport Development Company Ltd*

**2022 IND 45**

**Cause Number 648/18**

**IN THE INDUSTRIAL COURT OF MAURITIUS  
(Civil Side)**

**In the matter of:-**

**Mr. Rajeev Calleea**

**Plaintiff**

**v.**

**Mauritius Freeport Development Company Ltd**

**Defendant**

**Judgment**

In this plaint, the undisputed issues and evidence are that –

*Plaintiff was in the continuous employment of Defendant as Tally Clerk since 6.8.2012.*

*He was working on a 6-day week basis and was last remunerated at monthly intervals at the basic rate of Rs 14,373 per month and his average monthly remuneration was Rs 21,636.81.*

*By way of a letter dated 4.12.2017, he was suspended from work with immediate effect and was convened to appear before a Disciplinary Committee which was subsequently held on 26.2.18 to answer the charges laid down therein:*

"You have failed to perform the scheduled work/overtime on the 30 November 2017 and having left your place of work without due authorisation and good and sufficient cause at around 15hr00."

*He denied the charges at the Disciplinary Committee.*

Plaintiff has averred in his plaint that by way of a letter dated 1.3.18, his employment was terminated without notice and without any justification.

Plaintiff is, therefore, claiming from Defendant the sum of Rs 378,644.18 representing one month's wages as indemnity in lieu of notice and severance allowance for 66 months' continuous employment.

Defendant, for its part, in its plea has averred that Plaintiff's employment was terminated by way of a letter dated 1.3.18 and which was fully justified for the reasons and circumstances given below after the Disciplinary Committee having found the charges proved against Plaintiff, Defendant had no alternative, in good faith, other than to terminate his employment summarily with it for gross misconduct:

- (a) Defendant is an economic operator in the logistics sector and assists a wide panoply of businesses to achieve their economic endeavours.
- (b) Defendant has about 300 clients which entrust it with the storage and handling of their stock of goods. The clients are thus totally dependent on Defendant.
- (c) It is of prime importance that the said clients' goods be made available to them on a timely basis, failing which Defendant would be in breach of its obligations towards its clients and would lose all its business.
- (d) Defendant has, therefore, incorporated in its employees' contracts of employment clauses to fit the exigencies imposed by Defendant's clients.
- (e) Consequently, Plaintiff's contract of employment, just as the contract of employment of employees in Category D, *inter alia*, provides that the employee's working hours "est fixé à 45 et votre horaire de travail dépendra de l'organisation du service (permanence d'ouverture 7 sur 7, 24 heures sur 24)."

- (f) The said contract of employment also provides that “*les conditions d'exercice soit régies par le règlement intérieur de société M.F.D.*” and the said “*Règlement Intérieur de MFD*” provides, *inter alia*, that “*le nombre d'heures normales qu'un employé des catégories C et D doit fournir est fixé à 45 par semaine pour le personnel des services des opérations et ....*” and that “*pour les catégories C et D, les horaires peuvent être modifiés ponctuellement selon les besoins de l'entreprise, en particulier pour l'organisation des opérations en deux ou trois équipes*”.
- (g) The said “*Règlement Intérieur de MFD*” further provides, *inter alia*, that “*L'employé est requis de faire des heures supplémentaires qui seraient éventuellement nécessaires et demandées par MFD.*”
- (h) Plaintiff's contract of employment provided for a minimum of 195 hours (4 and 1/3 weeks x 45 hours per week) of work per month and during peak period, Plaintiff even reached up to 325.90 hours of work.
- (i) The normal working hours on week days for Plaintiff were from 7 a.m to 6 p.m. which included 3 hours of structured overtime payment.
- (j) Any overtime work required for the day beyond 6 p.m. is normally communicated to Defendant by its clients at around 1.00 p.m., following which Defendant then informs its employees whether arrangements would have to be made for work beyond 6 p.m. or not.
- (k) All employees in Plaintiff's category are fully aware that they have to work at least to until 6 p.m. on a daily basis from Monday to Friday and up to noon on Saturday.
- (l) Any employee who wishes to leave work earlier and who cannot carry out the structured overtime, is required to timely notify his Manager/ Assistant Manager/Senior Supervisor/Supervisor in the morning when he reports to work or at the time he assumes duty or at such time whenever an unforeseen need arises so that necessary manpower planning is made.
- (m) On 30 November 2017, on or around 12.58 p.m., Defendant had been informed that one of its clients, being also one of its biggest clients and a leading distributor of Fast Moving Consumer Goods (FMCG), would be working up to 9 p.m. on that day and consequently, Defendant's employees

would have to work after 6 p.m. so as to ensure that the said client's products would be on the supermarkets' shelves instead of the client's competitor's products.

- (n) Defendant immediately informed all the relevant employees, including Plaintiff, that they would be required to work beyond 6 p.m. on that day.
- (o) No employee, including Plaintiff, informed Defendant that he would not be able to work beyond 6 p.m.
- (p) However, at around 3 p.m. on 30 November 2017, 34 employees who were expected to work overtime (in department Cold and Dry), left their site of work at around 3 p.m. without due authorisation and good and sufficient cause.
- (q) The said 34 employees, including Plaintiff, undertook a concerted stoppage of work which was motivated by the following:
  - (i) On the morning of the 30 November 2017, the Management of Defendant had a meeting with the Port Louis Maritime Employees Association (PLMEA), which is a union to which the said 33 employees, including Plaintiff, out of the said 34, belonged.
  - (ii) The request of the PLMEA for a special bonus was discussed in the said meeting and the said union was informed that Defendant was unable to accede to that particular demand.
  - (iii) Following the said meeting, on the same day, PLMEA, without Defendant's consent and authorisation, held a meeting with Defendant's employees in the canteen, being on Defendant's premises.
  - (iv) After the said meeting in the canteen, the employees, including Plaintiff, abruptly stopped working at 3 p.m. and left their place of work.
- (r) This concerted action was meant to put a halt to Defendant's activities on that day and to specifically not allow Defendant to honour its contractual commitments towards its client.

- (s) This concerted action was an attempt to pressurise Defendant to adhere to the request of PLMEA for a special bonus.
- (t) During previous negotiations, similar sudden stoppages of work had been encountered by Defendant on 24,25 & 27 March 2017, 27,28 & 29 April 2017 and 2,3,4,5,6 & 8 May 2017. Plaintiff had on seven occasions, namely on 27 March 2017, 27 & 28 April 2017, 3,4,5 & 8 May 2017, participated in such stoppage of work, on two of the other dates on which there had been stoppage of work, namely on 24 March 2017 and 2 May 2017, Plaintiff had been on local leaves.
- (u) No disciplinary action had been taken by Defendant for such actions carried out by employees in March, April and May 2017 in order to maintain a spirit of good industrial relations during the negotiation process.
- (v) However, Defendant, in November 2017, could no longer allow the irresponsible acts of some employees, including Plaintiff to jeopardise Defendant's reputation and the living of its employees, the more so as the said biggest client's trust in Defendant was put at stake by the stoppage of work which could have resulted in the non-renewal of its contract which could have in turn jeopardised the employment of Defendant's employees.

Thus, Defendant has denied being indebted to Plaintiff in any sum whatsoever and has averred that the termination of Plaintiff's employment was fully justified and has moved that the plaint be dismissed with costs.

Plaintiff gave evidence in Court. He produced his suspension letter with immediate effect dated 4.12.17 from Defendant containing two charges leveled against him as per Doc. P1 in relation to which he was convened to appear before a Disciplinary Committee which was subsequently held on 26.2.18 as per Doc. P2 following two postponements to answer the said charges namely:

"You have failed to perform the scheduled work/overtime on the 30 November 2017 and having left your place of work without due authorisation and good and sufficient cause at around 15hr00."

At the Disciplinary Committee, he denied the charges as they did not apply to him.

He admitted that on 30.11.2017 morning, Defendant had a meeting with the Port Louis Maritime Employees Association (PLMEA) which was a union and of which he was a member and which he attended as well as 33 workers. It was in relation to a request for a special bonus which was discussed and the union was informed on the same day by Defendant that such request was not acceded to. When confronted with the fact that following that negative response from Defendant, Plaintiff including the other 33 workers had a meeting in the canteen within the premises of Defendant following which those workers including him left work at 3.00 p.m., he said although he formed part of that union, he worked normally as he should have on that day and his job ended at 3.00 p.m. when he left. He accepted that as per the dates given in the plea of Defendant in relation to other concerted stoppage of work, he did not work on some days as according to him all the workers at the Defendant did not work and as for the others either he stayed until late or he was on leave.

Normally he started working as from 7.00 a.m. until 3.00 p.m. which was normal working weekday hours and as from 3.00 p.m. it became overtime. If there was any need for the workers including him to do overtime, then around 1.00 -1.30 p.m., they were asked by the Warehouse Officer, Mr. Salman Imrith or his secretary Mrs. Rakhee or either Mr. Philibert Linley or Ravin meaning his two colleagues whether they would do overtime as from 3.00 p.m. It was Mr. Salman Imrith who came personally to ask them whether they would stay after 3.00 p.m. or after 6.00 p.m. or not. Normally they did overtime as from 3.00 p.m. to 6.00 p.m., but there was another shift as from 3.00 p.m. to 9.00 p.m. For the purposes of overtime, those superior officers came daily in the morning or at about 1.00-1.30 p.m. or even 2.00 p.m. at times to ask them whether they could perform overtime or not.

On 30 November 2017, they were not given any instruction about overtime by Defendant which meant that there was no overtime on that day. When confronted with the fact that on the said day at about 3.00 p.m., the 34 employees including him in the "Cold and Dry" section had left without authorisation and valid reasons, he said that he knew there was no overtime and he could not be made to work after working hours. He did his work and left as his work ended at 3.00 p.m. as he was not asked to stay until 6.00 p.m. He did all the handing over by remitting the key from his section to Mr. S. Imrith and after informing him at about 3.10 p.m. that he was leaving and he said that it was okay.

Then, Plaintiff contradicted himself by saying that since he joined employment with Defendant, the normal working hours during weekdays were from 7.00 a.m. to

6.00 p.m. and that working from 7.00 a.m. to 3.00 p.m. was the exception. Should he need to leave at 3.00 p.m. on a given day, then he had to inform his superior usually Mr. Imrith either on the eve or in the morning when he was at work so that a remark was made next to his name viz. 15.00 hours on a whiteboard kept for that purpose just like his colleague Mahen, for instance, so that arrangements could be made for the necessary manpower to work in that section. Then, he said that he did inform Mr. Imrith during the day of 30.11.2017 that he would leave at 3.00 p.m. although there was no remark near his name on that board. When Mr. Imrith would have informed the workers including him at about 1.15 p.m. on that day to stay until 9.00 p.m., he would have been aware that he would have left at 3.00 p.m. He admitted that in his section which was a FMCG department on 30.11.2017 there was a request from (PNL) around 1.00 p.m., that they had to work until 9.00 p.m. which was communicated on the floor by their superior officer. Then, he contradicted himself by saying that on that day, neither Mr. Imrith nor his officers told the workers including him that they had to work until 9.00 p.m. He admitted that there was an email emanating from Pharmacy Nouvelle (PNL) which was addressed to Mr. Imrith and Mrs. Rakhee that they had to work till 9.00 p.m. The practice was then, Mr. Imrith would have informed the other workers and him that they had to stay until 9.00 p.m. but he did not do so. He went on to say that they were not meant to stay until 6.00 p.m. as they were not asked to do so. He went as far as saying that he did not stay after 3.00 p.m. on that day as he was not informed during the day that he had to stay after 3.00 p.m. and furthermore, he had to leave early.

Following the Disciplinary Committee, he received a letter dated 1 March 2018 as per Doc. P3 wherein he was informed that the two charges leveled against him as per his suspension letter of 4.12.17 were proved and Defendant could not in good faith take any other course of action than to terminate his contract of employment on the ground of gross misconduct with immediate effect which he said he did not agree as he including the other employees worked as they used to and after 3.00 p.m. they used to leave. There was *règlement intérieur* to do overtime, but he did not do so by himself but needed to be told. He did not agree that he had to work from 7.00 a.m. to 6.00 p.m. daily which included 3 hours structured overtime and that only if he had to work after 6.00 p.m. to 9.00 p.m. that he would have been asked by Management whether he would stay after 6.00 p.m.

He did not accept the charges leveled against him and was claiming the sum of Rs 378,644.18 as detailed in his plaint from Defendant for unjustified dismissal. He did not produce a copy of his contract of employment either.

Mr. Trilok Pureeag in his capacity as Chief Human Resource Officer gave evidence in Court. He confirmed that as per *règlement intérieur* viz. Doc. P5 of the contract of employment of Plaintiff, he worked 8 hours per day and 5 hours on Saturdays. As regards Plaintiff, on a typical working day, he had to work as from 7.00 a.m. till 6.00 p.m. with 3 hours structured overtime which was based on the specificity of the department which was a FMCG department. It operated as such namely Supermarkets sell products throughout the day around Mauritius depending on the stocks that were left on their shelves. They would around 1.00 p.m. assess what requirements they would have to reshave their stock of products and they would send an email to the company based on which the work would automatically go everyday up to 6.00 p.m. and in peak period exceeded even 10.00 p.m.

On 30.11.2017, there was a meeting held by the union in the canteen of Defendant without the express permission of the latter. There were stoppages of work of a similar nature in the past, but Defendant did not take any action as the union was represented by Mr. Ashok Subron and that they had to conclude on a negotiation. All specificities were clearly spelt out in the contract of employment, in the *règlement intérieur*, so that when an employee took employment with Defendant, he was fully aware as to whether he wished to join such company or not because the specificities and realities of the market were such. That was done at the point of the signature of the contract that the employee had to work from 7.00 a.m. to 6.00 p.m.

In cross-examination, he stated that for an employee to work daily from 7.00 a.m. to 6.00 p.m. which included 3 hours of structured overtime was perfectly in compliance with the law because of the specific requirements of the business where workers were required to perform extra hours. Should the employee wish to leave at 3.00 p.m. he had to inform the Management. If someone left at 3.00 p.m. without informing the Management before, that was an act of disobedience as a planning needed to be done for the proper manning of the number of workers present at all times. It was not the case that every day, the Management had to inform the workers whether they had to stay until 6.00 p.m. or not. The burden was on the employee towards Management. Plaintiff had consented to such hours of work. All the employees including Plaintiff left at the same time meaning about 3.00 p.m. on

30.11.2017. The termination of employment of Plaintiff was done according to law and he had no right to disobey instructions from his organization.

Mr. Darddenne Peta Permall gave evidence in Court in his capacity as Operations Manager in the sense that he was in charge of all dry warehouses of Defendant including that of S10 which was a fast moving consumer goods department (FMCG) warehouse consisting of about 50 workers including Plaintiff. For that specific department, the normal working hours for Plaintiff was as from 7.00 a.m. to 6.00 p.m. so that structured overtime was for the purpose of payment only. Should an employee not be able to comply with his normal working hours on a particular day, then on the eve or in the morning, he had to inform his superior in the warehouse that he would not be able to stay. That superior officer would then inform him and there was a board on which were written the names of those who would leave early so that arrangements could be made for the available manpower for the service of Defendant to be continued towards its clients. He took a photograph of that white board as per Doc. D1 in which there was a list of names including that of Plaintiff. There was no remark where his name was found concerning the fact that he left early when he was supposed to work until 6.00 p.m. on 30.11.2017. As from 20 November to 31 December it was peak season. It was about 1.00 p.m., that Management of Defendant had a request by way of email that the employees would be needed to stay until 9.00 p.m. It was then that the employees would have been asked by their superior whether they would stay until 9.00 p.m. or not and then he would be informed by that superior officer of Defendant so that necessary arrangements could be made. On 30.11.2017 there was an email from Pharmacy Nouvelle namely PNL as per Doc. D2 where there was a request for the employees to work until 9.00 p.m. The supervisors and his assistant manager informed all the workers that they had to work after 6.00 p.m. As per photograph D1, it was mentioned that one employee namely Mahen had to leave at 15.00 hours, there was nothing mentioned for the name of Plaintiff. On 30.11.2017, he received a phone call from the manager of Pharmacy Nouvelle viz. Mrs. Martine Cesar to the effect that she learnt about a stoppage of work from the manager of Pharmacy Nouvelle who was the representative of PNL at Defendant namely Mr. Dhanesh Khaundun that the workers were stopping work at 3.00 p.m. Immediately, he informed his assistant manager and a supervisor to check that information and he was told that they were working and at that time he was not at the warehouse. At about 1.00 p.m. he went in the yard of Defendant facing his office, there was a canteen and he met a representative of the union called Rajeev Beeharry who told him that there was a

meeting and that the supervisors were preventing the workers from attending that meeting. Then, he said that he had to check at his warehouse S10 and went there in his car. Some workers were working and others came from the mess and were continuing to work and he left at about 2.00 p.m. At about 3.10 p.m. he was informed that there was a concerted stoppage of work and in fact after having gone immediately to the warehouse, he saw that all the workers had left about 20 in all so that he had to reorganize everything for the loading of stocks of goods for Pharmacy Nouvelle. The Plaintiff had done so on at least 3 previous occasions in the past as per Doc. D3. In the department where Plaintiff was working at the warehouse S 10, if he needed to leave early, he had to inform his superior in the morning. On that day, he was not informed that Plaintiff would leave early. There was dissatisfaction from PNL that it would leave the warehouse of Defendant and there were also similar threats from other clients of Defendant because of the delay in Defendant's operation.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel.

The unrebutted evidence of the two witnesses for Defendant and Plaintiff's own candid admission show that since Plaintiff joined employment with Defendant that on a normal working week day, Plaintiff was supposed to work as from 7.00 a.m. to 6.00 p.m. which was the rule (meaning as from 3.00 p.m. to 6.p.m. it was structured overtime for the purpose of payment only) and the exception was that he had to leave at 3.00 p.m.

Should Plaintiff or any employee not be able to work after 3.00 p.m. on a particular day which was on 30.11.2017, he ought to have informed his superior early in the morning so that needful would be done to insert the time 3.00 p.m. near his name on a whiteboard like it was the case for one Mahen so that arrangement could be made for the pooling of manpower given the nature of the FMCG section in which Plaintiff was employed. On 30.11.2017, although Plaintiff claimed that he informed his superior during the course of the day, admitted that there was no remark next to his name on that board viz. Doc. D1 that he would be leaving at 3.00 p.m. so that it is abundantly clear that he did not inform Mr. Imrith nor any other Superior officer of that fact.

Plaintiff admitted that on that day, there was a request from PNL for all the workers to stay until 9.00 p.m. and admitted that there was an email emanating from

same which was addressed to Mr. Imrith, yet he said that he was not told by Mr. Imrith nor by any of his superior officers that he had to stay until 9.00 p.m. so that he left around 3.00 p.m. as there was no overtime when he himself admitted that the normal working day ended at 6.00 p.m. and not 3.00 p.m. I find it hard to believe that Mr. Imrith had refrained from asking Plaintiff and the other workers to work till 9.00 p.m. on 30.11.2017 when he had received an email from PNL around 1.00 p.m. for that purpose. Furthermore, the testimony of Mr. D. Peta Permall remained unchallenged that at least its assistant manager and the supervisors informed all workers on the floor that they had to stay until 9.00 p.m. on that day. In the circumstances, I agree that Plaintiff was aware that he had to stay until 9.00 p.m. on the material day the more so as he conceded that Mr. Imrith talked to him on that day itself before he left at around 3.00 p.m. Thus, in the light of the unrebutted evidence of both witnesses for the Defendant which boils down to the fact that the said workers forming part of the union and from the section where Plaintiff was posted were informed on 30.11.2017 that they had to stay until 9.00 p.m. and after having met later on that day in the premises of Defendant after their request for a special bonus failed, had left around 3.00 p.m. in order not to allow Defendant to honour its obligations the more so as Plaintiff did not say why he had to leave early on that day after having admitted that he formed part of that union. Furthermore, the unchallenged testimonies of both witnesses for Defendant boil down to the fact that Plaintiff participated in at least three concerted stoppages of work in the past which Plaintiff conceded that all workers including him on at least some of those days did not work let alone that on the material day after having admitted that he was a member of the union and having attended a meeting in the morning involving Defendant where the negotiation for a special bonus failed, he could not confirm whether there was not any meeting at all on that day itself thereafter in the canteen of Defendant's premises having to do with the workers from that union.

This state of affairs lends support to the unchallenged versions of both witnesses for Defendant to the effect that only when the employees had to stay after 6.00 p.m. that they were informed at about 1.00 p.m. during the day whether they would be willing to stay until 9.00 p.m. bearing in mind that Plaintiff conceded that his contract of employment was subject to a *règlement intérieur* and which contract he did not produce in Court. Thus, I accept the version which is more plausible and reliable that an employee from the S10 warehouse where Plaintiff was employed would only be contacted by Management at about 1.00 p.m. when he had to work

after 6.00 p.m. and not before as his normal working hours ended at 6.00 p.m. as a rule as admitted by Plaintiff himself since he joined employment with Defendant.

Hence, Plaintiff's admission that nothing was added next to his name on the whiteboard of Defendant that he would be leaving at 3.00 p.m. on 30.11.2017 and that he left at about 3.00 p.m. is in line with the unrebutted versions of both witnesses for Defendant that on that day Plaintiff as well as about 20 other workers from the S10 warehouse left around 3.00 p.m. without Plaintiff having informed any of his superiors and in so doing, had indulged in a concerted stoppage of work which was done more than once in the past. That was indeed, an act of defiance, disobedience and gross insubordination on the part of Plaintiff when gauged with the fact that on that day he was aware that there was a request from one of Defendant's client namely PNL for the said workers including him to stay until 9.00 p.m.

At this stage, I find it appropriate to reproduce the provisions of Section 16 of the Employment Rights Act 2008 as amended applicable then which reads as follows:

#### ***"16. Overtime***

*(1) Subject to subsection (3) –*

*(a) a worker and an employer may agree on the number of hours of work to be performed in excess of the stipulated hours where the exigencies of an enterprise so require;*

*(b) no employer shall require a worker to perform work in excess of the stipulated hours unless he has given, as far as is practicable, at least 24 hours notice in advance to the worker of the extra work to be performed.*

*(2) A worker who does not wish to work in excess of the stipulated hours on a particular day shall notify his employer, at least 24 hours in advance, of his intention not to work on that day.*

*(3) Subject to subsection (5), where a –*

*(a) worker works on a public holiday, he shall be remunerated at twice the notional rate per hour for every hour of work performed;*

*(b) worker, other than a watchperson, performs more than 90 hours' work or such lesser number of hours as may be specified in an agreement in a*

*fortnight, not being the hours of work referred to in paragraph (a), he shall be remunerated at one and a half times the notional rate per hour for every hour of work performed; or*

(c) *watchperson performs more than 144 hours of work in any fortnight, not being the hours of work referred to in paragraph (a), he shall be remunerated at one and a half times the notional rate per hour for every hour of work performed.*

(4) *For the purpose of subsections 3(b) and (c), the day on which a worker is on annual leave shall be reckoned in the computation of overtime.*

(5) *An agreement may stipulate that the remuneration provided for therein for a pay period includes payment for work on public holidays and for work in excess of the stipulated hours where –*

(a) *the maximum number of public holidays; and*

(b) *the maximum number of hours of overtime on a day other than a public holiday,*

*covered by the remuneration are expressly stated for in the agreement."*

Therefore, it is clear from the above provisions pursuant to Section 16(1)(a) of the Act that a worker and an employer are fully entitled to agree on the number of hours of work to be performed in excess of the stipulated hours (viz. from 3.00 p.m. to 6.00 p.m.) where the exigencies of an enterprise so require which in the present case it is from 7.00 a.m. to 6.00 p.m. on a normal working day which has been the case since Plaintiff joined employment with Defendant.

Now should the worker be requested to perform overtime after 6.00 p.m. to 9.00 p.m., the employer should as far as is practicable, give at least 24 hours' notice in advance to the worker of the extra work to be performed pursuant to Section 16(1)(b). In the present case, it is clear that it is not practicable for the employer to give at least 24 hours' notice as Defendant would only be notified on the day itself at about 1.00 p.m. from its clients via an email that their stock of products would need to be replenished at the supermarkets so that the workers would need to stay after 6.00 p.m.

Thus, consequently, in the same breath, Plaintiff who for some reason could not work after the stipulated hours be it after 3.00p.m. or after 6.00 p.m., he has to inform Defendant at least 24 hours before pursuant to Section 16(2) which is more likely to be unpracticable so that it is being done in the morning of the day he attends work or at the time he is made aware that he has to stay or he is unable to stay so that his name would be inserted on a board for the employer to do the needful for the necessary arrangements to be done for the supply of manpower to be made to suit the exigencies of its clients.

In view of the nature of the business of Defendant and the type of contract of employment of Plaintiff belonging to the category where he was posted at the fast moving consumer goods department (FMCG), the *règlement intérieur* of the contract was fully warranted in view of the impracticability aspect so that Section 16(1)(a) would obviously overlap on to Section 16(1)(b) which in turn would overlap onto Section 16(2) above so that all the said three subsections have to be interpreted concurrently and not independently of each other in the present context for a purposive interpretation.

Now, it is stipulated that Section 16(1) is subject to subsection (3) and subsection (3) is subject to subsection (5). However, both subsections (3) & (5) are relevant for the purposes of remuneration only which is not an issue before this Court so that they will not have any impact in the context of the present case.

Hence, I take the view that it is clear enough that Plaintiff had disobeyed the *règlement intérieur* of his contract of employment by having failed to perform the scheduled work which contained a structured overtime till at least 6.00 p.m. when he was fully aware that there was a request for him to stay until 9.00 p.m. by having left his place of work around 3.00 p.m. on 30.11.2017 without informing his superior or without due authorisation together with some other 20 workers and without good and sufficient cause as he admitted that he had to leave early on that day without giving any reasons whatsoever.

Thus, the case Plaintiff had run before the Disciplinary Committee that his normal working hours ended at 3.00 p.m. daily on week days and that he had to be requested to perform overtime until 6.00 p.m. by Defendant or else his work was deemed to finish at 3.00 p.m. cannot be successfully invoked in order to dissuade his employer so that he could have kept his job ( see- **Moortoojakhan R. v Tropic Knits Ltd [2020 SCJ 343]**) in view of the concurrent interpretation of Sections 16(1)(a),

16(1)(b) and 16(2) of the Employment Rights Act 2008 in line with the *règlement intérieur* of his contract of employment and his own admission that since he joined employment, the normal working hours started as from 7.00 a.m. to 6.00 p.m. and that was the rule and leaving at 3.00 p.m. was the exception so that Management had to be informed beforehand.

Indeed, the case run by Plaintiff at the Disciplinary Committee has reinforced the case run by Defendant at the Committee in that failure of Plaintiff to have notified Management on 30.11.2017 that he was leaving his place of work early at 3.00 p.m. and the reasons for doing so, because it is plain enough that it was done in order not to allow for the proper arrangements to be made for the necessary manpower for 9.00 p.m. for PNL because no agreement was reached by the workers of his union and Defendant earlier on that day as regards a special bonus to be given to them.

It is significant to note that there is no evidence adduced whatsoever before this Court to show that both Plaintiff and Defendant had departed from the case they had run before the Disciplinary Committee although their case could have been corroborated in Court. Thus, I hold that the Northern Transport Principle in the Privy Council case of **Smegh (Ile Maurice) Ltée v Persad D.** [\[2011 PRV 9\]](#) has not been infringed.

It is worthy of note that Defendant complied with the provisions of the law by affording Plaintiff an opportunity to answer the charges leveled against him at the Disciplinary Committee pursuant to Section 38(2)(a)(ii) of the Employment Rights Act 2008 and waited for its finding first although it was not binding on it (see- **Moortoojakhan**(supra)) before taking a decision to dismiss Plaintiff.

For all the reasons given above, I find that Defendant has acted within the ambit of the evidence adduced before the Disciplinary Committee and the evidence which Defendant ought to have been reasonably aware at the time it took the decision to dismiss Plaintiff following the finding of the Disciplinary Committee and it has successfully discharged the burden of proving that it could not in good faith have taken any other course of action but to terminate Plaintiff's employment with immediate effect ( see- **Smegh** (supra)).

Hence, I am unable to find that the case for the Plaintiff has been proved on a balance of probabilities. I accordingly dismiss the plaint and make no order as to costs.

**S.D. Bonomally (Mrs.) (*Vice President*)**

**23.8.2022**