

*Calou E.L. v Sregh(Ile Maurice) Limitee, in liquidation represented by its
Provisional Liquidator, the Official Receiver.*

2022 IND 40

Cause Number 340/08

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

In the matter of:-

Eddy Louis Calou

Plaintiff

v.

**Sregh (Ile Maurice) Limitée, in liquidation represented
by its Provisional Liquidator, the Official Receiver.**

Defendant

Judgment

The averments of this amended plaint are to the following effect.

*Plaintiff was in the continuous employment of Defendant since May 1991.
From May 1991 to December 1993, he was employed as Handy man.*

In January 1994, he was promoted to the post of Assistant Maintenance Manager and thereafter, he has occupied the post of Maintenance Manager up to 9 September 2008. He was last drawing a monthly salary of Rs 26,285.

By way of a letter dated 9 September 2008, Plaintiff was summarily dismissed by Defendant without any valid cause and/or justification.

Thus, Defendant is indebted to him in the sum of Rs 1,557,386 made up as follows:

- (a) 3 months' wages in lieu of notice (Rs 26,285 x 3): Rs 78,885;
- (b) Severance allowance at punitive rate (1/2 x 26,285) x (221/12) x 6: Rs 1,452,246;
- (c) End of year bonus: Rs 26,285.

The matter was heard and fixed for judgment to 27.2.2013 when Defendant's representative informed the Court that Defendant was in liquidation and a copy of the winding up order was filed.

On 27.8.2013, judgment was delivered and the plaint was dismissed with costs. Plaintiff appealed against the said judgment. Following an Order made by the Commercial Division of the Supreme Court on 11.9.2013, Plaintiff was granted leave to appeal and initiate and continue with the appeal proceedings against the judgment.

By virtue of a judgment delivered by the Court of Appeal (SCR 6716-4/21/13), the judgment of the previous Bench was quashed and the matter was remitted to the Industrial Court for it to be heard anew. An Order was accordingly given by the Commercial Division of the Supreme Court on 18.8.2020 wherein Plaintiff has been granted leave to proceed and continue with the present matter.

Plaintiff has therefore prayed for a judgment ordering the Defendant to pay to him the sum of Rs 1,557,386 which is due.

The case for the Defendant is to the following effect.

Neither the Directors nor the shareholders of the Defendant company are interested in the present matter although they were informed and were aware of same as clearly stressed by the Official Receiver, Mr. V. Virasami in Court. It is borne out by the record that this case is to be heard anew following the appeal authorised to Plaintiff against a judgment of another Bench whilst Defendant was in liquidation. Moreover, the Supreme Court has ordered that the case be heard before the Industrial Court anew as Plaintiff was granted leave by the Commercial Division of the Supreme Court to do so on 18.8.2020 in view of the status of the Defendant pursuant to Section 105(2) of the Insolvency Act. The Official Receiver, Mr. V.

Virasami, has stated in Court that Defendant will not file any plea to the amended plaint but will abide by the decision of the Court and will not cross-examine the witnesses for Plaintiff so that the case will go undefended.

The case for the Plaintiff rested on the evidence given by Mr. S.K. Takoo who is the Court Manager before the Industrial Court, Plaintiff, Mr. E.J.A. Farla and Mr. P. Daumoo.

Mr. Santosh Kumar Takoo, in his capacity as Court Manager, produced a bundle of documents after they were retrieved comprising essentially of:

- (a) Doc. P3 confirming that Plaintiff was employed at Ambre Hotel (Srehg (Ile Maurice) Limitée) within the Maintenance Department as Handyman from 22 May 1991 to December 1993. He was promoted as Assistant Maintenance Manager in January 1994. In July 2003, he was promoted as Maintenance Manager till 9.9.2008;
- (b) Doc. P4 emanating from Ambre Apavou Hotels thanking and congratulating Plaintiff for the good services rendered to the hotel which reads as follows: "*Bravo great job!!!, well done. Thank you!!!*" signed by Mr. Alessandro Schenone, General Manager, and the Human Resource Manager;
- (c) Doc. P5 dated 13.11.2007 issued to the Maintenance Department where an offer was made for a compressor make Copeland DWMD6 for the sum of Rs 160,000 rupees and the said compressor was received on 13.11.2007;
- (d) Doc. P6 is a receipt showing a part payment made to Mr. Acker Farla on 7.3.2008 in the sum of Rs.100,000;
- (e) Doc. P7 which is a pay slip of Plaintiff for the month of August 2008;
- (f) Doc. P8 showing a letter dated 17.7.2008 wherein he was convened to appear before a disciplinary committee to answer 6 charges levelled against him on 21.7.2008;
- (g) Doc. P9 dated 9 September 2008 showing that 5 of the charges levelled against him have been proved against Plaintiff by the disciplinary committee and that Management had no other alternative than to terminate his employment with immediate effect for gross misconduct.

Plaintiff gave evidence in Court. He started working as from 22 May 1991 to December 1993 as Handyman for Ambre Apavou Hotels meaning (Sregh (Ile Maurice) Limitée) within the Maintenance Department and he was promoted as Assistant Maintenance Manager in January 1994. In July 2003, he was promoted as Maintenance Manager till 9.9.2008 and was thanked by Defendant namely Ambre Apavou Hotels for the good services rendered to the hotel as per Doc. P4 which reads as follows: "*Bravo great job!!!, well done. Thank you!!!*" signed by Mr. Alessandro Schenone, General Manager.

As per a letter dated 9.9. 2008, he was dismissed by Ambre Appavoo Hotel following a disciplinary committee where he was heard and Defendant decided to terminate his employment with immediate effect. Before the disciplinary committee he had to answer 6 charges levelled against him which essentially boil down as follows:

1. It was in relation to a compressor that Mr. Farla was supposed to provide, which was not received at the Hotel; he took an existing complete compressor from the store, used it and committed a fraud by saying that Mr. Farla brought and placed it which he did not agree.
2. He did not keep the record of the serial numbers of the compressors when they were being replaced by Ambre Hotel which he said was not true.
3. One serial number plate of a compressor was found in his personal drawer in his office on the day he was suspended from duty which he did not accept as in his office, there were 3 persons working where there was a table containing a drawer which did not contain a key meaning it remained unlocked. His office remained open and anyone could have access inside. He was not present when that number plate of a compressor was found in his drawer and he was not shown same then.
4. He failed to take precautionary measures to prevent the risks of irregularities in his department viz. the replacement of the compressor at Hotel Ambre to protect the interest of the hotel which he did not agree as he did his job as per the regulations and there were no irregularities.

Plaintiff revealed that on 12 November 2007, the compressor supplying air conditioning for about 30-40 rooms at the Ambre Hotel had a breakdown. It was peak season and there were many clients at the hotel on that day occupying those

rooms. He went personally to check the compressor and saw that it was not functioning and he tried to inform the Director of the hotel namely Mr. Alessandro, but he was on holiday. He informed the Assistant Director, Mr. Anil Mohabeer, who phoned Mr. Alessandro in Italy in his presence to explain to him the problem they were facing. Then, Mr. Alessandro talked to him directly and asked him to contact Mr. Farla who was the one who came to repair the compressor each time it had problems. He phoned Mr. Farla on 12 November 2007 as it was urgent as 30 rooms did not have air conditioning. But Mr. Farla could not make it on that day and stated that he would bring a compressor on the 13.11.2007. As Plaintiff had already previously applied for leave for 13.11.2007, he delegated his assistant, Mr. Vicky Daumoo for that day. On the latter day, Mr. Vicky Daumoo assisted the work when Mr. Farla brought his compressor by helping him to remove it from his vehicle and with its installation. The work was completed very early during the day of the 14.11.2007. The compressor that did not work was changed in the presence of Mr. Daumoo and replaced by the other one and the air conditioning started functioning. On the 14.11.2007 when Plaintiff went to work, he checked whether the compressor was functioning and he was satisfied and he informed the Assistant Director that everything was resolved. Mr. Farla did make an offer to the maintenance department on 13.11.2007 for a compressor make Copeland DWMD6 for the sum of Rs 160,000. Plaintiff signed a document after having verified that the compressor was alright and it was also signed by Mr. Kanen, the storekeeper as per Doc. P5. A part payment was made to Mr. Farla on 7.3.2008 and the said Mr. Farla signed a document as well as an employee of the Ambre Hotel as per Doc. P6. The remaining sum of Rs 35,000 was paid to Mr. Farla afterwards.

Thereafter, Plaintiff was dismissed for gross misconduct without valid cause or justification. Thus, he has claimed the sum of Rs 1,557,386 as per the details given in his plaint. His case was heard before the Industrial Court and it was dismissed as per a judgment given on 27.8.2013. He appealed against that judgment. For the purposes of appeal, he sought the permission of the Commercial Division of the Supreme Court as the Defendant company was in liquidation. The Supreme Court after having heard the appeal case, in a judgment dated 1 September 2017 has ordered that the case be heard anew before the Industrial Court. Furthermore, he was given leave to proceed with the present case being heard anew by way of an order from the Supreme Court on 18.8.2020. Ambre Hotel formed part of the Defendant company and was run and administered by Defendant.

Mr. Marie Emanuelle Jules Acker Farla gave evidence in Court. In 2007 his job concerned air conditioning. The Ambre Hotel was owned by Srehg (Ile Maurice) Limitée and he did work for that hotel on several occasions in the past. He confirmed that Doc. P5 was a compressor Copeland DWND6 for which he made an offer to provide and install same at Ambre Hotel on 13.11.2007 for the sum of Rs 160,000 inclusive of labour in the sum of Rs 35,000. He was shown a receipt dated 13.11.2007 which he said was correct. He confirmed that on that day, he installed that Compressor, Mr. Vicky who was present, helped him to transport the compressor from his van and helped him to install same. They started the job late and finished very early in the morning at about 3.00 a.m. and the hotel had paid him the sum of Rs. 160,000. He was paid Rs. 100,000 on 7.3.2008 as per Doc. P6 and for the remaining Rs.35,000 he had also been paid and he had no claim against Defendant. He was never sued by the Defendant that he never supplied the compressor and obtained money for it.

Mr. Prithivirajsingh Daumoo testified in Court in line with the versions of Plaintiff and Mr. Farla.

No evidence was led by the Defendant in Court.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for the Plaintiff. I am convinced that the Plaintiff had sufficient material, in the sense of absence of irregularities at his end regarding the replacement of the compressor belonging to Defendant, in order to be able to dissuade his employer, the Defendant, so that he could have kept his job when gauged with the charges levelled against him (see - **Moortoojakhan R. v Tropic Knits Ltd** [\[2020 SCJ 343\]](#)). Furthermore, he has corroborated the case he had run before the Disciplinary Committee namely the dissuading exercise which was supported by all his above witnesses' testimonies and the documentary evidence produced in relation thereto and in the absence of any evidence showing that he went outside the ambit of what Defendant would reasonably have known at the time it took the decision to dismiss him. It is appropriate to quote an excerpt from the Supreme Court case of **Moortoojakhan R. v Tropic Knits Ltd** [\[2020 SCJ 343\]](#) as follows:

*"Now, it is trite law that a Disciplinary Committee is not a Court of law and does not have its attributes (see **Planteau de Maroussem** as endorsed in Smegh).*

*It is set up by the employer as “an obligatory part of the employer’s internal procedure for dismissing an employee” (see **Smegh** at paragraph 20).*

(...) “The aim of a Disciplinary Committee (...) is merely to afford the employee an opportunity to give his version of the facts before a decision relating to his future employment is reached by his employer (...).”

*(...) The Disciplinary Committee therefore operates as an obligatory mechanism for the employer to provide an opportunity to its employee to give his version in relation to the charges laid against him pursuant to the law (in this case, **section 38(2)(a) of the Employment Rights Act**) and to attempt to dissuade the employer from dismissing him. (...) It is then for the Industrial Court to determine if any termination of the employee’s employment was justified or not on the basis of the evidence that was or ought to have been available to the employer at the time.”*

In the same breath, I find it most relevant to quote an extract from the Privy Council case of **Smegh (Ile Maurice) Ltée v Persad D.** [\[2011 PRV 9\]](#) which reads as follows:

“19. (...) In *G. Planteau De Maroussem v Dupou [2009] SCJ 287*, the Supreme Court of Mauritius held that the question whether an employee has been unjustifiably dismissed was a matter for the court and not the employer’s disciplinary committee. The court said:

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

20. The Board agrees. It would be remarkable if the exclusive jurisdiction to decide whether a worker has been unjustifiably dismissed in a particular case were to be vested in the employer. The denial to workers of the right of access to a court to decide such a question could only be achieved by the clearest statutory language. (...) It does not provide that the findings of a committee are conclusive. The obligation to afford an opportunity to be heard is no more than an obligatory part of the employer’s internal procedure for dismissing an employee.” (**emphasis added**)

Moreover, the Plaintiff's version remained unchallenged in its form and tenor and there is nothing to suggest that Defendant would not reasonably have known or availed itself of such evidence emanating from Mr. Farla and Mr. Daumoo at the time it took the decision to dismiss the Plaintiff following the finding of its disciplinary committee which is not conclusive. I am convinced by the straightforward and plausible testimony of Plaintiff supported by those of his above witnesses which are essentially compatible with the documentary evidence produced. I have no qualm that Plaintiff is a witness of truth. The Defendant, on the other hand, has failed to discharge the burden of proof placed upon it namely to show that following the finding of its disciplinary committee, that its decision to dismiss Plaintiff or to terminate his employment was justified taking into consideration all the evidence adduced before the committee and also evidence which ought to have reasonably been within its knowledge at the time it took its decision to dismiss Plaintiff, it could not in good faith have taken any other course of action (see- **Smegh (Ile Maurice) Ltée v Persad D.** [\[2011 PRV 9\]](#)).

For all the reasons given above, I find that the case for the Plaintiff has been proved on a balance of probabilities and I order Defendant to pay to Plaintiff the sum of Rs 1,557,386 made up as follows:

- (a) 3 months' wages in lieu of notice (Rs 26,285 x 3): Rs 78,885;
- (b) Severance allowance at punitive rate $(1/2 \times 26,285) \times (221/12) \times 6$: Rs 1,452,246;
- (c) End of year bonus: Rs 26,285.

I also order Defendant to pay to Plaintiff interest 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. With Costs.

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

5.8.2022

