

VEENA GOPAULEN VS INTERCONTINENTAL TRUST LIMITED

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Cause Number : 395/22

THE INDUSTRIAL COURT OF MAURITIUS

(Civil Division)

In the matter of:-

VEENA GOPAULEN

Plaintiff

VS

INTERCONTINENTAL TRUST LIMITED

Defendant

JUDGMENT

Introduction

The present case is founded on a claim for unjustified dismissal of the Plaintiff by the Defendant in the sum of Rs 320,094.55.

The facts

The Plaintiff was in the continuous employment of the Defendant as personal assistant since the 27th April 2015. She was employed on a 5 day week basis for and in consideration of a monthly basic remuneration of Rs 17,260. The Plaintiff filed in Court a copy of her contract of employment as well as her pay slip.

On the 16th February 2021, an incident arose between the Plaintiff and the executive director of the Defendant company, Mrs Chan. According to the Plaintiff, an accounts officer went to see Mrs Chan in her office. They were looking for ITL Corporate credit card receipts when Mrs Chan called for the Plaintiff to also look for same. The Plaintiff proceeded to the office of Mrs Chan and took the file to her work table to look for the receipts.

Whilst the accounts officer waited for the Plaintiff, the latter could not find the said receipts. She asked the accounts officer to leave and looked for the receipts a second time, but in vain. When Mrs Chan walked past her table, the Plaintiff informed Mrs Chan that she could not find the receipts and according to the Plaintiff, Mrs Chan looked annoyed and told her to continue searching.

In the afternoon, the Plaintiff went to see the accounts officer whilst the file remained on her table. When Mrs Chan came back from lunch, she asked the Plaintiff if she found the receipts but the Plaintiff replied in the negative as she contended having looked for same for 4 times. Mrs Chan then took the file from the Plaintiff and went to her office. After 5 to 10 minutes, Mrs Chan came back and stated that she saw the receipts in the file. She asked the Plaintiff if she really looked well for the receipts or did not want to look for same in an unhappy and aggressive tone. Mrs Chan then took the file and left.

Following the incident, the head of the Human Resource department at the Defendant company sought explanations from the Plaintiff. By way of letter dated the 22nd February 2021, the Defendant suspended the Plaintiff from work with immediate effect. She was requested to appear before a disciplinary committee on the 16th March 2021 by way of letter dated 02nd March 2021. However, the disciplinary committee was postponed in view of the confinement period and was held on the 17th May 2021. At the disciplinary committee, the Plaintiff denied the charges levelled against her. By way of letter dated the 19th May 2021, the Defendant terminated the Plaintiff's employment with immediate effect. The letters have been duly produced in Court.

The Plaintiff averred that she never encountered any problem with Mrs Chan in the past. She never received any warning concerning her job nor did she ever raise her voice against anyone at work. According to the Plaintiff, she has always worked honestly.

The Plaintiff considered that the Defendant terminated her employment on the 19th May 2021 without notice and without any justification. She averred that she had 12 days outstanding annual leave for 2021 which the Defendant has failed to refund to her. She was paid one month's wage as indemnity in lieu of notice.

The Plaintiff therefore claimed from the Defendant the sum of Rs 320,094.55 representing severance allowance for 72 months continuous service and refund of 12 days outstanding annual leave for the year 2021, together with interests at the rate of 12% per annum on the amount of severance allowance payable from the date of termination of employment to the date of payment and such amount by way of compensation for wages lost or expenses incurred in attending Court.

The Defendant denied being indebted to the Plaintiff. In its plea, the Defendant confirmed that the Plaintiff was suspended from work following an incident which arose between the Plaintiff and one of the directors of the Defendant on the 16th February 2021 and which incident was subject to an investigation at the level of the Defendant. After completion of the investigation, the Plaintiff was convened to attend a disciplinary committee to answer the charges levelled against the Plaintiff, which charges read as follows:

Charge 1: On 16 February 2021, you acted in a disrespectful manner towards the executive director of the Company, Mrs Françoise Chan, following an incident regarding receipts of ITL Corporate Credit Card assigned to the latter, morefully particularised as follows:

- (a) When Mrs Françoise Chan, executive director of the Company requested you to give the receipts of ITL Corporate Credit Card to the ITL accounts' officer from the file that you usually maintain, you stated that you had looked for the said receipts but could not find them in file, when queried about same.*
- (b) Following your reply, Mrs Françoise Chan looked for the above-mentioned receipts and they were all clearly visible in a plastic folder in the file itself.*
- (c) When Mrs Françoise Chan requested for an explanation from you, you raised your voice against the latter to such an extent that other staff of the Company could hear you.*
- (d) Following the said incident, you have persistently refused to carry out any task assigned to you directly or indirectly by Mrs Françoise Chan.*

Charge 2: Following the incident which took place on 16 February 2021, you made serious and unfounded allegations against the executive director of the Company, Mrs Françoise Chan in emails dated 19 and 22 February 2021, to the effect that Mrs Françoise Chan has in bad faith and maliciously introduced the receipts of ITL Corporate Credit Card in the file so as to deliberately cause harm to you.

It is the contention of the Defendant that the Plaintiff's employment was lawfully terminated in line with the provisions of the Workers' Rights Act 2019. The Plaintiff was afforded the opportunity to answer all charges levelled against her before the disciplinary committee which was chaired by an independent chairperson who found the charges proved against the Plaintiff. The Plaintiff was duly assisted by a Senior Labour and Industrial Relations at the disciplinary committee.

According to the Defendant, it was under no obligation to pay the outstanding annual leaves for the year 2021 on the basis that the Plaintiff's employment was terminated on the grounds of misconduct. It averred that the Plaintiff's claim is devoid of any merits, is frivolous, vexatious

to all intents and purposes and moved that the present matter be purely and simply set aside. With Costs.

Observations

I have assessed the evidence on record. The termination of the employment giving rise to the present case occurred in May 2021 which would justify a legal action under the Workers' Rights Act, applicable at the time of the offence. For the purposes of the present case, *"it is trite law that in an action for unjustified dismissal the plaintiff need only aver that his employment was terminated without any cause or justification because the burden of proof on that issue rested on the defendant employer (RE: HAREL FRÈRES LTD V. VEERASAMY [1968 MR 218])"*. It is therefore necessary to consider the version of all parties to determine whether the termination of employment was justified or not. Before embarking on an assessment of the evidence, I shall first deal with preliminary issues arising in the case.

THE LETTER OF TERMINATION

At the outset, it can be read from the letter of termination of employment sent by the Defendant to the Plaintiff that *"Following the findings of the disciplinary committee held on 17 May 2021 whereby the charges have been proved, Management has taken the decision to terminate your employment with Intercontinental Trust Ltd, effective as from 19 May 2021"*. There is a statutory obligation on the part of an employer to notify a worker of the termination of his employment by stating the reason of the termination. **(RE: BERLINWASSER INTERNATIONAL AG MAURITIUS v BENYDIN L.R (2017) SCJ 120).**

This is in line with section 63(2) of the Workers' Rights Act which reads: *An employer shall, at the time of notifying a worker of the termination of his employment, state the reason of the termination.* In the present case, the Defendant has informed the Plaintiff that the two charges as levelled against her before the Disciplinary Committee have been found proved and established.

In the case of **THE CENTRAL ELECTRICITY BOARD v GENTIL J. M. (2024) SCJ 501**, the Appeal Court considered the validity of a termination letter which read that all four charges have been proved against the Plaintiff. The Court found that the letter was not in breach of section 37(2) of the Employment Rights Act (now section 63(2) of the

Workers' Rights Act) since it clearly spells that all four charges had been proved and the employment had been terminated due to the fact that the employee had behaved in a dishonest manner which breached the bond of trust between an employer and employee. The Court referred to the observation in the case of **DOGER DE SPEVILLE V UNITED DOCKS LTD** [\[2017 SCJ 198\]](#) as follows:

"It goes without saying that just as the employee who is called to give his explanation before a disciplinary committee, is entitled to know the nature of the charges against him, he is also entitled to know at the conclusion of the disciplinary hearing which of the charges have been found proved. He may wish to exercise his undoubted right to dispute the findings of the disciplinary committee. Not informing him of the exact charges which are retained against him denies him of his right to challenge the grounds of his dismissal effectively and meaningfully. Moreover, the employer who does not so inform the employee, runs the risk of being taxed with unfairness and even high handedness. Mr de Spéville was just informed that he had been guilty of gross misconduct without any further ado and that UDL had no alternative but to dismiss him. Section 37(2) of the Employment Rights Act 2008, now provides that "(the) employer shall, at the time of notifying a worker of the termination of his employment, state the reason of such termination."

A reading of the above makes it clear that the Plaintiff ought to be informed of the exact charges against her. It can be read from **Dalloz, Répertoire de Droit du Travail, Rubrique Contrat de Travail à Durée Indéterminée : Rupture et Conditions de Licenciement pour Motif Personnel** –

C – Fixer les limites du litige

113. La lettre de licenciement fixe les limites du litige ; par suite, lorsque cette lettre énonce un seul motif de licenciement, une cour d'appel n'a pas à examiner les autres motifs allégués par l'employeur en cours d'instance" (Cass. Soc. 9 mars 1993, Bull. civ. V, no 83).

10 – Limites opposées à l'employeur

114. En cas de litige, l'employeur ne pourra se prévaloir devant les juges, d'un motif de licenciement qu'il n'aurait pas préalablement notifié au salarié (Cass. Soc. 20 mars 1990, Bull. civ. V, no 124 D. 1990, IR 94 ; 9 oct 2001, Bull. civ. V, no 306) (...) (...)

20 – Pouvoir limite des juges du fond

117. *En cas de contestation sur le caractère bien fondé de la rupture, les juges du fond doivent tout d'abord rechercher si la lettre de licenciement contient un motif de rupture du contrat de travail, énoncé de façon claire et explicite. Si tel est le cas, il leur appartient ensuite d'examiner si les motifs énoncés présentent ou non un caractère réel et sérieux (V. infra, no 165 et s.).*

118. *Dans cette appréciation, ils doivent se fonder exclusivement sur les motifs énoncés par l'employeur dans la lettre de notification. Ce principe général implique trois conséquences distinctes.*

119. *En premier lieu, si l'employeur invoque à l'instance une cause de licenciement qu'il n'a pas notifiée au salarié, les juges n'ont pas à examiner son caractère réel et sérieux.*

The notification of the Plaintiff of the reason for termination of employment assumes all its importance in that it fixes the parameters of the charges which must be proved against the Plaintiff. Before the Industrial Court, when discharging the burden of justifying termination of employment, the employer cannot go beyond the charges as spelt out in the termination letter which ought to be in line with the charges levelled at the Disciplinary Committee. The following extracts from **Camerlynck, Droit du Travail, Deuxième édition** are relevant—

414. *Portée de la réponse.-*

« ... Suivant la formule précitée de la Cour de cassation, la réponse de l'employeur énonçant les causes réelles et sérieuses du licenciement « fixe les limites du litige » (no 412). L'employeur ne peut procéder au licenciement qu'en raison de causes réelles et sérieuses existant au moment de sa décision et qu'il a l'obligation légale de porter à la connaissance du salarié (64)

Il ne peut donc en invoquer d'autres devant le juge (65).

Il appartient à ce dernier d'apprécier le caractère réel et sérieux des griefs de l'employeur et de former sa conviction au vu des éléments de preuve fournis par les parties (66) »

(...)

450-2 Applications jurisprudentielles.

« ... Rappelons que l'employeur ne peut en principe invoquer devant le juge un motif différent – et prétendu réel – de celui indiqué au salarié à la suite de sa demande (v. no 414) (87).

Un tel dispositif semble assurer la protection efficace du salarié contre les allégations infondées de l'employeur ; contrairement à la jurisprudence antérieure à la réforme, l'inexactitude démontrée des motifs invoqués par ce dernier entraîne sa condamnation ».

Coming back to the present case, the termination letter has expressly set out that the two charges levelled against the Plaintiff at the Disciplinary committee have been proved. These charges were notified to the Plaintiff in a letter dated 02nd March 2021. It is the same charges which are reflected in the termination letter.

I find that the present case is contrary to the case of **LATERAL HOLDINGS LTD v MURDAMOOTOO V. 2021 SCJ 19** where the Appellant was notified of the reason for the termination of his employment as being a breach of trust when the charge at the Disciplinary Committee pertained to an offence of misconduct. It is also different from the case of **LAFRESIERE M VS NEW MAURITIUS HOTELS LIMITED (2021) SCJ 244** upheld by the Judicial Committee of the Privy Council where the Supreme Court found that the reason for dismissal was different from the pleadings.

In the case of **RAMKURRUN B v FIREMOUNT TEXTILES LTD 2024 SCJ 487**, the Court considered the extent of the notification of the reason for termination of the employment, “i.e., *whether it is sufficient to merely state misconduct or poor performance for instance, or whether the charges which had been proved before the disciplinary committee should also be stated*”. They found that:

“We are of the view that this will depend on the facts and circumstances of each case. In some cases, there might be only one charge against the employee at the disciplinary committee so that notifying him that his employment has been terminated on ground of misconduct would suffice. However, in cases like the present one where the employee was faced with many charges at the disciplinary committee, the latter ought, in fairness, to be informed which charges had been found proved against him and which therefore constituted the misconduct.”

In the present case, the same charges which have been levelled against the Plaintiff at the Disciplinary Committee are the same ones which have been set out as the reason for termination of the employment of the Plaintiff in the termination letter. There were two charges against the Plaintiff and the termination letter specifically referred to the two charges with the precision that they were proved against the Plaintiff at the Disciplinary Committee.

In cross-examination, much was said about the termination letter and reference to the charges mentioned therein. The Plaintiff persistently denied the charges against her, averring that the disciplinary committee found them proved, though she was not agreeable at all. She stated that she could not understand why the termination letter would state that the charges have been proved when she did not agree to the charges. Be that as it may, though being in denial of the charges against her, the Plaintiff was aware and was notified of the said charges, for which she was ultimately dismissed.

In the circumstances, I find that the Plaintiff has been duly notified of the reason for termination of her employment in the termination letter and the said letter is in conformity with the requirements of section 63(2) of the Workers' Rights Act.

Having said that, I have also noted that the termination letter reads that "Management has taken the decision to terminate your employment with Intercontinental Trust Ltd". According to section 64(2)(iv) of the Workers' Rights Act, no employer shall terminate a worker's agreement for reasons related to the worker's alleged misconduct, unless the employer cannot in good faith take any other course of action.

In the termination letter, the Defendant has not mentioned that he could not in good faith take any other course of action before coming to the decision of terminating the Plaintiff's employment. I find that an omission of the words "in good faith take any other course of action" is not fatal as it is the evidence which would reveal whether the Defendant considered in good faith any other course of action which he could have taken. I deem it fit to refer to the case of **THE CENTRAL ELECTRICITY BOARD v GENTIL J. M. (2024) SCJ 501** where a similar situation arose and the Court had this to say:

*"As regards the requirement under **section 38(2)(a)(i) of ERA** to the effect that an employer cannot terminate the employment on ground of misconduct unless he cannot in good faith take any other course of action, we find that the learned Magistrate laid too much stress on the form rather than the substance of the law when she found that the appellant did not mention in its letter of termination that 'it could not in good faith take any other course of action'."*

It is true to say that in the case of **THE CENTRAL ELECTRICITY BOARD v GENTIL J. M.**, the termination letter did state that: *‘the Management had no other alternative but to terminate your employment with the CEB, with immediate effect’*. However, the fact remains that failure to adhere to the strict words of the statute did not render the termination of employment as being unjustified. In fact, whether the employer considered other alternatives, referred to as the ‘no other option test’ pertained to a matter of evidence. Indeed, the Court said:

“The learned Magistrate was also wrong when she found that the employer had not established the ‘no other option’ test since she completely disregarded the document produced by the employer wherein it was specifically mentioned that the employee had already been warned in a similar case in the past for having solicited money from a customer. Had the learned Magistrate considered the said document and given due weight to it, she would have found that the present charges were not isolated incidents which would then have led her to the only reasonable conclusion, in the given circumstances, that the employer had satisfied the ‘no other option’ test”.

In view of the above, bearing in mind that in the letter of termination the Defendant has stated that Management has taken the decision to terminate the employment, I shall consider the evidence adduced before me to determine whether the Defendant has addressed its mind to other alternatives, in good faith, before terminating the Plaintiff’s employment. Was it the only option available to the Defendant at the time? **(RE: UNITED DOCKS LTD VS DE SPEVILLE (2018) PRV 48).**

APPLYING THE LAW TO THE FACTS

The versions of the parties

In the present case, I have given anxious consideration to the versions of all parties. I shall first deal with the version of Mrs Chan, the witness for the Defendant company.

Mrs Chan narrated to the Court that as an executive director, she held corporate credit cards for the company. On the material day, an officer from the finance department of the Defendant called her, seeking for the receipts of the credit cards. She called the Plaintiff who was her personal assistant and was the one handling the filing of the receipts of credit cards, to look for same in the appropriate file. The file was kept in the office of Mrs Chan wherein the Plaintiff had access.

In the afternoon, when she came back from a meeting, she asked the finance officer if she had received the receipts to which the latter informed her that the Plaintiff could not find

same. Mrs Chan called for the file and instantly saw the receipts in a plastic folder in the file, which was clearly visible.

When Mrs Chan questioned the Plaintiff regarding how she missed the receipts, the latter replied to her in a high tone in the following words: “mo dire ou mo pas in trouver, ou pas in comprend”. The tone of voice was so loud that other employees could hear what was said, including the General Manager, Mrs Sabrina Kong and Mrs Friquin.

Mrs Chan testified that she felt shocked and went back in her office and reported to the human resource department that the Plaintiff refused to carry out a task and spoke in a disrespectful manner. This led to an investigation by the human resource department and the ultimate dismissal of the Plaintiff.

I have found that Mrs Chan spoke with an ease and a confidence of a witness of truth. Her narration of events was unhesitant as she told the Court of the incident of the 16th February 2021. She explained her state of mind at the material time as being shocked warranting her to walk away from the Plaintiff.

I have noted that the words which Mrs Chan stated as having been uttered by the Plaintiff in Court are as follows: ““mo dire ou mo pas in trouver, ou pas in comprend”. However, when she deposed at the disciplinary committee, she averred that the Plaintiff told her: “mo dire ou mo pas in trouver”. I do not find the difference in the version of Mrs Chan in Court and at the disciplinary committee to be so different as to cast a doubt in her version. I find that the gist behind both versions of Mrs Chan with regards to the words used by the Plaintiff pertains to the idea of defiance on the part of the Plaintiff. The fact that some words were omitted at the disciplinary committee does not affect the credibility of Mrs Chan.

I find credence in the version of Mrs Chan that the notion of disrespect associated to the Plaintiff is more than the words used by the latter. The words were not swear words, they were in a loud, aggressive tone, which amount to disrespect, coming from a personal assistant towards an executive director.

The version of Mrs Chan has been corroborated by the head of Human Capital of the Defendant company, that is, Mrs Harnaran, who conducted an investigation in relation to the charges levelled against the Plaintiff, adding credence to the version of Mrs Chan. For the purposes of the present case, I shall deal with each charge in turn.

THE CHARGES AGAINST THE PLAINTIFF

The charges which have been levelled against the Plaintiff and found proved at the disciplinary committee read are 2 folds. The first one reads as follows:

Charge 1: On 16 February 2021, you acted in a disrespectful manner towards the executive director of the Company, Mrs Françoise Chan, following an incident regarding receipts of ITL Corporate Credit Card assigned to the latter, morefully particularised as follows:

- (a) When Mrs Françoise Chan, executive director of the Company requested you to give the receipts of ITL Corporate Credit Card to the ITL accounts' officer from the file that you usually maintain, you stated that you had looked for the said receipts but could not find them in file, when queried about same.*
- (b) Following your reply, Mrs Françoise Chan looked for the above-mentioned receipts and they were all clearly visible in a plastic folder in the file itself.*
- (c) When Mrs Françoise Chan requested for an explanation from you, you raised your voice against the latter to such an extent that other staff of the Company could hear you.*
- (d) Following the said incident, you have persistently refused to carry out any task assigned to you directly or indirectly by Mrs Françoise Chan.*

In relation to this charge, I have paid special attention to the version of the witness for the Defendant, namely Mrs Vidya Harnaran. She was called in her capacity as the head of Human Capital at the Intercontinental Trust, which refers to the human resource management of the Defendant company.

At the outset, Mrs Haranaran struck me as a witness of truth through her straightforward version in Court. Her intervention in this case is through her professional capacity and I have no reason to doubt her testimony. In relation to the incident involving the Plaintiff and Mrs Chan, true it is that Mrs Harnaran could not tell the words used by the Plaintiff to the address of Mrs Chan at the time of the alleged offence. However, she credibly explained that the purport of the disrespect was the fact that the Plaintiff's tone of voice was not appropriate in an office environment.

Mrs Harnaran averred that the tone used by the Plaintiff was so loud that it was overheard by other employees present. Her investigation as head of the human resource management has revealed that the general manager of the Defendant company, Mrs Sabrina Kong and another officer from the Human Resource Department, Mrs Laura Friquin witnessed the incident and reported that the Plaintiff raised her voice and spoke aggressively to Mrs Chan. There was no report of Mrs Chan using a loud or aggressive tone. She maintained that it is incumbent in an office environment to maintain a certain behaviour and decorum.

Mrs Harnaran also explained that the Plaintiff failed to carry out a task assigned to her by Mrs Chan by failing to retrieve the receipt for the corporate credit card. She added that even before the incident, the Plaintiff had already refused to work with Mrs Chan. In view of the problematic situation with the Plaintiff refusing to work as a personal assistant, the Defendant offered the Plaintiff an alternative post of receptionist, which the Plaintiff refused. The Defendant company acknowledged the refusal of the Plaintiff to work in another post but the Plaintiff failed to accomplish a task assigned to her by Mrs Chan on the 16th February 2021.

In light of the above, I find that Mrs Haranaran credibly explained the sustainability of the first charge levelled against the Plaintiff to the effect that the Plaintiff failed to carry out her work as a personal assistant, failed to carry out specific tasks assigned to her and used a loud, aggressive tone in an office environment.

This leads us to the second charge levelled against the Plaintiff, and which reads as follows:

Charge 2: Following the incident which took place on 16 February 2021, you made serious and unfounded allegations against the executive director of the Company Mrs Françoise Chan in emails dated 19 and 22 February 2021, to the effect that Mrs Françoise Chan has in bad faith and maliciously introduced the receipts of ITL Corporate Credit Card in the file so as to deliberately cause harm to you.

On this score, I have been favoured with an e-mail trail dated the 19th and 22nd February 2021, reflecting an exchange between the Plaintiff and Mrs Harnaran. It pertained to the explanation sought from the Human Resource department to the Plaintiff following the incident dated the 16th February 2021.

I read from the email dated 19th February 2021 at 4:56 PM that Mrs Harnaran referred the Plaintiff to the incident dated the 16th February 2021. She informed the Plaintiff that it has been reported that the Plaintiff insisted on a very defiant tone that she looked for the receipts of ITL Corporate Credit Card assigned to Mrs Chan and did not find them whilst Mrs Chan found the receipts on top of all other documents, which the Plaintiff could not have missed. To this the Plaintiff replied on the same day at 5:54 PM. She explained that the receipts were not in the file. Mrs Chan took the file from her and brought it to her office whilst Plaintiff was still at her desk. In around 5 to 10 minutes, Mrs Chan returned the file and said that she got the receipts.

The Plaintiff added in bold in her e-mail : **To note that I was not in her office when she was searching for the receipts, so I don't know where she found the receipts.** On the 22nd February 2021 at 9:47 AM, the Plaintiff sent another e-mail to Mrs

Harnaran, reading as follows: Concerning the point you raised on my tongue language towards Mrs Françoise Chan, please note that I **disagree** and on the contrary it's Mrs Françoise Chan who talked aggressively to me.

I find that the Plaintiff's version raises some concern. Indeed, when she testified, she described Mrs Chan's tone towards her as being a bit annoyed and aggressive. When confronted in cross-examination about the charges levelled against her, more specifically, to the fact that she raised her voice against Mrs Chan, the Plaintiff averred that it was Mrs Chan who spoke aggressively towards her. In re-examination, when the Plaintiff had an opportunity to clarify the tone used by Mrs Chan against her, the Plaintiff simply said that Mrs Chan asked her : "tone roder, to pas roder", and she went to the extent to say that she does not wish to label the tone as being aggressive. I find that the Plaintiff's version is not consistent.

Also, when she was asked for an explanation by Mrs Harnaran regarding her attitude during the incident of the 16th February 2021, the Plaintiff sent an email explaining her version on the 19th February 2021. It was only on the 22nd February 2021 that she claimed that Mrs Chan talked aggressively to her. I find that if Mrs Chan held an aggressive tone towards the Plaintiff, the latter would have outright mentioned same in her first mail and in her testimony in Court. The fact that she claimed this as an afterthought casts doubt on her version.

I have also considered the tenure of the e-mails sent by the Plaintiff to Mrs Harnaran in the Human Resource department. I have noted that upon being questioned, the Plaintiff wrote in bold : **To note that I was not in her office when she was searching for the receipts, so I don't know where she found the receipts.** At the outset, the bold nature of the writing is suggestive of a strong statement on behalf of the Plaintiff. I find that such a statement suggests serious underlying tones as it means that Mrs Chan discovered the receipts which were unfound by the Plaintiff and which suddenly appeared in the file.

The Plaintiff was thoroughly questioned, through more than 10 questions, about the underlying meaning of the words used by her and she remained vague. She averred that she meant she was not in the office of Mrs Chan when the latter discovered the receipts. However, I find that the e-mail goes beyond the averment of the Plaintiff that she was not in the office of Mrs Chan when the latter was searching for the receipts. The e-mail goes on to state that she does not know where Mrs Chan found the receipts. I find that the attitude of the Plaintiff to conveniently restrict her explanation regarding the underlying tone of her e-mail to only state that she was not in the office of Mrs Chan renders the Plaintiff an unreliable witness. I find that the Plaintiff deliberately refused to give a clear answer to the underlying tone behind the bold words in her e-mail.

In light of the above, I find that the Defendant has adduced sufficient evidence to establish the charges as levelled against the Plaintiff at the Disciplinary Committee. I find that the gist of the charges against the Plaintiff, including her tone and attitude at work, her refusal to perform tasks assigned to her to amount to a gross misconduct. It constitutes 'des fautes graves'. Instances of 'fautes graves' have been referred to in **Camerlynck, Traité de Droit du Travail, Contrat de Travail, p. 416, note 243** as follows :

243. *Ainsi ont été considérés comme constituant une faute grave privative de l'indemnité de licenciement:*

. . . . les multiples absences irrégulières et retards;

. . . . l'intempérance;

. . . . l'insubordination du salarié qui se rend coupable d'une infraction de droit commun en quittant son travail sans autorisation et en injuriant publiquement son employeur;

. . . . le défaut de surveillance d'un contremaître ayant entraîné la détérioration du matériel;

. . . . l'incapacité et l'incurie d'un cadre telles qu'il devait être dangereux de le maintenir dans son emploi;

. . . . le fait de quitter l'usine sans autorisation régulière, muni d'une pièce signée d'un directeur suspendu de ses fonctions pour assister à une réunion dont l'objet était précisément les mesures prises par la société contre ce dernier;

. . . . le refus de rejoindre son nouveau poste, à la suite d'une mutation justifiée par l'intérêt du service et ne constituant pas une modification essentielle ni une aggravation appréciable des conditions d'exécution du contrat de travail;

. . . . le versement habituel de ristournes clandestines par un client la copie frauduleuse de documents secrets;

. . . . la concurrence déloyale;

. . . . le fait pour un directeur de s'opposer systématiquement à la réorganisation de l'entreprise en refusant de communiquer les renseignements nécessaires, négligeant de transmettre les instructions et de tenir les réunions de contrôle prévues.

Les insultes ou injures ou la diffamation d'un salarié à l'égard de l'employeur, d'un responsable hiérarchique, d'un autre salarié, d'un client de l'entreprise, ou d'un tiers constituent, le plus souvent, des fautes graves.

In addition, I find it apt to cite the decision of the **Chambre Sociale of the Cour de Cassation (Soc. 26 février 199, 88-44.908, Bulletin 1991 V No 97 p.60)** : "faute grave" was defined as "une faute résultant d'un fait ou d'un ensemble de faits imputable au

salarié, constituant une violation des obligations du contrat de travail ou des relations de travail, d'une importance telle qu'elle rend impossible le maintien du salarié dans l'entreprise pendant la durée du préavis".

In light of the above, I find the attitude of the Plaintiff at work, by being loud and defiant, by refusing to perform a task assigned to her, to amount to 'fautes graves'. In the circumstances, I have considered whether according to the evidence adduced, the Defendant could in good faith take any other course of action but to terminate the employment of the Plaintiff. **(RE: BATA SHOES (MAURITIUS) LTD vs . MOHASSEE (1975) SCJ 146).**

Mrs Harnaran who represented the Defendant in Court as part of the management team of the Human Resource department explained that the Defendant had no other alternative but to dismiss the Plaintiff in view of her conduct at work. She explained that the Defendant considered other alternatives for the Plaintiff when the latter refused to work with Mrs Chan. The Defendant did offer the Plaintiff an alternative post as a receptionist, which the latter refused. Mrs Harnarn was adamant about the fact that the management needs to trust that an employee would behave appropriately.

I have weighed the versions of Mrs Harnaran and Mrs Chan to that of the Plaintiff to consider whether the Defendant had no other alternative but to dismiss the Plaintiff. I have borne in mind what was said in the case of **UNITED DOCKS LTD VS DE SPEVILLE (2018) PRV 48** to that effect:

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

I find that in the present case, the Plaintiff was a personal assistant who held a defiant, loud and aggressive tone towards an executive director. The Defendant considered the option of providing an alternative post which was refused by the Plaintiff upon her own refusal to perform work assigned to her. I find that the Plaintiff failed to maintain a standard of conduct and decorum required of her in a place of work. The misconduct in this case amounts to a "cause réelle et sérieuse" which held a bearing on the employer-employee relationship to the extent that it brought "un trouble profond dans le fonctionnement et la marche de l'entreprise". **(JURISCLASSEUR TRAVAIL, FASC 30, NOTE 163).** In the

circumstances, I find that the Defendant could not in good faith take any other action, except than a dismissal. **(SBI (MAURITIUS) LTD VS ROUSSETY J B (2021) SCJ 420).**

Conclusion

In light of the above, I find that the Plaintiff has failed to prove her case on a balance of probabilities. I dismiss the case.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Magistrate

Judgment delivered on: 25th March 2025