

HANOOMANJEE Balmick Manoj Rajkamal Romy V/S SUN LIMITED

2020 IND 23

**THE INDUSTRIAL COURT OF MAURITIUS
(CIVIL JURISDICTION)**

C N 459/11

In the matter of:

HANOOMANJEE Balmick Manoj Rajkamal Romy

Plaintiff

V/S

SUN LIMITED

Defendant

JUDGMENT

The present matter is a claim entered by the Plaintiff against the Defendant company in the total sum of Rs 18,522,549/ for alleged unjustified termination of employment.

Plaintiff's case

In a gist the Plaintiff's case as averred in the amended proceipe dated 20 June 2019 is as follows:

He joined employment with the Defendant company (formerly known as Sun International Indian Ocean) on 1 December 1995 as Director of Information Systems. His last employment was as Chief Information Systems Officer and in such capacity he was drawing a monthly basic salary of Rs 131,090. His progression and performance were very much appreciated in the Defendant company and he never had any grievance from the latter. Over the past 15 years he was involved in a number of projects in Mauritius, Maldives, Mexico, USA and Dubai and as such Defendant company was recognized as a leader not only in basic hospitality but also in the ICT field. He had an unblemished professional record.

It was further averred that since 2009 he was working on two important projects – the head office move at Ebene Skies and data cabling for Long Beach Hotel. However he noted that he was being side lined on these two projects inasmuch as meetings in respect of the above two projects were held in his absence and discussions in respect of same were done behind his back.

From paragraphs 6 – 15 the averments consist in a number of correspondences exchanged between the Plaintiff and the Defendant company as follows:

- Letter dated 4th November 2010 in which Plaintiff reported his views to his direct reporting head, the Chief Executive Officer (CEO) of the Defendant company and expressed his concern for the humiliating and oppressive attitude towards him.

- Letter dated 15 November 2010 wherein Plaintiff was informed by the CEO that an enquiry was being initiated “into a number of matters including a complete audit of the IT department”.

- Reply letter dated 18 November 2010 to the CEO,

- Letter dated 24 November 2010 from CEO who strongly objects to the contents of his letter.

- Letter dated 1 December 2010 from Plaintiff requesting that the purpose of the audit of the IT department be communicated to him.

- Letter of suspension dated 3 December 2010. Plaintiff was suspended from his functions with immediate effect “in view of the seriousness of the irregularities which have come to light regarding the Long beach tender exercise”. He was also informed that other issues were under investigation and in due course he would be convened before a disciplinary committee.

- Plaintiff's reply letter dated 7 December 2010 to the CEO contesting the validity of the suspension.

- Reply letter from CEO dated 14 December 2010

- Plaintiff's letter dated 15 December 2010 requesting a copy of the interim report and informing the CEO that his suspension was unfounded, illegitimate and invalid inasmuch 10 days had lapsed and charges were not levelled against him.

- Letter of charges dated 16 December 2010 and in which plaintiff was convened to attend to a disciplinary committee to be held on 14 January 2011.

Paragraphs 16 -20 refer to the interim injunction lodged by Plaintiff on 29 December 2011 before the Honourable Judge sitting in Chambers , which was declined and after which

Plaintiff was subjected to a disciplinary committee held on 14 January 2011 wherein he denied all the charges levelled against him. The sittings lasted for 7 months and ended on 4 August 2011.

He then received a termination letter dated 9 August 2011.

Plaintiff considered that Defendant has acted in breach of section 38 (2) (a) (iii) of the ERA 2008 by failing to notify the charges within the statutory delay of 10 days and hence the disciplinary committee was held in all illegality. It was further contended that the termination was unjustified for the reasons spelt out in paragraph 24 of the proceipe. Hence Plaintiff is claiming from the Defendant company severance allowance in the sum of Rs 17,157,531, payment in lieu of notice in the sum of Rs 1,101,018 and outstanding dues in the sum of Rs 264,000 making a total sum of Rs 18,522,549 together with interests and costs.

Defendant's case

In its plea Defendant averred the following facts:

Before Plaintiff joined employment it already had a team of dedicated professionals who were already addressing all issues. Defendant did not communicate to Plaintiff any grievance because it was not aware of any problem but the situation changed drastically when it became aware of the facts which led to Plaintiff's dismissal. Decisions of all matters were not taken by Plaintiff alone but collectively at management level and the implementation of any ICT Issues are normally carried out by the suppliers' préposés. By virtue of his position Plaintiff only monitored such implementation. The recognition and achievements of the Defendant in the field of hospitality industry is the result of the dedication of its employees and not only one person. Further Defendant has benefitted from the support and expertise of its former management and of its network in all fields.

Defendant denied having held meetings behind Plaintiff's back regarding the two projects averred by the Plaintiff or that the latter was side lined or humiliated or subject to an oppressive attitude. It was further averred that there is a central purchasing department entrusted with the review of all its procurement issues, among which the selection and purchase of IT software and equipment. Same is meant to promote transparency in the procurement process. Hence Plaintiff cannot expect to have a free hand over the Defendant's procurement issues.

Defendant further denied that its letter of 15 November 2010 had brought to Plaintiff's attention that its CEO 'had conducted enquiries'. It averred that Plaintiff's contention that the 10 days' delay had allegedly lapsed is misconceived in law and denied that the charges were leveled outside the statutory limit of 10 days. It further denied any illegality of the

disciplinary committee and averred that there was no breach of the Employment Rights Act. It further averred that all Plaintiff's attempts to prevent the disciplinary committee from taking place failed and same was held and chaired by Mr Antoine Domingue S C. The six charges were found proved.

Defendant contended that as those charges amounted to serious misconduct it warranted the termination of the Plaintiff's employment. Further the bond of trust between employer-employee had been irretrievably broken down by Plaintiff's acts and doings and hence Defendant could not in good faith take any action than to terminate Plaintiff's employment forthwith.

Evidence adduced by Plaintiff

Plaintiff confirmed the averments in the proceipe as to the position which he was occupying when he joined the Defendant company and the salary which he was drawing. He produced the organization chart of the company as at 2010 (Doc.P1), his payslip (Doc.P2) and his letter of appointment (Doc.P3). At that time the Defendant company was known as Sun International Indian Ocean and as Director of Information Systems he was reporting directly to the then Managing Director who was Mr Paul Jones and he was in charge of the Group's Information System strategy, budget and vision. When his employment was terminated he reckoned fifteen years service within the Defendant company.

He described the evolution of his career within the company since 1995 until 2010 as follows: When he joined the Defendant company in 1995 he was in charge of 3 hotels: St Geran, Touessrock and La Pirogue. In 1996 two other hotels were opened namely Sugar beach and Coco beach. So his responsibility increased. In the same year the central reservation system was created for the whole group in Mauritius. There were also two hotels in the Comoros. All these hotels had to be linked together with the central processing system. His responsibility increased to take over all these IT strategies to get all the group connected technology wise. In 1998 he was asked to participate in the opening of a hotel in Dubai. In 2002 and 2003 he took over the two hotels which were opened in Maldives. Hence he became in charge now of Indian Ocean. He considered that his role grew at the same time as the industry and the hotels business group grew. When he stopped working there were five hotels in Mauritius and two hotels in the Maldives. When he started working he had four people working under his responsibility and by the time he left the company he had nine people reporting to him in Mauritius and in Maldives he got four on one island and three on another island.

Plaintiff stated that he was actively engaged in the management aspect. He produced the document relating to his job description (Doc.P4) as well as a certificate of recognition from

the employer for the work he contributed in the re opening of Le Touessrock Hotel (Doc.P5). In the same year i.e 2002 he got another formal recognition from his employer for Touessrock (Doc.P6). He produced a copy of his CV to demonstrate the different activities he was involved in and his accomplishments (Doc.P7) as well as an email which he received from the CEO asking him to attend to a meeting outside Mauritius (Doc.P8).

He pointed out that throughout the time he was employed by the Defendant company he was never taken apart for any shortcomings or any problems in the quality of his work and there have never been any complaints made to him by the management. He had very good relationship with the management namely with Mr Paul Jones and Mr Fabio. He worked under Mr Paul Jones from 1995 till 2002 when the latter left for UK and Mr Fabio took over in 2002. He was reporting to both until 2007 when Sun Resort became 100% Mauritian and Mr Fabio Piccirillo took over 100% . So he reported only to Mr Fabio Piccirillo. He maintained that the company was recognized as leader not only in hospitality but also in the ICT field. They developed a full team of specialist in hotel hospitality and industry. The Defendant company became expert in the sense that it was the only group using hotel software and hence became a sort of reference in this part of the world. The number one software company in the world sought their help when updating and amending their software for resort hotels in this part of the world. He contributed to this recognition inasmuch as together with his team he did the technical adjustment as the new released software was not meant for resort hotels but were mainly targeted for business hotels or big cities.

Plaintiff stated that in 2008 he was given an incentive bonus and a salary increase by a letter from Mr Piccirillo (Docs.P9 & P10). He produced an exchange of emails illustrating the manner in which he contributed on the implementation of projects outside Mauritius namely in Maldives (Doc.P11) as well as a testimonial from Mr Paul Jones (Doc.P12). Same is undated but he stated that it was given to him at the time his employment was terminated.

As regards his involvement in the two projects mentioned in the proceipe namely the office move of Ebene Skies and the cabling work for Long Beach hotel, he explained that he was in charge of the overall IT and had to decide the strategy together with the CEO. He was actively involved in the decision making process. Initially they worked on the conception of the project and based on the conception his role was to prepare a budget on the technology investment. Same was discussed with the CEO on a panel depending on the finance and the estimate was fine tuned. He was involved in all the executive meetings because the IT element forms part of a general project.

Thereafter he noticed that there was a change inasmuch as he was less involved in the decision making process. Some meetings were heard without him being informed or present.

There was a decision making process on the technology side where he was not involved namely concerning the Long Beach project where in October 2009 decision was made on the technology side with the suppliers without him being present. And that state of affairs had lasted prior to October. Things started to change since Mr Piccirillo took over in 2007. Previously IT was directly reporting to the CEO and not to the Finance i.e the CFO. But then there started to have some interferences from the finance into the technology area, interferences from the supply chain department as technology items were purchased without him and his team being informed. Laptops were being purchased by the No.2 of Finance without his signature on the request form, without specs and directly between the finance people and the supplier in breach of the in-house procedure. For the Skies project as well the purchasing, people were dealing directly with the stakeholders when he was not in Mauritius or was absent. Hence he considered that he was being side lined from the main decision making process of which he had always formed part.

In that context on 4 November 2010 he wrote a letter to Mr Piccirillo (Doc.P13) in which he referred to the two above projects and mentioned his grievances for not being consulted and forming part of all decision making processes as it used to be. His main complaint in that letter was that he was being blatantly sidelined and overruled by persons under the CFO presumably, both for the Long Beach and the Ebene Skies projects. In response to the said letter, by letter dated 15 November 2010 (Doc.P14) Mr Piccirillo, his CEO informed him that in the light of what has been brought to his attention in his letter, he has conducted enquiries and the issues raised in his letter were addressed to the persons mentioned therein namely Mr Sin and presumably Mr Wong. The CEO also mentioned in his letter that he had the benefit of their explanations and in the light of what has been brought to his attention he has initiated an enquiry into a number of matters including a complete audit of the IT department. Subsequently on 18 November 2010 he sent a letter to the CEO (Doc.P15) in which he expressed his surprise as to the turn of events and pointed out that he had at no point in time been informed of any shortcoming or false on his part which would warrant an enquiry of the IT department which was under his responsibility. He expressed his helplessness and demotivation in the manner in which decisions were being taken at management level. On the 24 November 2010 the CEO responded to his letter (Doc.P16).

Plaintiff explained that from 4 November till the end of November he was at work and saw Mr Piccirillo. He did talk to him but he did not discuss the exchange of the above letters because there were always some people around. So he called him and informed him that he wanted to have a meeting with him but he did not respond. He got the impression that Mr Piccirillo did not want to talk to him. So it was quite heavy for him to go to work in such a working environment. On the 1 December 2010 he replied to Mr Piccirillo's letter of 24 November

(Doc.P17) following which Mr Piccirillo replied on the 3 December 2010 informing him that he was in presence of an interim report by an auditor and in the light of which he has decided to suspend him with immediate effect (Doc.P18).

Plaintiff explained that in the letter of 15 November he was asked to collaborate with whoever would be appointed to conduct the audit. But he was not aware of any internal audit in the IT department or of any enquiry being carried out concerning this department at that time. He did ask Mr Piccirillo about the audit when he received the letter of 15 November, namely what it was all about and who will do it but Mr Piccirillo said nothing on that. However though the audit was supposed to be within his department, he was not asked any questions and neither his staff. He met the Auditor before he got the letter of suspension, some times between 15 November and 3 December. The Auditor was one Ibrahim Laher from Marsh Africa and he was told that Marsh Africa used to the finance audit. Mr Laher came to see him together with Mr Budullah who was the HR Manager at that time and the latter introduced Mr Laher as the person who will be doing an audit on Long Beach. Mr Laher asked him some questions mainly on the Long Beach project and about how the tender specifications were prepared. Basically it was a check on the process and there were no specific questions regarding irregularities in the Long Beach project. The Auditor mentioned to him that someone wanted to know why he met the suppliers after the tender process was out and he explained to him that it was a pre-bid meeting which is normal done when the tender is out to meet suppliers after one week after they have gone through the documents so that any points which need to be clarified can be done. The discussion with the Auditor was also about a particular product in the tender namely an access point in the rooms for a wifi access that is a wireless point. And on this issue the tone was more like an interrogatory than an audit process. He was being questioned about why did he choose this product and why was this product important. The discussion lasted for about 15-20 minutes and after that he never met the auditor again. However he was aware that questions were being asked to his team.

Plaintiff pointed out that in his letter of 7 December (Doc.P19) he outlined the different correspondences between the CEO and himself and he challenged the validity of his suspension. He also requested for a copy of the interim report and informed the CEO that the audit which was carried out by Mr Laher was more of an investigation on him; and hence he considered that this enquiry/audit of the IT department was more of a colorable device and a phishing expedition to create charges against him. He explained that in fact he was interrogated on the way he was running his department, his team and he seemed to him that 'they' were looking for information to 'squeeze' him somewhere because at some point in time Mr Laher mentioned that he was a risk factor. The letter of 14 December 2010 from Mr

Piccirillo to him was produced (Doc.P20) in which the latter informed him that it was his prerogative to cause an independent enquiry to be carried out and that he would be convened to a disciplinary committee. His letter of reply to same was dated 15 December (Doc.P21) in which he maintained his objection to the letter of suspension and his request for a copy of the interim report not yet communicated to him. And he also requested to be reinstated in his work with immediate effect. Subsequently on 17 December 2010 he received a letter dated 16 December 2010 with a number of charges levelled against him and convening him to attend to a disciplinary committee (Doc.P22).

Plaintiff confirmed that there were five sets of charges levelled against him. The first charge was in relation to the Broadband costs for Sugar Beach Resort. He stated that same was never discussed by Mr Laher with him. As regards the second charge which concerns the procurement process of Sun Resorts in relation to the Long Beach project, he did mention to the auditor that there was a pre-bid meeting and which the latter considered was interference with suppliers. The auditor also asked him about the device – Tele Adapt namely what was that device but he was not asked why he specified this device, nor did he mention the company Ecoflow Ltd. When he received the letter of charges Ecoflow Ltd did not ring a bell to him. He explained that he showed the suppliers a device and asked them to quote for an option or an alternative to that device.

Plaintiff explained the tender procedures in relation to the Long Beach project – namely with regard to the renovation of the hotel as follows: a tender was launched for about six potential bidders in Mauritius. When the bidders received the documents they were given some days or weeks to go through them and then a pre-bid meeting was called with all the suppliers at the same time. All the bidders were present like Mauritius Telecom, Blanche Birger, EDS etc and from Sun Resorts he was present together with two members of his team – one from the network side and the other one from the software side. It was an official meeting wherein the bidders were asked whether they had any questions, clarifications on the documents communicated to them. It was an exercise which usually takes place in all the bids that he has undertaken at Sun Resorts.

Plaintiff elaborated on the device Tele Adapt which he explained is a brand. But in the bids' document he only mentioned a wifi device to put in the rooms and the word Tele Adapt was not used. It was following a trip in Dubai that he came over this device in a hotel and one of his team members ordered a fake sample to show to the suppliers. He wanted to show them a sort of product that they were looking for the room because the said device was cute, not bulky and invisible in the rooms. So he showed to the suppliers the fake product device and he asked them to quote this or an alternative to this brand which must be aesthetic,

operational and performing. He did mention the make of the product i.e Tele Adapt. But this specification was not in the bid and the suppliers did not really ask questions about Tele Adapt. Some of the suppliers already quoted and installed this Tele Adapt device in other hotels in Mauritius. It was not new to them. He showed the said device to them as an example. He never heard of Ecoflow before the 16 December.

On this issue of Long Beach project, plaintiff further added that during the discussion he had with the auditor he was never reproached that he was fully aware that his request to the suppliers to purchase the Tele Adapt device would have prevented them from submitting their lowest or more competitive offers. The auditor did not suggest to him that Tele Adapt would cause the bids to rise up. He stated that in a bid process it is possible for suppliers to propose alternatives and in this particular case they did not quote any alternatives and they all quoted Tele Adapt.

The other reproach which was made to him in relation to this Long Beach Project as per the letter of charges was that he did not disclose his relationship with Ecoflow. He stated that it was only in the letter of charges that he became aware that Ecoflow is a company set up by his brother in law and in which his wife was involved. He further stated that in fact his brother in law did not import Tele Adapt and he never did so. Hence he considered that all those matters concerning this charge were totally unknown to him and were not discussed with him by Mr Laher.

As regards the fifth charge namely that on 03 December he tampered with the laptop of the company and formatted it in a way that information on the said laptop was lost, plaintiff explained that when one leaves the office and gives back the laptop, same is normally formatted so that it can be used again and there is no personal confidential information on it. Therefore one of his team members – Mr Thierry Ohis formatted his laptop but this was not done under his instructions. He left his laptop on his desk when he was suspended on 03 December. He was not told to leave all the data on the laptop. He also had personal information on it as he was also using the laptop for personal use. He did not have much time to remove all these data. Hence Mr Ohis formatted his laptop. He explained that the official information on the laptop i.e everything concerning his work was also on the server and on his secretary's laptop so that in formatting his laptop that information was not lost and would be retrievable on these two systems. He did not inform anyone that his laptop was formatted because when he left there was no one to hand over his laptop. He did ask Fabio (meaning Mr Piccirillo) to let him keep his laptop for the weekend so that he can retrieve all his data and erase any personal information. Initially he accepted that request but afterwards he phoned him to inform him that after he had discussed with the company's lawyer he was

not allowed to take the laptop out. So he was told to remove all his data to an external drive. But unfortunately the external drive he had with him was a smaller one and he could not put all his personal information on it. So he took what was most important and then his team member, Mr Thierry Ohis mentioned to him that the best thing would be to format it.

Plaintiff confirmed that he entered an action before the Judge in Chamber inasmuch as he considered that the disciplinary committee should not take place because the mandatory delay of 10 days within which charges should be levelled was not complied with. He put in the affidavit sworn by him and Mr Budullah to that effect and the interlocutory order issued by the Honorable Judge sitting in Chambers (Docs.P23 (a), P23 (b) and P24 (c)) . Following the ruling that it was premature for such application, the disciplinary committee was held on 14 January 2011 and it lasted for 7 months with no fewer than 18 sittings.

Plaintiff maintained that apart from the two issues that were raised by Mr Laher namely the pre bid meeting with the suppliers and the Tele Adapt device, none of the matters were known to him until he received the letter of charges. It was at the disciplinary committee that the report of Mr Laher was presented and he had then the opportunity for the first time to know its contents. The report was produced (Doc.P25) as well as a letter dated 2 December 2010 from Mr Laher addressed to Mr Piccirillo and which was produced during the disciplinary committee (Doc.P24). Plaintiff confirmed that the said letter was what was called the interim report in the letter of 03 December (i.e Doc.P18) and the final report dated 10 December 2010 was produced at the disciplinary committee for the first time. He stated that this report was the basis of all the proceedings before the disciplinary committee.

Plaintiff produced a salary emolument slip showing his last salary (Doc.P26) in which there are several items as detailed in paragraph 26 of proecipe namely air tickets as per item 7 of his contract of employment (Vide Doc.P3) , medical aid scheme, hotel accommodation – which is not mentioned in the contract as it is an advantage given to employees and not only to Executives; it is part of the acquired benefits that have been over the years, and which he had benefitted throughout his years of service in Defendant's employment. It is the same principle for meals during accommodation whereas for meals outside accommodation same is included in his contract of employment at item 6. He explained that it was in the course of his fringe benefits that he had lunch every Sunday as was entitled all employees of his level. There was nothing in writing to that effect but it was like this. Likewise for the item golf which he explained that all Executives have the right to play at Ile aux Cerfs for free. The kids transport too was a fringe benefit given to all Executives. As regards the pension scheme, same was in his contract of employment at paragraph 3 as well as the item company car at paragraph 5. The computation of all these items come to Rs 18,522,549 which comprises his

severance allowance, payment in lieu of notice and the outstanding dues in the sum of Rs 264,000 for unused air tickets. In respect of this last item he explained that he was entitled to 4 tickets (business class) per year but he did not have time to use them. He confirmed that his contract did not mention the class or details regarding the travelling facilities but it was an acquired benefit over the years.

As regards the disciplinary committee, Plaintiff stated that on the 26 May when the committee was about to start he received a letter from Sun Resorts under the hands of Mr Budullah adding a new charge to those already in the letter of charges (Doc.P27). In the course of the proceedings this charge was put to him. Thereafter he received a letter of termination dated 9 August 2011 in which he was informed that all the charges brought against him had been proved and hence the Management had decided to terminate his contract of employment (Doc.P28).

Plaintiff elaborated on the sequence of events at the disciplinary committee. The people present on behalf of Sun Resorts were Mr Patrick Sin, Mr Ibrahim Laher and Mr Budullah. He stated that he mentioned the name of Mr P Sin in his letters to 'Fabio' regarding some interferences in his department namely that the latter was contacting some IT suppliers behind his back and his team, asking the suppliers to come and do surveys or audits without his team and himself being informed. He came to know Mr Sin since he was appointed as Financial Controller at Sugar Beach in or about 2002 or 2003 . It was after 2008, after the departure of Mr Paul Jones and the taking over by Mr Piccirillo that Mr Sin started to be a hinderer to his operations. Mr Sin was at that time the Supply Chain Manager and then promoted to the post of Financial Controller. This new responsibility entitles him to look into the bid process from a financial point of view.

Plaintiff explained that the first project on which he worked was the Sugar Beach project in 2008. It was a minor renovation on which he worked exclusively with Mr Piccirillo. There was a bid exercise for this project and he adopted exactly the same procedure as he did for the Long Beach project. The pre-bid meeting also took place and the manner in which he dealt with suppliers was similar. Mr Sin also participated in that process concerning the financial aspect and his interactions with him were totally correct. Things started to change internally when Coco Beach Hotel was going to be closed to become Long Beach Hotel. At that time 'Fabio' was the CEO and the way things were being dealt internally completely changed. It was mainly driven by Finance so that not only his department but also the Engineering department was feeling some sort of interferences in their day to day running of their own unit.

He stated that as far as he recalled there was no procurement manual in place at Sun Resorts Ltd at the time he was there. There was a set procedure for bid processes and it was the same in all projects. The set procedure for IT was done by him namely the way IT projects should be dealt with. There were no financial procedures set though this has been asked by Mr Paul Jones but he never saw any. Therefore the financial part of the bid process was actually elaborated by him although this was not strictly his work. A request was made by Mr Mario Sik Kuen who was the Finance Director at that time to the finance department to set up the procedures for finance but this was never done. Thereafter Mr Sik Kuen was succeeded by Mr Tommy Wong under whom Mr Sin was working. Therefore whatever process he had put in place both for IT and Finance in relation to his department was used in the Long Beach project.

Plaintiff further added that he was not surprised that during the disciplinary committee Mr Sin supported all the charges against him because he was the disturbing element in all his correspondences. He confirmed that all the explanations which he gave during the disciplinary committee regarding all the 6 charges are the explanations which are still relevant today as well as the explanations regarding the procedures and the figures in the financial documents that were put in during the committee.

Plaintiff considered that the termination of his employment was unjustified because before his letter of 4 November wherein he requested some clarifications from the CEO – Fabio Piccirillo, he was never put in front of any charges or issues whatsoever as to the way he was running his department and doing his job. Since this letter concerning the issues he had noted namely the closing of Coco Beach and other issues of interferences in his department, there was a rift between the IT department and Finance. The Head of Finance was Tommy Wong and Patrick Sin was directly reporting to him. All of a sudden an audit was being carried out by a company called Marsh Africa which is already a company known to the Finance department because it was doing some finance audits for the group. Therefore he considered this audit as not being objective and the auditor as not impartial.

He explained that the source of the problem between the IT department and Finance was that the Finance wanted to have control of the IT department so that it can purchase equipment directly. Hence laptops and equipment were purchased without his signature on the request form and some equipment were purchased from suppliers not in their suppliers' list and without him or his team being involved on the specs and technical aspect. When he started querying about same there was complete opacity. He had to go back to Mr Piccirillo but then he realised that there was something fishy going on behind his back because the tone Mr Piccirillo used when talked to Patrick Sin was different. He realised that Mr Piccirillo

was siding with people in the Finance department. Towards the end of his employment with Sun Resorts there was some hostility between him and Mr Piccirillo. This arose after his letter of 4 November and also because he told him that he heard some rumours that he was not being seen as the CEO of the company but instead it was Tommy Wong. Since then he has changed. Mr Piccirillo could not do anything to Tommy Wong because he was the Financial Controller and was sitting on the board as well.

Regarding the issue of Ecoflow, he maintained that when he received the letter of charges that he found out that this company existed. He stated that his brother in law is a French national working in Mauritius and his wife was French. He knew that his brother in law started a business to be able to stay in Mauritius but he did not know the name of the business and the activities it was doing. It was in the letter of charges that he came to know that his wife was the company secretary of this company. After he received the letter of charges he spoke to his brother in law and the latter confirmed the above facts. He stated that his wife was not an active secretary, she was not working there nor paid any salary. He did not bring his wife or brother in law to testify in Court because since 2 years he is separated from his wife and they are not on speaking terms. During the tender process Ecoflow did not come into the picture.

As far as Tele Adapt was concerned, he explained that same is a wifi device which is installed in hotel rooms to provide wireless connection. In the specification for Long Beach project he did not mention Tele Adapt but only a wifi and wireless device equipment and did not mention any brand as well. During the pre bidding meeting he showed a fake one. He did not know at all whether there was any relationship between the device Tele Adapt and Ecoflow. He was surprised to see at the disciplinary committee several pieces of paper with his brother in law's name. He did not know that his brother in law was talking to some suppliers regarding this particular equipment because the dummy he showed to the suppliers was one he received from Tele Adapt in Dubai and not from a local company. He never discussed his work with his brother in law but only "general stuffs". His brother in law was not in the IT field

At the start of the Plaintiff's cross examination, a bundle of documents was produced namely: minutes of proceedings of 14 January 2011 to 31st May 2011 – Vol 1-10 (Doc. P29), Vol. 11 – 18 for proceedings of Monday 20 June 2011 to Thursday 04 August 2011 (Doc.P30) , a third bundle which contains documents which were produced in the course of the disciplinary committee (Doc.P31) and a fourth document is the final report of Mr Antoine Domingue SC dated 07 August 2011 (Doc.P32).

Plaintiff admitted that Mr Piccirillo as CEO had the duty to ensure that everything was on board. Concerning the different items which plaintiff claimed as remuneration, the following facts were elicited: He would get 4 tickets per year for his “usage personnelle” and not for working purposes. The sum of Rs 155,000 for the item medical represented the amount of money that he claimed for annual expenses for him and his family. He agreed that there was an insurance cover for medical expenses for all his family but he contended that if he spent Rs 200,000, he will be refunded Rs 200,000. In relation to the hotel accommodation, he explained that there was no fixed limit given to staff but he admitted that it was an “avantage par pure tolerance”. It was not in the contract and he considered that it was an acquired benefit. There was no need to have any authorization in writing to spend a week end in a particular hotel. It will depend on the availability of rooms. The meals outside accommodation were the meals which he had with his family on Sunday when he was not working and there was no need to ask for any authorization. He confirmed that in the records of the company there would be the number of times he had lunch. Regarding golf, there is a letter to the effect that all Executives are allowed free rounds. As far as pension is concerned he agreed that it is pension which was paid by his employer that is Sun Resorts. Concerning the company car, when he left the company he had a Peugeot 406 and its market value at that time was approximately Rs 1.5 M. He used to change car every 5 years. He is claiming Rs 100,000 for the running expenses. The golf allowances or facilities and lunches were at the discretion of the Management towards him and all the other Directors.

Plaintiff confirmed that during the disciplinary committee he was duly represented and Mr Sin was called by the employer to depone on its behalf. He agreed that at that time Mr Sin was the Supply Chain Manager and as such he was responsible of procurements in the Defendant company. Though he agreed that Mr Sin had to make sure that everything was properly documented before submitting same to Management, he considered that for tenders the specifications are submitted to the Quantity Surveyor (QS). It was he as Head of IT who had to provide all the specifications to the relevant body prior to quotations .

Plaintiff admitted that during the disciplinary committee question was put to Mr Sin as “who would be the one who launches the tenders” to which he answered “The tender was written by Manoj (that is the Plaintiff) and were sent to the QS for invitation for tender”, and the next question was “Who sets down the specs for each tender exercise with regards to ICT”, the answer was “Manoj” (Doc.P29 – Vol.6 pg 6). He agreed that this is correct and that in cases of tender for IT he has to take the overall responsibility. He confirmed the averment in the plaint that he had a wise experience in IT. He agreed that the defendant company is ISO certified. There are a set of procedures for ICT staffs which he wrote and which was ISO certified but for tenders it’s not only an ICT exercise but a finance and business corporate

exercise. This is not to be written by ICT but by the finance people, by the management. Upon being shown Doc. Y in Vol. P31 he confirmed that it is a procurement instruction for the renovation and the first time he saw the said document was when it was produced during the disciplinary committee – Doc.P33. He did not know whether in 2010 Mrs Marie Law Ah-Yu was still there. He was not sure whether there was a Quality Assurance department. It existed until Marie Law left the company which was sometime in 2007.

Plaintiff admitted that in relation to the tender exercise for Long Beach, he submitted all the documents and in June 2010 he made recommendations as per Doc.H – email dated 28 June 2010 in Doc.P31. Attached to this document is a table with all the tenders namely 6 tenders but from 5 companies. He agreed that from the said table it would seem that EDS was marginally cheaper than the others. The said document was produced (Doc.P34). He stated that in the tender documents the capacity which was required was 10 gigabytes. He agreed that on 30 June he sent another email to the same parties (Doc.I in P31) but addressed to Mr Sin, copy to Fabio and Mr De Chalain and Tommy Wong. He admitted that at this stage he left the matter in the hands of Mr Sin to negotiate. Referring to Vol. 14 at pg 26 he conceded that he said in the committee that he was leaving for overseas on the 10 Jul and there was a meeting on the eve of his departure. He was aware now that there was an exchange of correspondence between MT and the defendant. He admitted that at this point in time when he told MR Sin to negotiate, he was to do so with 3 tenderers namely Blanche Birger, MT and EDS. He stated that there was also EME who was on the bidders list. Upon being shown Doc.J of P31 which was an exchange between MT and Sun Resorts – i.e Doc.J of P31, he conceded that it concerns the capacity which MT considered to be enough i.e 1 giga and not 10 (Doc.P36) . He did try to have the figure of EDS lowered beyond Rs 27 M . He only told Patrick (meaning Mr P Sin) to do his best. He was not surprised when he saw the document of 13 July (Doc.K of P31) which was an exchange between EDS and the Defendant and where within 3 hours EDS lowered their prices by Rs 2M i.e by 6.9% because on this same project the supplier got down by 20% in less than an hour. The said email was produced (Doc.P37).

As regards the device Tele Adapt, Mr Hanoomanjee stated that in the tender documents it was only mentioned that the company needed a wifi and a wired access point in the rooms. He maintained that the make Tele Adapt was never mentioned. Upon being shown the documents R – R5 (Doc.P38) he confirmed that same was produced during the disciplinary committee and he agreed that during the disciplinary committee he stated that this component (meaning Tele Adapt) was “un service en plus” (Vol.17 pg 32) . He did not suggest to any of the tenderers namely Blanche Birger, Mauritius Telecom, and EDS to quote Tele Adapt. He only asked them to quote a device. He further added that if somebody

from Blanche Birger or Mauritius Telecom was to say that in the pre bid meeting he asked one of them or all of them to quote Tele Adapt, this could be a misinterpretation because he showed them a dummy from Tele Adapt which he got around the same period as the pre bid meeting – May or June 2010. He told the tenderers about a wireless and wired device in the room and showed them one which he saw in a hotel in Dubai. He told them to quote for more or less the same device for the rooms that can be good looking and not bulky. He denied that he did mention to the tenderers to quote for the make Tele Adapt. He further added that he was in Dubai for an IT conference for business purposes.

Plaintiff agreed that there was a difference in the prices for the same device – namely the following prices were quoted: Rs 4,283; Rs 4,370; Rs 5,562; Rs 12,100. He further agreed that this represents a major discrepancy in the price of this specific device. He confirmed that for the Long Beach project there was a budget of approximately Rs 2 M. He did not know that how much the Defendant paid for the whole tender exercise. He admitted that when one looks at the figures in respect of the amount for the device, EDS would be in a better position pricewise when compared with Blanche Birger and Mauritius Telecom.

It came out that when his contract of employment was terminated in 2011, he worked at EDS which he agreed was one of the tenderers in the Long Beach project. He started his employment there in September 2011 as Deputy CEO. He further conceded that prior to the tender, he was on very good terms with the representative of EDS namely Mr Dev Sunnasy with whom he is still on good terms but they see themselves less often than before. He left EDS in June 2014. He knows Mr Sunnasy since 1995. They worked together at Alcatel for 3 months. He further admitted that EDS was awarded the contract Ebène Skies where Sun Resorts is to be found. He confirmed that during the disciplinary committee he agreed that EDS was awarded small contracts regularly from the department where he was Head during the last 10 years- (pg 19 of Vo.17) and that the manner in which he carried out the tender exercise could have raised a suspicion.

In relation to his complaint of being side tracked ever since 2008 as per his depositions in examination in chief, Plaintiff stated that he did make a complaint to that effect to Fabio in his letter of 4 November 2010 (Vide Doc.P13). He explained that he did mention some issues in his department to Mr Fabio many times and that this letter of 4 November reflected a couple of conversation that they had in recent months before this letter. He conceded that there had been no emails of whatever nature to that effect but only verbal communications. According to plaintiff it was the letter of 4 November 2010 which triggered everything. He considered that the complaints he mentioned in his letter of 4 November were irregularities. He conceded that as Head of IT who sent such a letter to the CEO, he expected the latter to

take actions and enquire about it. He further admitted that in the said letter he was pinpointing to two important players in the hierarchy of the Defendant company namely the Head of Procurement and the CFO Mr Tommy Wong. When referred to the reply of the CEO to his letter of 4 November namely the letter of 15 November (Doc.P14) he admitted that it could be that the enquiry which the CEO decided to initiate was prompted by the explanations given to him by Mr Sin and Mr Wong but he considered that it was unfair that the CEO did not call him to discuss those matters. Though he agreed that it was proper on the part of the General Manager, to whom he was reporting, to make sure that all his departments are functioning properly, he however considered that it was unfair to pinpoint only the IT department.

He did not consider it insulting towards the CEO to have written the letter of 18 November (Vide Doc.P15) and according to him it was proper for him to say to the CEO the following : “I note with dismay that such qualms have not been addressed at all in your abovementioned letter” . He further added that in view of the relationship which he had with the CEO which was quite good, the latter could have discussed those issues with him. He further considered that there was a discrimination in the CEO decision to have an audit of the IT department. He maintained that he did not see any issue why the CEO could not have talked to him about problems before knowing all the facts really. He conceded that as per the 5th paragraph of his letter of 18 November he considered that all the three – the CFO, Mr Patrick Sin and the CEO were the source of his demotivation. He contended that being a Senior Executive it was proper for him to draw the attention of the CEO that he was bypassing his rights. Further he did not consider it most improper to question the CEO of doing an audit exercise. He did reply to the letter of Mr Piccirillo dated 24 November namely on 1 December 2010 (Vide Doc.P17). He agreed that as per the contents of the said letter he suggested to Mr Piccirillo to convey to him his qualms prior to the audit. Plaintiff conceded that as per the letter of Mr Piccirillo of 3 December, there was an interim report in the light of which he was suspended and that the CEO has not yet got a full report on the exercise which has been started in his department. Further after investigation he was going to be given the opportunity to offer his explanations.

Mr Hanoomanjee agreed that Mr Budullah accompanied Mr Laher when the latter came to his office and that Mr Laher questioned him about the ‘process’ as per his testimony in chief. He explained that he distinguished an audit exercise and an enquiry by the tone used. He agreed that the purpose of auditors is to enquire but he added that it is not to investigate. All the auditors he had met were not like that . Questions were put to him concerning Tele Adapt. He gathered information that Mr Laher also talked to other members of his team namely Mr Stephen Ng. He stated that an audit is planned whereas in this case his team

was surprised because Mr Laher wanted to see them and they did not know why. He did not talk to any members of his team to tell them that Mr Laher was going to come and see him nor had he ever mentioned to members of his team that he has been queried and investigated upon by Mr Laher.

Upon being referred to his letter of 7 December which he sent to Mr Piccirillo (Vide Doc.P19) wherein he mentioned some irregularities in the tendering and procurement exercise regarding the Long Beach project, he admitted that the contents of his letter dated 4 November 2010 related to the same irregularities. The said letter i.e 7 December was a recap of the exchange of correspondences between Mr Piccirillo and himself. As per the said letter he still maintained that he was entitled to be informed of any irregularities which have not yet been concretized in the report . He however conceded that what Mr Piccirillo stated in his letter of 14 December (Vide Doc.P20) namely that “it is my prerogative as CEO to cause an independent enquiry to be carried out as regards any serious matter which comes to my attention with a view to satisfy myself of its veracity before taking any action” constituted a fair comment on the part of Mr Piccirillo but he maintained that the latter should have cleared all the allegations and rumors he had on him as he did it with Mr Tommy Wong and Mr Patrick Sin.

Plaintiff confirmed that on 15 December he wrote another letter to the CEO in which he referred to his previous letters of 7 December and requested to be reinstated in his work with immediate effect. He considered that the contents of the said letter were proper. He further confirmed having received the letter of charges dated 15 December in which are highlighted 5 charges (Vide Doc.P22). He agreed that the final report of Mr Laher is dated 10 December and that 6 days after he received the letter of charges. He then challenged the said letter namely to appear before a disciplinary committee and he entered an action in Court before the Judge in Chambers to that effect. He confirmed he was not successful and the disciplinary committee was held.

As regards the issue of Ecoflow which is one of the charges brought before the Disciplinary committee, Plaintiff admitted that his wife was secretary of this company but he did not know since when. His brother in law was the CEO of Ecoflow. The said company was not involved in the procurement business of IT equipment. His wife was not aware in what field the company was engaged in because she was only a name used by his brother in law as he is French. He was not aware what his wife was doing. His brother in law knew that he was working at Sun Resorts but he did not discuss the tender of Long Beach with him. He conceded that it is abnormal that even before the pre bid meeting his brother in law was exchanging emails and correspondences for Tele Adapt device for the Long Beach project. It

was during the disciplinary committee that he came to know that his brother in law's company was involved in electrical devices. He stated that his brother in law was already a supplier for Sun Resorts for other stuffs.

Upon being confronted to the email dated 28 April 2010 (Doc.P39) sent by Mr Romain whom Plaintiff confirmed is his brother in law and in which it can be seen that the latter was writing to potential tenderers with regards to 'Tele Adapt pour le Long Beach' telling them the success depends on this device, plaintiff denied that this information was imparted by him to his brother in law or via his wife. He conceded that at the pre bid meeting in May 2010 he showed this very device to all the tenderers and he asked them to quote for a device after which they all quoted for Tele Adapt. He maintained that he did not ask Blanche Birger or Mauritius Telecom to quote Tele Adapt.

In relation to the issue of laptop which is the subject matter of charge 5, Plaintiff confirmed that when he was requested to leave the company, he asked for his laptop and that he was allowed to go with his laptop for the week end because it was on a Friday and he wanted to retrieve his personal information. He further confirmed that on the same day some few minutes after Mr Budullah came to him and told him that after having spoken to Mr King Fat he could not take his laptop at his place. He did ask for some time to retrieve his personal information. He however contended that when he was requested to leave everything behind, he was allowed to format the laptop, which he admitted consisted in erasing the data. He further admitted that when the data have been erased this means that when the company opens the laptop it will be blank. He agreed that there was data on his laptop so that when the company took over the said laptop there was none. He did not give instructions to anyone to format his laptop nor did he personally do that. It was one of his staff members, namely one Thierry Ohis who did so because he could not retrieve all his data. The latter did inform him that he had formatted his laptop. Hence when he left the company he knew that his laptop has been formatted.

Plaintiff was also cross examined as to what he said or what was put to him before the disciplinary committee concerning this issue of formatting namely that Mr Laher stated that 45 minutes after Plaintiff had been allowed to retrieve his personal things they were given the laptop and there was nobody in Plaintiff's room and the laptop was on his desk. It was formatted. There was nothing on the laptop (Vol14 pg 3). And there was no possibility of retrieving this information. Further all the programs on Plaintiff's laptop belong to Sun Resorts. It further came out that Plaintiff stated that it was under the instructions of his subordinates that he formatted the laptop (Vol.17 pg 24). He however contended that he said so because at that time he did not want to reveal the name of the person as the latter

was still in employment. Plaintiff also admitted before the committee that he was the one who had control over his laptop but he contended that he was not the one who pressed the button. He further agreed having admitted during the committee that all the emails on his laptop no longer existed, all was erased. He however contended that they can be found on the mail server and so still available to the company.

In relation to the document which Plaintiff made use during the disciplinary committee (i.e Doc U in P 31) dated 22 September 2010, same was produced and marked Doc.P40. He agreed that this document is the company's property and he further agreed that when he was requested to leave the company he was also requested to leave behind all the company matters. It came out that on the basis of this document an additional charge was levelled against the Plaintiff as borne out in letter dated 26 May 2011 (Doc.P41). Plaintiff admitted that on the 20 May 2011 he had the said document at his place.

As regards charge 1 which is in relation to the Broadband issue, Mr Hanoomanjee admitted that as Head of ICT he was involved in all the technical issues with regards to ICT. He was aware of another contract with EDS concerning broadband internet access at Sugar Beach. He however stated that he was aware of only the technical part of the contract with regards to Sugar Beach (Doc.P42). He admitted that he was responsible of the good administration of his department and that he had vetted the technical part of the contract. But he did not know the terms of the contract between EDS and the company though it concerns his department. He knew the nature of the contract namely to provide internet access to the customers but he only knew globally the responsibilities of each party because he was not sent the contract. He conceded that responsibility-wise EDS was to pay for a line as is obvious from the record. He agreed that the contract was not properly managed but it was, according to him, by the hotel. He explained that the contract was for two hotels. It was properly managed by the accountant there but mismanaged by the accountant at Sugar Beach and hence he did not see any IT issues. He considered that the supply of the line concerns not only the IT but also the payroll department. He was not aware that it was Sun Resorts which was paying for the line instead of EDS and it was only when he received the letter of charges that he became aware of same. He however explained that it was not EDS who paid for the line. He further contended that as the line was under Sugar Beach so the latter paid the bill to Mauritius Telecom and thereafter the accountant at Sugar Beach was supposed to deduct or to charge the amount of this line to EDS. The accountant at the payroll was doing that job but not the accountant at Sugar Beach.

Under further cross examination Mr Hanoomanjee stated that he went to Dubai earlier than May/June 2010. As regards the claim for hotel accommodation, Plaintiff did not agree that he

was not allowed more than 2 nights on a free basis per year. He stated that the handbook shown to him by Learned Senior Counsel for the Defendant company is a Sugar Beach document and does not apply to the corporate office. He explained that depending on the availability in the hotels, each Regional Office Director is allowed as many weekends as he wants. Only an email has to be sent to the central reservation to know about the availability of rooms at the hotel. He however conceded that this may not be the practice. He further stated that he was entitled to play golf every Sunday at Ile Aux Cerfs and the meal is free as per his contract – Doc.P2. As regards the claim for company car, Plaintiff stated that he did not have the figures with him to dispute the workouts on his car as per the lease agreement and the maintenance amount (Doc.P44). In relation to the air tickets he did not agree that his vacation tickets were economic class tickets and that they have been paid by the company on this basis. He explained that initially it was economic but then it changed to business because he was travelling a lot. It was an acquired benefit from Paul Jones at that time. There is no writing on that but only verbal agreement to that effect.

In re examination Plaintiff stated that his travels in business class was approved from the time of Paul Jones until 2010. He maintained that for hotel facilities, all the time he made a request by mail to see the availability of rooms. He did not have any emails with him to that effect but this would be in the mail box of the central reservation. Hence the company would have the information of how many times he stayed in the hotel and how much was spent. Likewise for the meals. He just has to sign off for free meals and so the company would have this information as well as the number of times he played golf.

Upon being referred to Doc.P 33 which was produced during the disciplinary committee as Doc.Y, Plaintiff confirmed that he explained before the committee that he had not seen this document before and that there was a list of people to whom the document was distributed which did not include him. He stated that his name did not appear on the list. He further confirmed that this document applies to the supply chain office and the hotel's finance department. Concerning the Tele Adapt issue, Mr Hanoomanjee stated that when he said that it was "un service en plus" during the committee, he meant to say that it was an optional element as per the explanations which he gave at pg 38 -39 of Doc.P30, Vol.17. He also explained before the committee the cost element factor (Doc.P30 Vol.16, pgs 13-14) namely that it was not obvious that by putting Tele Adapt in the tender it would automatically mean an increase in price.

Plaintiff further stated that the meeting where he was excluded concerns the Long Beach project in general and it was in October 2010, after the tender process. Concerning the formatting issue, Plaintiff explained that the formatting is done to erase all the data which are

spread everywhere and secondly it is the practice of the IT department to format all laptops whenever it has to be re used by somebody else. This also include people who were leaving their employment and returning the company laptops and equipment. A back up is done and then it is formatted. In his case the same practice was done. The back up of all the information on his laptop was on the server and then the formatting was done.

As regards the issue of the EDS lease line from Sugar Beach, reference was made to P29, Vol 8 at pg 45. Plaintiff confirmed that it was the contract which Sun Resorts had with EDS with regard to the provision of services concerning the lease line. That line belonged to Sun Resorts in 2 separated accounts that is, the account of Sugar Beach and the account of La Pirogue. He further confirmed that according to arrangements with EDS, the latter should be refunding the cost of a lease line to the respective hotel. It was the accounting department of La Pirogue which sorted out the problem namely the finance department but the accounting department of Sugar Beach did not resolve the problem. He maintained that this is something which is dealt with at the level of the hotel and the finance department.

Evidence adduced by Defendant

The following witnesses deposed in support of the Defendant's case:

Mr Marie Gerard Antoine Domingue SC was called as a witness to depose in relation to the disciplinary committee which took place at Sun Resorts Ltd and in which he acted as Chairperson. It came out that this committee spanned over 18 sittings.

Mr Domingue testified to the effect that he has been involved in a number of disciplinary committee either as Counsel for the employer or for the employee over the last 40 years. He confirmed that in relation to the disciplinary committee to which was subjected Mr Hanoomanjee, generous latitude was afforded to both parties to present their case. A number of witnesses were heard, among others an expert namely Mr Ebrahim Laher. The latter came from South Africa. He gave his evidence and was cross examined. He stated that he relied upon his testimony and even referred to part of it in his report. He identified the report put up by him and which was submitted to the employer (Doc.P 32). He confirmed that his opinion and conclusions were based on the evidence which was brought before him in the course of the committee. And in cross examination he confirmed that he relied on the evidence of Mr Laher and his report for the purposes of giving his findings.

Mr Thierry Ohis confirmed that in 2011 he was employed at Sun Resorts and at present he is no longer working there. He knows Mr Hanoomanjee during the time he was working at Sun Resorts. He recalls that on 03 December 2011 the latter was suspended from his employment. He stated that it was not the practice for an employee who left the IT

department to have his laptop formatted i.e erasing all the data. He denied having ever formatted the Plaintiff's laptop on 3 December and stated that he did not even touch Plaintiff's laptop.

Under cross examination the above witness stated that he does not hold any qualifications but has only followed courses in IT. He learned on the job, with experience and internship. He confirmed that he was Mr Hanoomanjee's subordinate at the time the latter was Head of IT at Sun Resorts. Mr Hanoomanjee was his superior and there were approximately eight persons in his team. On the day of Mr Hanoomanjee's departure i.e on 03 December 2010 there were four of them present including him. He usually started work at 8h a.m and finished at 5h p.m. On the material date it was well before 5h p.m that Mr Hanoomanjee was suspended. They came to know about the suspension when they saw the HR coming. He was shocked and he was also afraid that the same thing happened to him concerning his employment. He recalled having seen Mr Budullah but not Mr Laher. Mr Badullah was more in a hurry to see Mr Hanoomanjee leaving the office.

He stated that at the material time Mr Hanoomanjee was working on his laptop and at the same time he was picking up his things. They were all there, discussing of what was happening. He did not know what Mr Hanoomanjee was doing on his laptop because they were standing in front of him and he could not say whether he was removing everything that was on his laptop. They all accompanied him to the parking when he left the office and after his departure they all came back to their office. At that time he did not know if the laptop had been formatted and the question of formatting the laptop did not arise either. The laptop was on the office desk but he did not know if Plaintiff closed it or left it opened or it was switched off. He accompanied Mr Hanoomanjee when he was leaving the office as a moral support to him because he has been working with him for 12 years and also to know what was happening. He was also scared for his job because it was something new which has happened. He denied the Plaintiff's version to the effect that he was the person who pressed on the button for the formatting of Mr Hanoomanjee's laptop. He is no longer working for the Defendant company since 2012. He left the Defendant company one year after Plaintiff's departure because he got a better package at the MCB.

Mr Denis Patrick Sin Yan Too deposed as representative of the Defendant company. His evidence in relation to the present case was in substance as follows:

In 2010 he was the Group Supply Chain Manager at Sun Resorts. He has known Mr Hanoomanjee since 1998 and has been working with him closely since 2005. He confirmed that as from 2009 there was a rift between Plaintiff and himself because of the tender for the Long Beach ICT project. He explained that he was not comfortable with the tender process

and the recommendations made by the Plaintiff. He further confirmed that sometime in November he was approached by Mr Piccirillo. Upon being shown Doc.P13, he confirmed that he was aware of same and he was questioned by Mr Piccirillo who was then CEO of the company, about it. He then informed the CEO of the state of things and this prompted an enquiry/ audit to be carried out in the IT and Supply Chain department i.e in the department where Plaintiff was working and in his department as well.

Mr Sin confirmed that the audit was carried out by a company called Marsh from South Africa and the person in charge of the audit was Mr Brian or Ebrahim Laher. He was queried by Mr Laher who also queried his team, Plaintiff and members of Plaintiff's team. Subsequently a preliminary report was produced on 3 December 2010 followed by a final report on the 10 December 2010 (Vide Doc.P25). He identified the said document i.e P25 as being the very report which was produced by Mr Laher in the course of the disciplinary committee which was chaired by Mr Domingue, Senior Counsel. He confirmed that both Mr Laher and himself deposed in that committee. Mr Sin further confirmed that at a certain stage during the tender process Plaintiff asked him to negotiate with the tenderers (Vide Doc.P35).

In respect of charge 1, Mr Sin confirmed that there was a contract for broadband internet access with a company called Enterprise Data Services (EDS) Ltd. He produced the said document (Doc.D1) and explained that it was the IT department which was responsible to ensure the smooth running of this contract. At the material time the IT department was under the management/responsibility of the Plaintiff. He stated that there has been some mishap in the management of this contract inasmuch as a certain sum of money which was to be paid by EDS was in fact paid by Sun Resorts. It was in August 2010 that same was brought to his attention following which there was an exchange of correspondences between himself and the CEO of EDS, Mr Sunnasy. Whatever sum which was due was then repaid by EDS to Sun Resorts. He further added that if it was properly monitored there would have been no issue between Sun Resorts and EDS.

As regards charges 2,3 and 4 in the letter of charges, Mr Sin confirmed that there was an issue raised concerning the procurement and the suppliers in the tender exercise in relation to a specific electronic device known as Tele Adapt. He knows that it is a device which is installed in each room.

It came out that for the IT bid there were five or six bidders and at the end of the day there were only three namely EDS, Blanche Birger and Mauritius Telecom. Upon being referred to the Laher report namely Doc. P25, Annexure F, he confirmed that there is an email dated 30 April 2010 with the subject "Tele Adapt pour le Long Beach" and on the next page there is an

email dated 28 April 2010 with the same subject which the witness read out in Court. Mr Sin stated that he came to know that Mr Baiutti is Mr Hanoomanjee's brother in law and as per the document which follows the email on the next page it came out that Ecoflow Ltd is a company where Mr Baiutti is the main shareholder and the company's secretary is the wife of Mr Hanoomanjee. It follows from the 'adverts' on the next page that the only type of business in which the company is involved is energy i.e water. Mr Sin confirmed that there is no hint whatsoever that the company was engaged in electronic devices.

The Defendant's representative confirmed that there is a correspondence from Mr Laher where questions are being asked about Tele Adapt. He stated that there was a situation where there were exchanges between the various bidders and himself concerning Tele Adapt as per Annexure D in the Laher's report. He explained that same was an email dated 28 September from Mr Malleck, the then General Manager of Blanche Birger and which was sent to him so as to negotiate a better price for the tender. Hence at this stage he considered that it was an integral part of the tender and he did not find it proper for Eco flow in the circumstances to be part and parcel of this tender because whatever the company buys it has to ensure that there is a proper service and a proper after sales service afterwards. Hence as Eco flow was not a local representative of Tele Adapt then the company would never consider buying from such a company. Furthermore, the representative of the company being a related party to Mr Hanoomanjee the latter should have informed the company or himself so that this can be taken into account prior to taking a decision. He confirmed that this device was quite an important part of the tender as pointed out by the Plaintiff himself at the sitting of 12 September pg18 that this device represented between 4 to 10% of the value of the tender. Mr Sin confirmed that from the correspondences which he had and which had been produced by Mr Laher at the disciplinary committee and before this Court, all the three tenderers quoted Tele Adapt.

Under cross examination Mr Sin confirmed that his actual position in the Defendant company is General Manager of the Laundry Division. It's a promotion which he gets in 2017. He confirmed and maintained that whatever he said in the disciplinary committee and which were recorded in the minutes of proceedings is correct and that the Court may rely on it.

He conceded that Mr Hanoomanjee joined employment in the Defendant company before him and he worked closely with him for about 5 years before the latter left. He had a professional and good working relationship with him. He described the Plaintiff as an authoritarian person, who likes to impose whatever decision he wants to take and when one tries to go against or recommends something other than what he has recommended that's

where all issues start. He started feeling all this during his time as Supply Chain Manager i.e in 2009.

Mr Sin explained that there was a rift between him and Plaintiff in 2009 because the latter was insisting that the full contract be allocated to EDS. This was on 9 July when there was a meeting during which were present Mr De Chalain, Mr Piccirillo, Mr Wong and Plaintiff. It was a formal meeting during which the decision was taken that he should go back to EDS to ask them to align their price. There were no minutes but only a decision was taken to go back and contact EDS. He agreed that the purpose of this meeting was to review everything that have been received from all the tenders. He confirmed that prior to this meeting there had been a formal recommendation made by Mr Hanoomanjee in writing that EDS should be given the contract. He explained that by insisting he meant that plaintiff wanted to give EDS the chance to review their code because there was a cost constraint on the project. The insistence of Mr Hanoomanjee caused a rift in their relations because he did agree with him. But there was no breakdown of relationship between him and Plaintiff. He stated that the fact they disagreed on a project does not mean that they stopped working together. His relationship with Plaintiff continued to be civil and proper.

Mr Sin confirmed that in June/July 2010 there was an anonymous letter that was circulating and sent to him concerning allegations of dishonesty made against him as well as against Mr Wong and Mr De Chalain. He explained that he was not under pressure because anonymous letters happen all year round and in view of the responsibility that he had for the last ten years he will have team members and colleagues who will agree and others who will not be happy. He admitted that when he took note of the letter he was upset but this did not affect his way of operating. He agreed that the CEO contacted him regarding these allegations to which he responded and as far as he knows the CEO was satisfied with his explanations. In fact all three of them i.e Mr Wong, Mr De Chalain and himself were asked to put something in writing for the benefit of the Board and they collectively put in writing their explanations to Mr Piccirillo who then directed it to the Board. They had a meeting with the Chairman – Mr Dalais, and the latter was happy with their explanations and they were told to continue working normally. He did not recall exactly when was that meeting with Mr Dalais.

Mr Sin stated he did not know whether the name of the person who made the allegations were disclosed to all the members of the Board. However he admitted that if he said before the disciplinary committee that the Board knew it, same is correct. He did not have any suspicion of who made the allegations. He pointed out that apart from Mr Hanoomanjee, Mr De Chalain, Mr Wong and himself, there were other people as well in charge of the Long Beach project. He however conceded that they were the four main people representing 'Sun'

i.e the employer. He further agreed that out of the four of them, the only one who was not involved in the allegations was Mr Hanoomanjee. He denied that as at June/July 2010 he was very much under the impression that it was Mr Hanoomanjee who was the person who made the allegations against him.

The Defendant's representative stated that he did his job of negotiating with the three short listed tenderers. It came out that in June 2010 there were five parties whose tenders were going to be discussed in the meeting of the 9 July namely – Blanche Birger, Mauritius Telecom, EME, EDS and Manser Saxon – the latter then submitted a joint bid with Mauritius Telecom and another party called Anglo Africa. He confirmed that Mauritius Telecom only tendered for 1 gigabyte which was not conformed with the tender specifications. He explained that he queried from the Accounts Manager of Mauritius Telecom as to why they tendered for 1 gigabyte and not 10.

Upon being shown Doc.H in P31 i.e Doc.P34 - the tender report, he confirmed that there was a report from Mr Hanoomanjee dated 28 June which was sent to all concerned. He further confirmed that as per the said email Mr Hanoomanjee stated that he had already contacted all the suppliers as there were some misunderstandings and they had now sent their final figures as per annexure except for Mauritius Telecom. He confirmed that the recommendation was that EDS should get the tender based on the figures that he set out. When referred to Doc.H1 – i.e Doc P35 he confirmed that it was Alcatel which was retained and he agreed that Alcatel was proposed by EDS, the others provide other types of equipment. He confirmed that as per the said email (Doc.P35) he was asked by Mr Hanoomanjee to try to negotiate to get a better figure than what they had given as final to him.

Mr Sin explained that his job as Supply Chain Manager is not only a rubber stamp of what he is being instructed to do because at the end of the day, he takes full responsibility of all the contracts that are issued by the company irrespective of who is giving the recommendations. Therefore before he proceeded with an approval, he has to understand what is being forwarded to him and the reason behind each and every quotation that they have received. That was why he enquired with EDS, Mauritius Telecom and Blanche Birger who are their working partners. He confirmed that Mauritius Telecom sent a letter dated 14 July explaining why they thought that 1 gigabyte was sufficient. There are technical explanations given by Mr Kapil Reesaul and the letter was addressed to Mr Piccirillo. He was made aware of the letter but he did not recall exactly when.

He confirmed that after the meeting of 7 July, Mr Hanoomanjee was not in Mauritius as he was away on overseas leave. He stated that the subsequent offers made by Mauritius

Telecom were for 1 gigabyte and Mauritius Telecom was insisting that whatever proposal they have made was more than sufficient to their specifications. As he insisted with Mauritius Telecom to give a formal guarantee they issued a formal letter signed by the CEO Manager of Mauritius Telecom. He agreed that this was a discussion which he had with Mauritius Telecom before the 14 July because they (MT) wanted to justify why they quoted for only one gigabyte. He conceded that he did not contact Mr Hanoomanjee to inform him about same. He further admitted that Plaintiff was not aware that he tried to contact Mauritius Telecom although they were outside the specs. He further stated that he also asked Mauritius Telecom to send them revised figures for 10 gigabytes and same was not to the knowledge of the Plaintiff.

Mr Sin admitted that on 7 July at the meeting where all the parties were present to negotiate he put in the revised figures from Mauritius Telecom for both one gigabyte and ten gigabytes. Same was not to the Plaintiff's knowledge who found it out in front of everyone else at the meeting of 7 July.

As regards the letter of 10 November 2010, he recalled he was shown same by Mr Piccirillo and he was asked to give his explanations, which he did. He told him that he was not comfortable with some items in the tender. He confirmed that after that there was an enquiry that was set up for IT and Supply Chain Department. He stated that there were 2 audits for both departments on this project (meaning the Long Beach project) and the auditor was Brian Laher. The audit on his department took place during Mr Laher's visit but he could not confirm how long it lasted. Mr Laher asked questions on the tender specifications, about how they "went around", what was the process and any documentation but as it was about 9 years ago he could not tell exactly all the questions which he asked him.

Concerning the broadband internet issue, he confirmed it was in August 2010 that the issue of EDS contract was brought to his attention. He admitted that the issue goes back to 2006 but it was only in 2010 that this matter came to his attention because the contract was due for renewal and hence it was sent to him for review before finalizing the renewal. It was the Finance department of the hotel, more specifically the Financial Controller Mr Mervin Chung who sent the contract to him because at that time all contracts are vetted by the Supply Chain Department prior to signing by the CFO and the CEO. The previous contract in 2003 was not vetted by him nor the one in 2006. He explained that the Supply Chain Department was set up end of 2005. Before August 2010 he was aware that there was a contract for broadband. But as the department was set up end of 2005, it took time for the process to be set up and at that time the Supply Chain was not taking care of contract for services. Whatever contract was signed by the top management was done without the vetting of the

Supply Chain department. It was after a few years that it was decided that contract for services as well would go through the Supply Chain for vetting prior to approval.

Mr Sin stated that the broadband contract was sent to him by the Finance department when it was due for renewal and he noticed that it is a contract that concerns the ICT services. He would send the contract to Mr Hanoomanjee for comments only if he had queries with regards to a specific issue concerning IT. In this case the contract was not renewed but he was not sure when the contract stopped being in effect. It continued and then notice was given and the contract was terminated. He explained that while doing the verification he contacted the hotel to check how the lease line was operating and that's how it was brought to his attention that the hotel was not aware of who was supposed to bear the cost. It was only when he stated querying that it was discovered that was one of the telephone lines that was used for the broadband was being paid by the hotel. He admitted that as from August 2010 he was fully aware that there had been a problem regarding this contract but he did not escalate this problem. He further admitted that the management of this contract as far as payments are concerned are managed by the Finance department and not by the ICT department. He however added that the Finance department did not have the information at that time to claim for the lease line charge.

In relation to the issue of Tele Adapt, he confirmed that the tender documents did not specify the make Tele Adapt and all the bidders put in bids for Tele Adapt. It is a product that can be purchased from several sources. He stated that according to the information he received from the suppliers, it was 'Manoj' who required the brand Tele Adapt.

He confirmed that he had no personal knowledge of the email dated 29 December (Vide Annexure F in Doc.P25) which was from Mr Sundeep Rambhojun of Blanche Birger and addressed to Mr Laher as well as the other e mails which were not addressed to him. He stated that he was informed of same by Mauritius Telecom and Blanche Birger because he was in contact with them in negotiation, sometime in July 2010, following the recommendation from 'Manoj'. He cannot recall exactly who was the person from Blanche Birger who informed him of the fact that there had been a supplier called Eco flow who proposed Tele Adapt but he knew that it was one of the staffs from Blanche Birger who worked on this quotation. When confronted to Annexure D which is an email from Mr Malleck dated 28 September, Mr Sin confirmed that same was in response to a request which he made to Mr Malleck. He made the request by phone and then he received the confirmation by email. He confirmed that as per the said email Mr Jaddoo informs Mr Malleck that "we were told by Sun Resorts, Mr Manoj Hanoomanjee to seek quote from Ecoflow.....".

Mr Sin explained that when he received this email of 28 September he enquired with Mauritius Telecom as well. He admitted that this email is a serious allegation on its own as it contains a piece of information that is very important and damning to Mr Hanoomanjee and which could be the subject of severe sanctions. Hence he had to investigate deeper into the information because first of all he had to understand the supplier Ecoflow namely what was its main activity though he admitted that in August he was aware of its existence as per his depositions before the disciplinary committee. He further stated that he needed to have confirmation from the other suppliers as well, namely from Mauritius Telecom. The latter sent an email to Mr Laher – as per Annexure E. He further added that at that point in time he considered that he did not have sufficient information because it was from Blanche Birger only. The other suppliers gave the information to him only verbally but as it is a sensitive issue he has to ensure that he gets all information before bringing it to the attention of top management. He did not agree that he was actively involved in looking for things on Mr Hanoomanjee right from June because of the anonymous letter and further denied that he was gathering all information until he could pin him down.

Mr Sin admitted that document E (in fact it should be Annexure E) came to the knowledge of Mr Laher after the date of suspension of Mr Hanoomanjee. He confirmed that this document is the written exchange that he had about the Tele Adapt. He further confirmed that at the end Tele Adapt was not even used as afterwards the specifications were changed. He did not know who changed those specifications; it could be Mr Laher. He did not know whether Mr Laher took over the role of Mr Hanoomanjee on the project once the latter had been removed. Upon being referred to what was said during the disciplinary committee – Vol.17 in P30 , pg 39, he admitted that the question was put to him about the costs and there was an explanation that it was not an essential component by the person who drafted the specifications – that is Mr Hanoomanjee. He explained that without this equipment the system would not work but he admitted that the equipment was replaced by a product called “Nano station Ubiquity” and it was Mauritius Telecom which got the tender.

Mr Sin denied that he had an axe to grind with Mr Hanoomanjee and that he had been very active in the whole process of getting him suspended and terminated from his employment. He further denied that all information that is now before this Court and which was before the disciplinary committee was given by him to Mr Laher. He also denied that all the information in Mr Laher’s report comes from him.

In re examination Mr Sin stated that Mr Laher had never worked for Sun Resorts. He was only needed for his job as Auditor in this case.

Submissions

Learned Senior Counsel appearing for the Plaintiff based her submissions on two limbs: firstly the non compliance with the notification period for charging an employee and; secondly on the issue of misconduct, namely as to whether the charges have been proved and if proved whether they amount to a 'faute grave' warranting the termination of the plaintiff's employment.

Section 38 (2) (a)(iii) of the Employment Rights Act (ERA) 2008 was referred to as well as the Supreme Court case of *Chelen v/s Mon Loisir Sugar Estate* [1971] MR 180 and an extract from *Encyclopedie Dalloz, Repertoire De Droit du Travail, Tome 2, notes 370 to 373*. As regards charge 1 it was pointed out that the date at which the employer became aware was August 2010 as borne out in Doc.P29 , Vol 6, pg 20 whilst for charges 2 to 4 it was submitted that the employer was already aware as at the end of August 2010 as borne out in Doc.P29, Vol 6, pg 14 to 17 and Doc. P25, Annexure D – mail dated 28 September 2010 showing the relationship between the Plaintiff and Ecoflow. Learned Senior Counsel referred to the evidence of Mr Sin that he was called by Mr Piccirillo shortly after the latter received the letter of 4 November 2010. It was submitted that as at that date Mr Sin himself was already aware about firstly the broadband issue; secondly of the fact that Plaintiff had requested the use of Tele Adapt device during the pre bid meetings for the Long Beach project and thirdly about the relationship between Ecoflow and Plaintiff's brother in law and wife as well as the fact that Ecoflow had contracted potential bidders to propose the distribution of a Tele Adapt product.

It was also pointed out that Mr Piccirillo took 11 days after the letter of 4 November was sent to him to decide to institute an enquiry or audit. It was therefore contended that in those 11 days Mr Piccirillo was already aware of those matters in respect of charges 1 to 4.

The Privy Council case of *Mauvilac Industries Ltd v Ragoobeer* was cited concerning the fatal consequence of not adhering to the time limit under the Employment Rights Act. It was therefore submitted that there must be an objective finding of the date of awareness as required under the French law and as mentioned in the case of *Chelen* (supra) and failure to act within the 10 days' limit constitutes a waiver of the employer's right to take disciplinary action for misconduct against the employee which may lead to the termination of his contract of employment.

In relation to the second limb, Section 38 (2) (1) (b) of the ERA 2008 was referred to and the case of *United Docks Ltd v/s De Speville* [2019] UKPC 28. Learned Senior Counsel submitted that there is evidence that Plaintiff had an unblemished record and a good performance track record of more than 15 years with the defendant. The circumstances in which Plaintiff was suspended and removed from his employment reveal a very brutal if not

callous approach on the part of the employer, in particular on the part of the CEO. It was pointed out that there is evidence that Plaintiff was already being side lined and by passed in the course of the tender process to the Long Beach project. There is also evidence that the employee was not reproached of anything either verbally or otherwise by the Defendant. He was not confronted to any adverse information his employer may have had against him to warrant such an attitude. On the contrary there is evidence that when Plaintiff sought the help of his reporting Head, the CEO to make a formal report as to perceived irregularities in his letter of 4 November 2010 at the end of the day he was the one taken to task which is in contrast to the manner in which Mr Sin, Mr Wong and De Chalain were treated by the CEO when allegations were made against them in June of the same year.

Learned Senior Counsel elaborated on the different charges as per the letter of charges. In a gist it was submitted that in respect of charge 1 it was Mr Sin himself to be held responsible for the omission being the Supply Chain Manager at that time, whilst as regards to charge 2 it was contended that the different elements mentioned therein have not been proved and the said charge is not tenable. In relation to charges 3 and 4 Learned Senior Counsel pointed out that there is nothing on record to support these charges. As regards charge 5 the Court was invited to take into account the circumstances in which the Plaintiff was made to return the laptop and also the issue of who actually pressed the button for the formatting of the laptop. The question as to whether returning a laptop in a formatted state amounted to a misconduct or 'faute grave' was also addressed. In relation to the additional charge as per Doc.P27 it was submitted that there is no evidence that between the 3 December 2010 and 26 May 2011 when P27 was issued that Defendant requested Plaintiff to return everything that was not on his work premises but at home.

Learned Senior Counsel for the Plaintiff also highlighted the issue of the degree of 'faute' warranting the termination of employment based on the case of *Abdurrahman N v Total Mauritius Limited* [2013] SCJ 480 which sets the test to be applied for determining what amounts to a 'faute grave'. It was submitted that if there was any form of misconduct on the part of the Plaintiff it cannot be considered to be the most severe 'faute' warranting the decision to terminate his employment. It was finally submitted that the evidence of Mr Laher should not be taken into account inasmuch as his credentials were heavily challenged during the disciplinary committee. Further the Chairperson of the disciplinary committee relied heavily in his conclusion on what Mr Laher said at the disciplinary committee. It was also pointed out that Mr Sin was not an objective witness and his evidence is to be treated with caution.

Learned Senior Counsel appearing for the Defendant referred to the plaint with summons before this Court which relates in a chronological order the exchange of a number of letters between the parties concerned. It was pointed out that the letter of 4 November 2010 requesting the intervention of the CEO culminated in the letter of charges – Doc.P22. It was submitted that it was the normal course to adopt because the CEO was in presence of a formal letter from the IT Manager asking him to intervene, hence his decision to come up with a complete audit as it was the Heads of certain departments who were concerned.

Learned Senior Counsel also highlighted the fact that the letter of 18 November 2010 from the Plaintiff to the CEO shows that Plaintiff did not want an enquiry to be initiated and that he is the one to dictate how things are to be done. The letters of 01 and 03 December were referred to (Vide Docs.P17 & P19) and it was contended that it is insulting on the part of a Manager to react in such a way towards his CEO and his challenging the validity of the letter of suspension stating that the audit exercise amounts to a fishing expedition shows the attitude of the Manager of IT towards his CEO.

As regards the charges against the Plaintiff, Plaintiff's job description was referred to in respect of charge 1 and it was submitted that if costs were not properly allocated, Plaintiff was answerable for same and this shows severe lacunas in the exercise of his duties. As regards charges 2,3 and 4 they were lumped together because they are interrelated. It was submitted that who can believe that Plaintiff was not aware of Ecoflow. The Laher report and the annexures in the said report are very clear on this issue and it was contended that the only conclusion one can draw was that all the information come from the Plaintiff otherwise where does the Plaintiff's brother in law get all the information. It was further pointed out that the latter is the only shareholder of Ecoflow where Plaintiff's wife works and it is a company not involved in IT devices. It was therefore submitted that it was impossible for any prudent employer to have trust in a person who has concocted a whole scenario for his brother in law and wife to benefit from it.

In respect of charge 5 Learned Senior Counsel highlighted the contradicting evidence on record on that issue of formatting of Plaintiff's laptop. The Plaintiff's version and that of the witness Ohis were referred to. As regards the additional charge, Learned Senior Counsel referred to the Plaintiff's evidence on record to the effect that he admitted the document was the company's property and that he was requested to leave all the company's materials behind.

In light of all the above it was submitted that there was no choice left to the employer as all the doings of the Plaintiff as per the charges against him constitute a 'faute grave'.

Learned Senior Counsel also submitted on the issue raised to the effect that Plaintiff was not given an opportunity to offer his explanations before the disciplinary committee. It was pointed out that the committee lasted for about 8 months and it cannot be said that Plaintiff was not given a proper opportunity to give his explanations. Further the evidence of the Chairperson as far as tenure of the committee was not challenged as well as his conclusions.

As regards the 10 days delay Learned Senior Counsel put emphasis on the fact that in the present case we are dealing at a stage where there have been allegations and investigations. Hence any responsible employer cannot charge straight an employee the more it was the Head of a department who was involved. It was submitted that the 10 days start to run as from the time the employer becomes aware of the misconduct, that is, the time he had “une connaissance complète” – which in the present case, was when the final report of Mr Laher was handed over, hence time starts to run on the 10 December 2010.

On the issue of remuneration it was submitted that all items which were not in the contract were advantages given “par pure tolerance”. As regards pension it was submitted that as per Section 48 of the ERA the remuneration cannot include the computation of pension.

Analysis

I have carefully analysed all the evidence on record as well as the submissions of both Learned Senior Counsel appearing for the Plaintiff and Defendant respectively. As all the evidence in support of the Plaintiff's and Defendant's case have been amply elaborated above hence the Court will deal straightaway with the issues raised in this case.

Suffice it to say that the termination of the Plaintiff's employment being on the 9 August 2011 the legislation applicable is the now repealed ***Employment Rights Act (ERA) 2008*** before amendment by Act No.6 of 2013.

The section of the law relevant to the case in hand is ***Section 38 (2) of the ERA 2008*** which reads as follows:

(2) No employer shall terminate a worker's agreement –

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

(i) he cannot in good faith take any other course of action;

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

(iii) he has within, 10 days of the day on which he becomes aware of the misconduct,

notified the worker of the charge made against the worker;

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

him; and

(v) the termination is effected not later than 7 days after the worker has answered the charge made against him, or where the charge is subject of an oral hearing, after the

completion of such hearing;

At the very outset the Court will deal with the issue of the 10 days delay provided by 38 (2) (a) (iii) of the ERA 2008, raised by the Plaintiff who considered that there has been a breach of this mandatory time limit set out by law for notification of the charges levelled against him, after which the Court will analyse those charges which Defendant considered amount to serious misconduct and breach of trust .

(i) Non compliance with the notification period for charging the employee

It is pertinent to note that Section 38 (2) (a) of the ERA 2008 as drafted makes it clear that an employer cannot terminate a worker's agreement for reasons of misconduct unless the employer has complied with all the five conditions listed above. The wordings of the above section of the law namely the following words "shall", "unless" "and" clearly convey the imperative nature of the provisions of section 38 (2) and hence any employer must comply with all the above requirements before termination of a worker's agreement on the grounds of misconduct. The mandatory nature of Section 38 (2) is further confirmed by Section 67(1)(e) (i) of the ERA 2008 which makes it a criminal offence for any person who contravenes Section 38, which means to say that failure to comply with any of the provisions of Section 38 would constitute an offence. Section 67 (1) (e) (i) reads as follows:

67. Offences

(1) Any person who –

(e) contravenes –

(i) sections 4(1), 5(1), 8, 10, 12, 13, 14(5), (6), (7), 16 (1) (b), 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 ,31, 32, 33, 34, 35, 37(2), 38, 39, 44(5), 47, 50, 51, 53, 55(1), 58(1), 59, 61(4), 62(2), 63 or any subsidiary enactment made under this Act;

Shall commit an offence.

In the light of the above it can be said that the delays of 10, 5 and 7 days as provided in subsection (iii), (iv) and (v) respectively are mandatory statutory delays and any termination of employment in breach of these statutory delays would be deemed to be unjustified. This has been confirmed in the Privy Council case of ***Mauvilac Industries Ltd v Mohit Ragobeer [2007] UKPC 43*** where the Judicial Committee of the Privy Council interpreted Section 32 of the repealed Labour Act 1975, more specifically subsection 1(a) (b) (ii) of the 1975 Act. Under the heading “Unjustified termination of employment” Section 32(1) of the 1975 Act reads as follows:

32. Unjustified termination of agreements

(1) No employer shall dismiss a worker –

(a) by reason only of the worker’s filing in good faith of a complaint, or participating in a proceeding, against an employer involving alleged violation of a law;

(b) for alleged misconduct unless –

(i) he cannot in good faith take any other course; and

(ii) the dismissal is effected within 7 days of –

(A) where the misconduct is the subject of a hearing under subsection (2) the completion of the hearing;

(B) where the misconduct is the subject of criminal proceedings, the day on which the employer becomes aware of the final judgment of conviction; or

(C) in every other case, the day on which the employer becomes aware of the misconduct

In the “Mauvilac” case, the Judicial Committee had to determine whether the termination of Mr Ragobeer’s contract of employment on 7 June “unjustified” in terms of section 32 of the 1975 Act? Their Lordships considered that “*by 7 June, the statutory period had passed and Mauvilac was therefore not entitled to dismiss Mr Ragobeer for alleged misconduct under section 32 (1) (b). It follows that the termination of his employment was unjustified.*”

The following extracts from the “Mauvilac” case regarding the mandatory nature of the statutory delay provided by section 32 (1) (b) of the 1975 Act are of pertinence and relevant to the present matter under consideration: “*Of course, it may seem strange to describe the termination of an employee’s employment for established misconduct as “unjustified” merely because the necessary notice reaches the employee eight, rather than seven days after the*

completion of the disciplinary hearing. Nevertheless, the legislature has adopted a policy of laying down a fixed time limit – clearly, with the Recommendation of the ILO in mind and with the aim of ensuring that both parties know where they stand as quickly as possible.....”

Applying all the above to the case in hand, it is clear that the termination of the Plaintiff’s – employee’s contract of employment for reasons of gross misconduct will be deemed to be unjustified unless the Defendant – employer has complied with each and every requirements of Section 38(2) (a) of the ERA 2008. As stated above, it is the Plaintiff’s contention that the Defendant has failed to comply with Section 38 (2) (a) (iii) of the ERA 2008 regarding the statutory delay of 10 days for notification of the charges levelled against him .

From the above provisions of the law, it is clear that the 10 days limit starts to run as from the date the employer **becomes aware** of the employee’s misconduct. In the case of ***Bata Shoes (Mauritius) Ltd. v. Mohassee [1975] MR 146*** (which was decided under the repealed Labour Act) this issue of “the day on which he (the employer) becomes aware of the misconduct” was interpreted as follows:

“the employee's misconduct, that is to say, not merely of acts or omissions and circumstances that may constitute misconduct but of acts or omissions and circumstances that would allow an employer, upon a reasonable view, to reach the conclusion that the employee has been guilty of that type of gross misconduct which alone entitles him under the law to dismiss his employee summarily.....What S.6 (2) requires is that the dismissal be effected within seven days after the employer is in possession of such information as ought to satisfy a reasonable employer that the worker is guilty of misconduct. The time-limit operates from that moment”. [Emphasis added].

The case of ***Chelen*** (supra) cited by Learned Senior Counsel for the plaintiff is also of relevance namely the following dictum:

“We agree that the starting point of the seven days should not be wholly subjective, as it would be too easy for any employer wishing to evade the provision of the law to decide arbitrarily, when he becomes aware of a worker’s misconduct. The starting point should be accessible with some certainty, but the circumstances of each case must be taken into consideration”. [the underlining is mine]

In order to determine whether the Defendant company – employer has/ has not complied with the statutory delay of 10 days as provided by Section 38 (2) (a) (iii), it is significant to

analyse the chronology of the events which culminates in the letter of charges dated 16 December 2010 (Vide Doc.P22).

To start with, it is undisputed that on 04 November 2010 Plaintiff sent a letter to his CEO Mr Piccirillo concerning some alleged interferences in his duty as Chief Information Systems Officer by the Supply Chain Manager, Mr Sin and in which he reported some examples of situations where he was sidelined and overruled by persons working under the Chief Financial Officer (CFO). From the evidence on record it clearly transpires that the '*déclat*' started with this letter as from then on there was an exchange of correspondences between the Plaintiff and the CEO as borne out by the letters already on record, and which finally resulted in the suspension of the Plaintiff on the 03 December 2010 (Vide Doc.P18) and ultimately the termination of his employment after he was subjected to a disciplinary committee.

There is no dispute that it was in the letter of 03 December 2010 that Plaintiff was informed of the charges levelled against him. It is however the Plaintiff's contention that since August 2010 the defendant was already aware of all the alleged incidents as enumerated in the letter of charges and so by notifying the Plaintiff of same on the 10 December 2010 clearly the Defendant – employer has been acting in breach of Section 38 (2) (a) (iii) of the ERA 2008. Reference was made to the evidence adduced by Mr Sin during the disciplinary committee namely at the sitting of 28 March 2011(See Doc.P29 in Vol.6, pg 20) that the latter became aware of the losses incurred by Sun Resorts Ltd around August 2010 and regarding the tender process it was towards the end of August that he was approached by some suppliers (See Doc.P29 in Vol.6, pg 14).

However the Court is of the considered view that the 10 days notification of the charges to an employee rests on the employer from the time the latter has sufficient information "as to satisfy a reasonable employer" that the worker has committed some acts of misconduct. Hence in this case it is not sufficient to say that time starts to run as from the date Mr Sin becomes aware of some facts concerning the broadband costs and the tender process. The starting time to be taken into account is the time the CEO of the Defendant company, who is the only one entitled to take any action against an employee, becomes apprised with "**some certainty**" of the facts brought to his attention by the Plaintiff in his letter of 4 November 2010. Hence it is on the basis of this letter that the CEO decided to order an enquiry into the matter concerning the parties mentioned in the said letter, in the light of which he can take the necessary actions he deemed fit.

The Court cannot lose sight of the fact that the CEO was in presence of some allegations made by the Plaintiff and after querying the persons mentioned by the latter, it came out that

there were allegations made against the Plaintiff too. Therefore the CEO was in presence of allegations against the Heads of two departments and it would have been most improper on his part to take any actions based only on the words of one against the other. Hence the CEO took the course of action which any reasonable and diligent employer would have adopted in such a situation namely to order an independent enquiry/ audit to look into the matter, after which he can take the right decision. And the CEO can only take this decision after having received the conclusion of the enquiry ordered by him. It transpires from the evidence on record that an interim report dated 02 December 2010 was handed over to the CEO – Vide Doc.P24. It is pertinent to note that in the letter of 03 December 2010 it was clearly brought to the attention of the Plaintiff that “there are other issues under investigation”, which means to say that the enquiry was not yet completed. It came out that the final report was communicated on 10 December 2010 (Vide Doc.P25).

Taking into account all the above, the Court is of the view that the CEO could not have taken any decision until he was in presence of all the facts and circumstances of the issues under investigation. Hence the final report sets the time from which delay starts to run for notification of the charges leveled against the Plaintiff as it is only after communication of this final report that it can be said that the employer is fully aware of the alleged misconducts committed by the Plaintiff. And this led to the charges laid down against the Plaintiff as per letter dated 16 December 2010.

Plaintiff contended that the CEO could have called him to discuss the matter. However the Court considers that it would have been most improper for an employer to impart to an employee allegations made against him without a proper enquiry carried out into the matter the more so in the case in hand it concerns high executive officers of two important departments.

In light of all the above, the Court is of the considered view that in the present case the 10 days delay of Section 38 (2) (a) (iii) starts to run as from the 10 December 2010 when the CEO of the Defendant company becomes fully aware of the incidents which as per the Defendant's contention warranted those charges as laid down in Doc.P 22 against the Plaintiff. Hence Plaintiff having been informed of the charges on the 16 December 2010, it stands to reason that the 10 days delay for notification of the charges against the Plaintiff - employee has been complied by the Defendant – employer.

(ii) Charges levelled against the Plaintiff

The charges are embodied in Doc.P22 i.e charges 1 – 5 and the additional charge is spelt out in Doc. P27.

Charge 1

Charge I is in relation to the Broadband issue and it was contended that Plaintiff was responsible for the losses incurred by the Defendant for one of its hotel resorts 'Sugar Beach Resort' though there was an agreement that all such costs are to be exclusively borne by EDS Ltd, one of SRL's ICT suppliers. On that score the Court takes into account the undisputed evidence on record that there was a contract with EDS concerning broadband internet access at Sugar Beach and it was agreed that responsibility wise EDS was to pay for the line. It is clear from the said contract (vide Doc.P42) that it concerns mainly the IT department as it involves the installation of high speed internet access through wireless broadband technology. Hence the question arises as who was responsible of the proper monitoring of this ICT contract? It is not in issue that Plaintiff was at the material time Head of the ICT department. But as per his testimony, as regards the provision of this broadband internet access he did not know the terms of the said contract and he was aware of only the technical part. However a close analysis of the Plaintiff's job description as per Doc. P4 clearly shows that amongst other duties, Plaintiff has managerial and administrative duties. And this includes among others the implementation and monitoring of short and long term project; "control and manage expenses in relation to his department"; "to provide at regular intervals Cost/Benefit analysis of the services offered by his department". Hence as Head of the IT department Plaintiff has the overall responsibility of his department. Therefore, the management and proper monitoring of the ICT contract between EDS and the Defendant falls under the responsibility of the Plaintiff. In fact Plaintiff admitted in cross examination that the said contract concerns his department but he contended that he is aware of only the technical aspect of the contract and does not know the terms of the contract. However, this seems quite far fetched on the part of a Head of ICT department whose job title is described as Director of Information Systems. Therefore in such capacity the Court is of the view that it was incumbent on the Plaintiff to ensure that all the terms of the ICT contract with EDS were properly complied with. Had same been diligently done by the Plaintiff there would not have been no losses incurred at the expense of the Defendant. The Court takes note of the Plaintiff's version that that it was the accountant at Sugar Beach who did not properly manage the said contract and did not make the proper deduction or addition. Be that as it may, this does not in any way exonerate the Plaintiff's overall responsibility of the close monitoring of this ICT contract with EDS. Suffice it to say that being the Head of the ICT department, Plaintiff cannot ignore the financial aspect of any project involving his department.

As per Plaintiff's version it was the hotel which did not properly manage this particular contract. However the Court considers that the hotel has several departments, each under the responsibility of a Head of a department. And it stands to reason that it is each Head of department who has the overall responsibility to monitor closely any contract or project involving his/her department and not the hotel. In this particular case as conceded by the Plaintiff the nature of the contract was to provide internet access to customers. Hence it is purely a contract which falls within the domain of the ICT department which itself falls under the responsibility of the Plaintiff. Hence had the plaintiff closely monitor the said contract there would not have been no losses incurred by his employer- the Defendant company in respect of this particular contract.

Hence in light of all the above the Court is satisfied that charge 1 has been proved.

Charges 2 and 3

A reading of the contents of charges 2 and 3 clearly show that they are both related to the procurement process as regards the Long Beach project. Hence these two charges can be dealt with together by the Court.

There is undisputed evidence that the Defendant was involved in the Long Beach project and that there was a procurement exercise which was carried out. The issue to be determined in respect of this procurement process, subject matter of charges 2 and 3 is namely the degree of involvement of the Plaintiff in this exercise thereby attempting to corrupt this process as contended by the Defendant; and secondly whether he deliberately suggested the electronic device Tele Adapt to the suppliers hence in so doing he was aware or ought to have been aware that this prevented the suppliers from submitting their lowest and/ or most competitive offers to the Defendant and from making their own assessment.

An assessment of the whole evidence adduced on this issue of procurement process clearly shows the Plaintiff's active involvement in this exercise in his capacity as ICT Head. The specifications were set down by him and he also carried out a pre bid meeting in or about May/June 2010 with all the potential suppliers after the tender documents were already communicated to them. As per Plaintiff's own admission, during that meeting he showed to the suppliers a dummy device of the make Tele Adapt which he brought from Dubai as he wanted to show them the type of product which was required in the rooms and which is not bulky and is aesthetic. It is not disputed that the tender documents did not mention the brand 'Tele Adapt'. All this scenario would have been a normal sequence of a pre bid meeting if the Court were not in presence of certain correspondences exchanged between a company in the name of Ecoflow commercializing this specific device – Tele Adapt , the very one, albeit a dummy one, shown by plaintiff during the pre bid meeting, and two potential bidders

namely Blanche Birger and Mauritius Telecom. It is significant to note that this exchange of correspondences was even before the pre bid meeting. The email of 28 April 2010 (Vide Doc.P 39) lends full support to the Defendant's contention as regard charges 2 and 3 levelled against the Plaintiff. The said email is accompanied by a cover letter from one Romain BAIUTTI concerning the product Tele Adapt. This document clearly shows that the company was already contacting two potential bidders for this Long Beach project proposing to them the very same device – Tele Adapt even before the pre bid meeting. Indeed it can be seen that the subject of this email dated 28 April 2010 is “Tele Adapt pour le LONGBEACH”. And from the undisputed evidence on record it has been established that the said Romain Baiutti who is the only shareholder of the company Ecoflow is the Plaintiff's brother in law. It is also on record that all the bidders quoted Tele Adapt. Therefore one does not need to do a mathematical calculation to see the relationship between this email / cover letter and the manner in which the procurement exercise was carried out by Plaintiff in order to favor this particular device thus showing the Plaintiff's interference with potential bidders, requesting them to purchase this particular product thereby preventing them from submitting their best offers to the Defendant. It cannot be by pure luck that all the three potential bidders quoted Tele Adapt! It is also on record that this device represented an important part of the bid because it amounted to 4-10% of the total value of the bid as admitted by the Plaintiff before the disciplinary committee (Vide Doc.P30 Vol.17, pg 39 and during cross examination (See proceedings 12 September 2018 – pg 18).

The question also arises as to how did Mr Baiutti get all this information for him to contact the potential bidders for the Long beach project? The answer to this question is quite obvious in the light of the above evidence before this Court. It cannot be by a mere coincidence that Plaintiff showed to the potential bidders a device which was the very one proposed by his brother in law to those potential bidders before the pre bid meeting. And the Court also takes into account the evidence on record that during the pre bid meeting Plaintiff asked the bidders to quote Tele Adapt. According to plaintiff this could be a misinterpretation by the bidders due to the fact that he showed them a dummy device of Tele Adapt. However the Court considers that in the light of the evidence on record concerning the tender exercise as handled by the Plaintiff, the very fact of showing them the device Tele Adapt is sufficient to show Plaintiff's skillful ‘manoeuvres’ as particularized in charges 2 and 3, which the Court is satisfied having been established by the Defendant on a balance of probabilities.

Charge 4

Charge 4 is in relation to the company Ecoflow Ltd.

A careful analysis of the whole evidence adduced in relation to this issue, clearly shows the close relationship between the Plaintiff and Ecoflow Ltd. According to Plaintiff he never heard Ecoflow before the 16 December i.e when he was communicated with the letter of charges. Yet, as already stated above, the sole shareholder of Ecoflow Ltd is Plaintiff's brother in law and the company secretary of this very company is no one else than the Plaintiff's wife. It is indeed very hard to believe that Plaintiff did not know the existence of a company in which his wife was the company secretary. His explanations to that effect were, the least the Court can say, most implausible and far fetched. Furthermore, based on Doc. P 39, pg 2- email of 28 April 2010 the Court is satisfied that since that date Plaintiff's brother in law was privy to some information regarding the Long Beach Project. In fact, Plaintiff has admitted that his brother in law knew that he was working at Sun Resorts and as already mentioned above it is more than obvious that those information could only have imparted to Plaintiff's brother in law by no one else than Plaintiff himself.

Furthermore based on the documentary evidence on record regarding the company Ecoflow Ltd, the Court is satisfied that the said company was not the authorized representative of the Tele Adapt electronic device and furthermore the said company is not even involved in ICT equipment but in the supply of water and electrical saving devices – See Annexures G & H of Doc.P25 which are self explicit in respect of the above.

The Court also bears in mind the close relationship between Plaintiff and the company EDS. Plaintiff himself admitted that the CEO of EDS, Mr Sunnasy was and is still a close friend of him. In fact it is on record that when Plaintiff left Defendant's employment he immediately took up employment as Deputy CEO at EDS. And as per the evidence on record Plaintiff recommended EDS to be the supplier for the allocation of the tender (Vide Doc.P34). In fact EDS quoted the lowest price for Tele Adapt. And as per Plaintiff's own admission during cross examination this situation could raise an outst of suspicion (see pg 28 – proceedings of 12.09.18).

Based on all the above the Court is satisfied that the Defendant has established on a balance of probabilities all the four limbs of Charge 4.

Charge 5

The above charge concerns the formatting of the company's laptop.

There is undisputed evidence that on the day Plaintiff was suspended he was requested to leave behind his laptop. There is also undisputed evidence that the said laptop was formatted before Plaintiff remitted it back to the Defendant. As per the Plaintiff's version during examination in chief, he did not have time to retrieve all his personal information

hence one of his subordinates, Mr Ohis formatted his laptop, which he admitted amounts to erasing all the data. And this was done without his instructions. In cross examination he stated that he was not the one who pressed the button for the formatting. On the other hand, Mr Ohis has deposed and denied having ever formatted Plaintiff's laptop. And he also testified that it was not customary that the company's laptop be formatted when an employee left the company.

Be that as it may, even assuming it was one of his team members who formatted the said laptop, the Court is of the considered view that Plaintiff being at the material time Chief Information Systems Officer and Head of the ICT department, it is hard to believe that one of his subordinates would do so without his instructions. The question of who actually pressed the button for the formatting is not relevant inasmuch as the Court is satisfied that the said laptop was at all material times in the sole custody of the Plaintiff who therefore had the overall control of it. So Plaintiff cannot put the blame on one of his subordinates for having pressed the button for deleting all the company data stored therein. Taking into account all the facts and circumstances of the present case it can reasonably be inferred that the sole person responsible for having tampered with the company's laptop is the Plaintiff himself.

Charge 6 (Additional charge)

This additional charge is spelt out in the letter dated 26 May 2011 under the signature of the Group Resources Manager, Mr Y Budullah (Vide Doc.P27). It concerns the use of a report by the plaintiff during the course of the disciplinary committee (Doc.U in Doc.P31). Based on the Plaintiff's own admission during cross examination, the Court finds this charge established against the plaintiff. Indeed, Plaintiff admitted that the said document is the company's property. He further admitted that when he left the company he was requested to leave behind all the company's materials. It was submitted that Plaintiff was not requested to return everything that was at home and also consideration must be given as to the circumstances in which Plaintiff made use of the said report. However, the Court is of the considered view that the said report being the company's property albeit being a spare copy which Plaintiff had at his place, he was not authorized to make use of it without the lawful authority and/ or authorization of the Defendant.

In light of all the above, this Court finds all the charges levelled against the Plaintiff as per letters dated 16 December 2010 (Doc.P22) and 26 May 2011 (Doc.P27) proved by the Defendant on a balance of probabilities.

Having found the above charges proved, the next question to be determined by the Court is whether they amount to a serious misconduct for which the employer has no other alternative than to terminate Plaintiff's employment and also whether those acts and doings

of the Plaintiff had caused a breach of the bond of trust so that Defendant could not in good faith take any course of action than the termination of the Plaintiff's contract of employment.

(iii) Issue of serious misconduct and /or breach of bond of trust

Whether a misconduct would warrant the termination of employment will depend essentially on the degree and seriousness of such misconduct. At this juncture I find it apposite to cite the Supreme Court case of **Abdurrahman N v Total Mauritius Limited [2013] SCJ 480** where reference was made to the following passage from **Fok Kan – Introduction au Droit du Travail Mauricien 1ère Edition at p. 196** on the issue of the degree and seriousness of any misconduct which will determine whether a termination of employment is justified.

‘L’élément clef dans l’appréciation de la faute semble être sa gravité. Il existe en effet divers degrés de faute (Harel Frères Ltd. v Jeebodhun [\[1981 MR 189\]](#). An bas de l’échelle il y a les fautes légères qu’elles ne justifient pas un licenciement et entraîneraient en cas de licenciement le paiement de l’indemnité de licenciement au taux punitif de même que l’indemnité de préavis. La faute n’étant que légère l’employeur aurait du sanctionner l’employé autrement que par le licenciement. Le deuxième degré de faute est la faute sérieuse. Bien que la faute justifie ici la sanction ultime du licenciement, elle n’est pas considérée comme suffisamment grave pour écarter l’application de la S. 34, c’est-à-dire le paiement de l’indemnité minimum légale et de l’indemnité de préavis. Au sommet de la hiérarchie des fautes nous retrouvons les fautes graves qui elles justifient un ‘summary dismissal’, c’est-à-dire sans préavis et donc éventuellement sans l’indemnité de licenciement dans la mesure où l’employeur ne pouvait ‘in good faith take any other course.’ Seul donc une telle faute grave constitue un misconduct au sens de la S 32 (1) (b).’

In **Camerlynck – Droit du Travail – Le Contrat de Travail, 2ème Edition at para 452**, the following extract on “faute grave” is of pertinence:

“454. La faute grave, aux termes d’une jurisprudence constante, et conformément aux dispositions des conventions collectives, entraîne la privation du bénéfice de préavis et de l’indemnité compensatrice, et justifie le licenciement immédiat.....La faute grave n’est-elle pas, suivant la décision même de la Cour de Cassation, celle qui rend impossible le maintien des relations contractuelles.....”

In the instant case , after due consideration of all the facts and circumstances of the present case and taking into account the position which the Plaintiff was occupying at the material time namely that of Chief Information Systems Officer and hence Head of the ICT

department in the Defendant company, the Court is of the considered view that the acts and doings of the Plaintiff as particularized in charges 1 -6 did amount to a 'faute grave' warranting his summary dismissal. Charge 1 amounts to gross negligence on the part of the Plaintiff as Head of ICT department responsible of the close monitoring of any ICT project; whilst charges 2-6 clearly demonstrate a most unethical conduct on the part of a Senior Executive Officer, if not a breach of professional ethics and conduct. True it is that the Plaintiff reckoned 15 years service in the Defendant's employment, was involved in a number of projects and seemed to have an unblemished professional record. However the Court considers that such serious misconduct on the part of the Plaintiff did have a serious bearing on the employer-employee relationship to the extent that the worker brings about "un trouble profond dans le fonctionnement et la marche de l'entreprise" and hence justifying the Plaintiff's summary dismissal (See **Deep River Beau Champ Ltd v Beegoo Baidhanan [1988] SCJ 432**)).

Furthermore the Court is also of the considered view that the acts and doings of the Plaintiff as laid down in the letter of charges "can only have the effect of undermining this element of trust which is fundamental in a good employer- employee relationship. As was pertinently held in the case of **Barbe J.B. v Shell Mauritius Ltd [2013] SCJ 202**, a "breach of trust can in itself be a cause for dismissal" and the Court cited the following extracts from **Dalloz- Contrat de Travail a Durée Indeterminée (Rupture – Licenciement pour motif personnel : Conditions) Janvier 2014 at Note 434**

"En attachant ses services à un employeur le salarié s'engage à avoir un comportement loyal et honnête. Le manquement aux obligations qui découlent de cet engagement peut constituer une cause réelle et sérieuse de licenciement." (Emphasis added).

Conclusion

Based on all the above considerations, the Court finds that the termination of the Plaintiff's employment was not unjustified as contended by the Plaintiff. I therefore find that the Plaintiff has failed to prove his case on a balance of probabilities against the Defendant company. I accordingly dismiss the present case. With costs.

This 31 August 2020

K. Bissoonauth (Mrs)
President, Industrial Court.

