DHOLAH Paul Gavin Anis v BRINK'S (MAURITIUS) LTD

2020 IND 16

THE INDUSTRIAL COURT OF MAURITIUS
(CIVIL JURISDICTION)

C N 552/12

In the matter of :

DHOLAH Paul Gavin Anis

Plaintiff

v/s

BRINK'S (MAURITIUS) LTD

Defendant

JUDGMENT

In an amended plaint dated 14th August 2015 the plaintiff is claiming from the defendant company the total sum of Rs 605,880 representing 3 months' wages in lieu of notice and severance allowance for 36 months' continuous service inasmuch as he considered that his employment has been terminated without notice and justification.

The pleadings

The following facts are averred:

Plaintiff was in the defendant's continuous employment since 16.01.2009 where he was employed on a 5-day week basis and his last post was that of Internal Auditor. His terms and conditions of employment were governed by the Employment Rights Act 2008 as amended and by his contract of employment. His total earnings amounted to Rs 50,490 comprising of his last monthly remuneration in the sum of Rs 30,490, a monthly prime of Rs 5,000 and a monthly car allowance of Rs 15,000.

Plaintiff was suspended from work on the 16th December 2011 on an alleged charge of misconduct following a complaint made against him by the Chief Finance Officer Mr A.P. Bacha, following which he was convened to appear before a disciplinary committee on the 27.12.11. On the 23.12.11 an additional charge of gross misconduct was added to the letter of charges and hence the disciplinary hearing was postponed to 10.01.12, on which date the hearing was held and continued on 12.01.12, during which the plaintiff denied the charges levelled against him.

It is further averred that no decision has as yet been given by the disciplinary committee. In a letter dated 17.01.12 defendant terminated the plaintiff's employment without 3 months' notice as per his contract of employment and without justification. Hence plaintiff is claiming from the defendant the total sum of Rs 605,880 made up as follows:

(a) 3 months' wages in lieu of notice …….. Rs 151,470
(b) Severance allowance for 36 months' continuous service …… Rs 454,410

TOTAL Rs 605,880

In an amended plea the defendant whilst admitting that plaintiff was in its continuous employment since 16.01.2009 averred that plaintiff was employed on a 6 day week basis. It admitted that plaintiff was suspended from work on 16th December 2011 but on a charge of serious misbehavior and loss of trust. It averred that during the disciplinary committee plaintiff partly admitted the occurrence of the events of the 8th December 2011. Defendant further averred that the disciplinary committee did give a decision. It admitted that it terminated the plaintiff's employment without the 3 months' notice and averred that it was not legally bound to give any notice to the plaintiff in the circumstances.

Defendant further denied that it terminated the plaintiff's employment without justification and considered that in view of the acts and doings of the plaintiff the defendant in good faith had no option but to terminate the plaintiff's employment after an opportunity was given to him to be heard before a disciplinary committee inasmuch as (i) the charges leveled against him amounted to gross misconduct and (ii) the relationship of trust which must necessarily exist between an employer and his employee has been severed. Hence defendant denied being indebted to the plaintiff in the sum claimed or in any other sum whatsoever. It therefore moved that the plaint be dismissed with costs.

Plaintiff's case

Plaintiff adduced evidence which was in substance as follows:

He confirmed that he was an employee of the defendant company since 19 January 2009 and he was last occupying the post of Internal Auditor. He maintained that he was working on a 5 day week basis and his total monthly earnings were in the sum of Rs 50,490.

Plaintiff explained that he made a formal complaint to the CEO of Brinks EMEA – Europe Middle East Africa, Mr Michael Beech in relation to a breach of ethics by the Chief Finance Officer (CFO), Mr Ashiq Bacha who was carrying out a side business. He sent an email dated 13 December 2011 to that effect. On 16 December 2011 he received a letter of suspension on alleged charges of misbehavior and loss of trust and thereafter he was convened to attend to a disciplinary committee during which he denied all the charges against him. He was never informed of the outcome of the disciplinary committee and on the 17 January 2012 his employment was terminated without notice and without any justification. Hence his claim in the total sum of Rs 605,880 as particularized in the plaint, together with 12% interest on the amount of severance allowance as well as compensation for wages lost and expenses incurred.

During cross examination the plaintiff confirmed that the letter shown to him by Counsel appearing for the defendant was that which he mentioned earlier and dated 16 December 2011. Same was a notification to attend a meeting of disciplinary committee wherein the charges leveled against him are spelt out. The said letter was produced (Doc.A). He identified the second letter as being the letter in which he was informed of an additional charge being leveled against him (Doc.B). He confirmed that during the disciplinary committee he was assisted by Counsel. Thereafter he received a document dated 17 January 2012 emanating from Brinks with the heading “Findings of the Disciplinary Committee Management Decision”. The said letter which put an end to his contract of employment was also produced together with the advice of delivery (Docs.C & C1). His contract of employment was also produced wherein he admitted that there is a clause at Article 10 in relation to the termination of the contract by either party and the clause at Article 13 concerns the conditions of execution of the contract (Vide Doc.D).

Plaintiff admitted that since 2009 when he joined the defendant company he had gradually moved up the ladder and in 2010 he was Head of Debt and Invoicing. Upon being shown a contract dated 22 November 2011 whereby he was appointed to the post of Internal Auditor he conceded having signed same (Vide Doc.E) but he did not agree that it is a position of high responsibility and trust. He further conceded that an Internal Auditor has access to all documents of the company to verify whether they comply with the procedure and to prepare reports. He however stated that before he had 10 persons who were working under his responsibility. Plaintiff confirmed that in an email dated 6 December 2011 he stated the

following in relation to document E (i.e the contract of 22 November 2011) : “I think it is a role that suits me well and I intend to do my best to meet expectations”. He however added that it must also be taken into account that the company wanted him to submit his resignation and hence he had no other choice than to say the above words which he explained were meant to be understood that as a MBA holder he thought that he had the necessary qualifications for the said post. He admitted that the defendant is a company based in Mauritius but with French and American shareholders and thus it has to comply to many rules and procedures.

Plaintiff confirmed that there was a meeting held on 8 December 2011 to discuss the objectives of his new post as internal Auditor as per the new contract. There were 3 persons present during the said meeting namely Mr Eric Rey, CEO Brinks, Mr Ashiq Bacha, CFO and himself. He did not agree that prior to the meeting of 8 December 2011 there was a strong animosity between him and Mr Bacha because of the assessment which the latter had made on him. He explained that in his assessment of March 2011 the CFO was satisfied with his performance and 60% of his objectives were met. He was awarded a bonus of Rs18,000. However in September 2011 Mr Bacha made some corrections on his performance sheet wherein he mentioned that the objectives were not met. He considered that this was the main cause of the termination of his employment. He was scared and was frustrated that he might lose his job but he did not have any animosity with the CFO.

Plaintiff denied that during the meeting whilst the discussion was going on concerning his new posting he suddenly raised a question in relation to a complaint which he made to Mr Michael Beach. He stated that the meeting lasted less than 30 seconds and as soon as he came in the CEO reproached him of being negative, and told him that it was finished for him. He then ordered him to leave in the following words “sortez, c’est fini pour vous”. And when he asked the CEO whether he was being fired, he replied in the affirmative. Plaintiff further stated that during the meeting they did not talk about Mr Michael Beech. He only asked whether he could give a call to Mr Michael Beech and he was told by the CEO that he can do what he wants and that anyway he will not take any action.

Under further cross examination plaintiff admitted that during the meeting he asked Mr Rey what he intended to do in relation to his complaints of breach of ethics against Mr Ashiq Bacha. He however added that in fact on the material date the only question which he asked Mr Rey was whether he was aware that the HR Manager had asked him to resign and upon his refusal he was then attributed the post of Auditor. He denied that Mr Rey told him that according to his experience he did not find anything wrong in what he had reported. He further denied that Mr Rey told him that there are many procedures in the company and so he was free to do what he wished but it would be a waste of time. He maintained that at the

very outset Mr Rey told him that he was being negative, it was finished for him and to leave his office. He further denied that when Mr Rey expressed to him his opinion he lost his temper, raised his voice and became aggressive. He explained that all throughout the meeting he remained calm and was respectful both towards the CFO and the CEO.

Plaintiff further added that he was scared to lose his job and when he was told that he was being fired he even begged to be given a chance. He never made mention of any recordings concerning the CFO during the meeting of 8 December nor during the disciplinary committee which lasted for 2 days. It was to the HR Manager that he mentioned that he had recorded the conversation of what the latter had told him in those words: “On vous donne l’opportunité de rebondir professionellement ailleurs, c’est une conversation entre employé et employeur, pourquoi je dois mettre cela en écrit Anis?” He maintained that the meeting lasted less than 15 seconds and he was fired on the spot. He further denied that he told Mr Rey “ca va vous coûter cher”. He did not agree that Mr Rey was surprised of his reaction and requested him to go out and that he refused to do so. He maintained that the CEO told him “c’est fini pour vous, je vous mets à la porte”. He further denied that he threatened to use the recordings for his own benefit.

Plaintiff confirmed that he sent a letter dated 3 January 2012 to the Managing Director of Brinks which was written by his Counsel but signed by him. He further confirmed that in the said letter he made mention, among others, of audio recordings of conversations in which he was one of the participants and which he intended to adduce as evidence at the hearing of the disciplinary committee (Doc.F). He stated that it was not in his habit of recording people without their authorization during the course of his work. But he admitted having recorded the conversation which he had with the HR Manager and that he informed her of the said recording after having done so. He explained he did so because he had to take the necessary measures to protect himself as this was the only way to prove that the Management wanted to sack him. He conceded that he also recorded the conversation he had with Mr Bacha when the latter told him that he thought that the objectives which he assigned to him were inhuman.

Plaintiff further confirmed that Brink’s Mauritius forms part of an American entity which is quoted on the stock exchange market. But he has no idea of what is meant by Sarbanes-Oxley Act of 2002 referred to by Counsel for the defendant nor about the procedures SOX. He stated that as Internal Auditor he was not concerned about same and he did not have access to any important information. He however did not deny having recorded the HR Manager when the latter told him that he was being fired and the CFO when the latter told him that no one would be able to meet the objectives which were assigned to him. He

maintained that during the meeting of 8 December 2011 he remained calm and that the question of recording previous conversations with the CFO without his knowledge was never raised. According to him both Mr Eric Rey and Mr Ashiq Basha lied as well as the HR Manager but he could not say why they would do so.

As regards the new contract which he admitted having signed for the post of Internal Auditor, plaintiff contended that he was forced to sign same though he admitted that he did not enter any case of constructive dismissal before this Court. He however explained that he did not have any choice because either he was sacked or he accepted the new post. He could not afford to lose his job and hence he had no choice than to sign the new contract. At the material time he had no money and had many projects in mind. He had suffered a lot when his employment was terminated. He denied that he is a calculating person who obtained recordings of his colleagues without their knowledge. He however stated that the company had trust in him for having promoted him after one year of service inasmuch as he had excellent results and hence he was awarded a bonus each month. He considered that it was lawful for a person whom the management wanted at all costs to get rid of, to have recording for the purpose of defending himself. He further added that in his case it was legitimate to record his colleagues without their knowledge so as to achieve his aims. Plaintiff maintained that the meeting lasted for only 10 seconds.

In respect of the other charges as mentioned in the letter of 16 December 2011 namely that following the meeting of 8 December 2011 he left the work premises at 14h45 i.e earlier than the usual time, plaintiff stated that on the material date he was never angry and that after the meeting he went out to have lunch and 30 mins later he came back to the office. From 5.00 p.m to 6h00 p.m he talked to Mr Clyde Carnarapen the Finance Manager to explain the problems which he was having with the management and during the disciplinary committee he requested that Mr Carnarapen be summoned but same was refused by the President of the committee. He is not aware of the email dated 10 February 2011 sent by Mr Ashiq Bacha to his team of workers, the subject matter of which was “Discipline at work” and in which he made mention of some cases of indiscipline in relation to punctuality at work, notification of absences etc. He also mentioned the procedures to be adopted for any leave request. Upon being shown such an email the plaintiff confirmed that it was addressed to all departments but he did not recall such an email. Same was produced (Doc.G). He further confirmed that his hours of work were 8h30 a.m to 5.30 p.m.

Plaintiff did not agree that he took certain liberty regarding the attendance register at work. Concerning the half local leave of 15 December 2011 which the defendant reproached him of having taken without prior authorization from his Head of department, Mr Bacha, plaintiff

stated that he did send an email requesting for half local leave and prior to that he had also filled in the required form for request of a “half local leave”. He further added that thereafter he was refunded of the money which was deducted for this allegedly non authorized “half local leave”. He denied that on 16 December he falsified the attendance book of the company by inserting an arrival time earlier than the time which he reached his office. He explained that on the material date he reached his office at 08h20 as he used to do. He then removed the franking machine which was kept in his office and handed it over to one Ms Simla Bissessur, after which he went to the credit control department found in another building of the company’s premises as he was responsible of credit control. He remained there until 9h30 and when he came back he inserted his arrival time in the attendance book as everybody in the company used to do. He further added that his Counsel had also shown the attendance sheet to the President of the committee. He had also asked the President to summon Ms Simla Bissessur but same was refused. According to plaintiff he was being framed because ‘they’ did a photocopy of the attendance sheet on which he did not sign his arrival time and where all the employees had signed and it was used as a proof to show that he arrived at 9h30 but he inserted 8h20. He further added that at the disciplinary committee his Counsel put in the same attendance sheet to show that during this month the CFO too did not insert his arrival time for about 10 days and several employees as well did not put in their arrival time. He agreed that later on the same day i.e 16 December, another photocopy of the attendance sheet was made and in the column “Time in” was inserted 8h20 in handwriting which he explained was the initial time at which he reached the office. The two documents were produced (Docs.H & H1). He did not agree that at 8h20 he was not on the company’s premises. He cannot say whether Mr Harel, who was the person who had signed document H, wanted to do him harm but he maintained that the management wanted at all costs to get rid of him. He considered that it is not true to say that on the material date Mr Harel went all around the company’s premises and did not see either him or his car in the company’s premises. He stated that on the material date there were many persons who had seen him and he had asked the committee to call them but this was not done.

Plaintiff admitted that there was an additional charge as spelt out in Doc.B to the effect that on the 25 October 2011 whilst using the computer made available to him by the company for his professional use, he usurped the secret password assigned to the Chief Financial Officer to log in the system of Brink’s Mauritius Limited without authorization and in utter breach of trust. He considered that this was a false charge levelled against him. He was not aware of any enquiry conducted on that issue. At the disciplinary committee the President of the committee did not allow Counsel for the defendant to use the word “theft”. He admitted that during his employment with the defendant company there was a laptop made available to

him and he was assigned a secret password so as to be able to log in the system to have access to the company's data. He did not agree that the enquiry which was conducted concluded that he had usurped the password of Mr Ashiq Bacha to log in the latter's computer to which was assigned a specific code.

Plaintiff stated that he was not really aware that each laptop was assigned a reference number. He did not recall that his computer had the following reference number – MUSOLLT0026 and that of Mr Ashiq Bacha was MUSOLLT0137. He did not agree that on 25 October 2011 the password of Mr Ashiq Bacha was found to have been used on his laptop. He explained that some few months ago there was a transfer of server in the defendant company and all the "Blackberries" in the office were going to be scraped. As Mr Bacha did not know how to upload the photos found on his laptop he requested him to keep them on his laptop. Plaintiff further added that during the disciplinary committee the IT Manager had produced a document showing the said photos on his laptop and Mr Bacha also stated before the committee that he had not lost his Blackberry but had given same to him. Plaintiff stated that on the material date he was together with Mr Ashiq Bacha in the latter's office until 20h00. They were involved in the exercise of writing off of bad debts. The IT Manager was aware that Mr Bacha was in his office and was connected to his computer. He (plaintiff) was sitting at a table by the side of Mr Bacha and the latter too was connected to his computer. They were working together. He wanted to give back to Mr Bacha his photos but as the transfer was already done, he created a folder which he had named "AB Transfer File". But as Mr Bacha could not have access to this folder he requested him to log out from his computer and to log in with his account on his (plaintiff) computer so as to retrieve all his photos. Plaintiff stated that it was a common practice in the company for a person in a department to log in on another computer to carry out his work. He maintained that it was Mr Bacha who had logged in on his computer. The IT Manager was aware that Mr Bacha and himself were both connected to their respective computer. He further added that it was not true that on the material date Mr Bacha left his office at 4h00 p.m. Both Mr Bacha and himself were the last persons to leave the office at 20h00. During the disciplinary committee he made a request that a technician from the alarm department be summoned to confirm same but it was not acceded to.

Upon being shown a copy of the attendance register of 25 October 2011 (Doc.J) he confirmed that his name was mentioned with his signature at "time in – 9.00" and "time out – 19.05" followed by the name of Mr Ashiq Bacha with "time in – 9.00" and "time out – 18.49" with the latter's signature. He stated that he had no means to verify whether same is correct but he maintained that he left the office at the same time as Mr Bacha. It was Mr Bacha himself who inserted the alarm code of the department. It is a personalized code and the

monitoring unit of Brink's can confirm the time at which Mr Bacha left the office on the material date. He pointed out that though during the disciplinary committee Mr Bacha stated that he left the office at 16h00 the register book shows that it was at 18h05. He admitted that on 25 October the pin code of Mr Bacha was found to have been used on his computer but he maintained that it was Mr Bacha himself who logged in on his computer to retrieve his photos. He did not agree that on the 25 October Mr Bacha's computer was crashed and at the material time he (the plaintiff) was in a meeting with him in his office together with other colleagues. He further stated that it is not correct either to say that at the material time Mr Bacha called Mr Shameer Burkhut, an IT assistant to help him. He maintained that on the material date and time there was only Mr Bacha and himself in his office. He did not agree that the said Mr Burkhut asked Mr Bacha to write down his password on a piece of paper so that he can repair his computer and that at the end of the meeting the said piece of paper was left in the office of Mr Bacha. He considered that same was a concocted story and he had documents to prove same.

He explained that during the disciplinary committee Mr Bacha admitted having given to him his photos because he could not save same on his computer. He contended that it was totally false that he usurped the password of Mr Bacha to have access to his data. He denied that he used to record persons without their knowledge. He further denied that during the disciplinary committee he stated that he had 7 recordings. He maintained that he recorded only the HR Manager and the CFO. He further maintained his explanations (as per above) concerning how Mr Bacha's password was found to have been used on his computer. He further added that it did not surprise him that Mr Bacha had denied the version given by him because since the beginning he wanted to fire him out of the company. According to him that was why he was given a new contract with a probation period of two months with objectives which were impossible to meet according to what Mr Bacha himself intimated to him.

Plaintiff stated that he had never denied that there were photos from the Blackberry of Mr Bacha in a folder on his computer but he maintained that same was at the request of Mr Bacha himself. He contended that on the material date there was an intern present in his office when Mr Bacha had asked him to upload his photos on his (plaintiff) computer. He confirmed that in relation to the issue of falsification of the attendance of 16 December 2011 he had stated that on the material date he came to the office very early and was in another building of the defendant company, he however denied that during the disciplinary hearing he stated that on the 16 December 2011 he had a meeting at 13h00 and that he was in his car preparing same. Plaintiff did not agree with the defendant's version that he was in possession of the photos of Mr Bacha because he had usurped the latter's password.

According to him the IT Manager was aware that the photos were transferred to his computer and then same was remitted back. He conceded that he created a folder which he had named “Hoolooman & Associates” on his computer to store those photos but he denied that he did so in order to hide those photos. He explained that if really he wanted to hide these photos he would have saved them in a ‘USB’ and then he would have cleared the folder and not leave same on his desktop.

Plaintiff denied that by his acts and doings he had exceeded the limits permissible. in a working relationship and that his actions constitute a “faute grave”. He maintained that the chain of events clearly showed that the company wanted to fire him and that was why he was placed on probation and false charges were levelled against him. He considered that those charges were not proved before the disciplinary committee but he was nonetheless fired without any compensation. He further denied that he committed the following acts and doings amounting to a “faute grave” -namely misbehaving and using threatening words towards the CEO and CFO; recording conversations he had with the CFO without his knowledge, falsifying the register book and usurping the password of his superior. He denied that he used “des méthodes tendancieuses” like recording conversations of his colleagues to achieve his ends. He did not agree that by his acts and doings the defendant company has considered that the bond of trust between employer-employee has severed and that the company has based itself on the accumulation of real and objective facts to reach such a conclusion. He did not agree either that the defendant company acted in good faith and had no other alternative than to terminate his employment.

In re examination plaintiff maintained that the meeting of 8 December lasted not more than 15 minutes. At the beginning it was Mr Rey and Mr Ashiq Bacha who questioned him about an email which he had sent to both of them to inform them that the objectives assigned to him could not be reached within the 2 months probation period and that he would need 5 months because there were 12 big files to be completed. He tried to explain to them that many of the objectives had no relevance to the post of Internal Auditor but mainly with management and accounting. He maintained that all throughout the meeting he was calm and he never misbehaved towards his superior nor used threatening words. He admitted that Mr Rey requested him to go out though he asked to give him a chance. He denied having said the words “ca va vous coûter cher”. He conceded having recorded the conversation which he had with Mr Bacha regarding the 12 objectives which he had to complete within 2 months and which Mr Bacha himself told him that he would not be able to meet. Hence he had no other means than to record this conversation so as to defend himself because he knew that the company was going to terminate his employment. He also recorded the conversation he had with Mrs Ross Gangnard as a proof that he asked the management to

give him a letter to the effect that he was being fired and was compelled to take up a new post. He stated that one of his superiors also told him that in view of the circumstances it was legitimate to record those conversations. He confirmed that on the 15 December he took a half day leave but he maintained that he sent an email to Mr Ashiq Bacha to that effect as well as filling in the required form. He produced the said email (Doc.K). He further added that Ms Simla Bissessur whom he mentioned earlier was at the material time employed in the defendant company. The office of the IT Manager is found in another building within the company's compound. On the day that he was in the office of Mr Bacha, he never saw Mr Shameer Burkhut there. On the material date Mr Bacha and himself were the only persons who were still in the office and all the other employees had already left. Plaintiff maintained that as from the time he had written to Mr Beech charges were levelled against him and thereafter his employment was terminated.

Through Court following a question put by Counsel for the plaintiff in relation to Doc.K to the effect that the so called application for leave on the following day i.e 15 May, was belated and in breach of internal procedures of the company plaintiff denied same. He explained that it was not belated because he already filled in the required form for a local leave and Mr Bacha also informed him that it was 'okay' for his leave tomorrow. Furthermore during the disciplinary committee it came out that the company was mistaken as it was found that he did fill in the required form for leave and hence he was refunded for the money which the company had withheld for this half day local leave.

Defendant's case

Mrs Karen Ross Gangnard, duly mandated by the defendant company to represent it before this jurisdiction for the purposes of the present case deposed as follows:

She is the Human Resource (HR) Manager of the defendant company and hence she is involved in the administration of the human resource department including recruitment, career management and training. The defendant company is an American company which provides worldwide security services since more than 150 years. The security services comprise the security of the assets of its clients, cash management and electronic services. The company also provides patrol services and the maintenance of alarm installations of its clients.

On 8 December 2011 she was already occupying the post of HR Manager in the defendant company. Mr Anis Dholah, the plaintiff joined the company as Head of Operations Money Processing in the cash management department (Vide Doc.D). In 2010 he was appointed Head of Debt and Invoicing in the finance department. Thereafter in the year 2011 there was a change in his posting – he was appointed Internal Auditor in the finance department. To

that effect there was an “avenant au contrat de travail” which was signed by the plaintiff and which she identified as Doc.E. She was personally involved in this new posting inasmuch as she drafted the said contract after same was formalized following a meeting with the plaintiff in presence of Mr Bacha who is the CFO of the defendant company and plaintiff’s superior. During the said meeting plaintiff’s performance was assessed and his wish to evolve within the company was also discussed following which a proposition was made to him for the post of Internal Auditor, which plaintiff accepted. After the signature of the said “avenant” a meeting was scheduled on the 8 December. She was not present at the said meeting but she was the one who organized same following an email which she received from Mr Dholah on 1 December 2011 which indicated that the latter seemed to be happy with his new post, which he stated in his email suited him well. Plaintiff also talked about the objectives assigned to him in respect of this new job. The said email was produced (Doc.L). As there were some questions raised by the plaintiff she therefore took the initiative to organize a meeting between the plaintiff, his superior, Mr Ashiq Bacha and Mr Eric Rey, the CEO of the defendant company. Following what happened during the meeting of 8 December 2011 she had the responsibility of convening the plaintiff to a disciplinary committee. She identified Doc.A as the letter which she sent to the plaintiff to notify him to attend to a disciplinary committee.

Mrs Gangnard stated that she was informed that during the meeting of 8 December the plaintiff behaved in an aggressive manner towards the CEO and had used threatening words to his address. The latter had on several occasions requested him to leave his office because he was becoming more aggressive but he refused to do so. She was informed that the plaintiff told the CEO that “ca allait lui coûter cher”. It was also reported to her that plaintiff also asked the CEO whether he was going to take actions against his superior, Mr Ashiq Bacha, to which he was told that it was not the purpose of the meeting. Mr Dholah also raised the question of the recording of conversations which he had with Mr Ashiq Bacha.

As regards the plaintiff’s new post of Internal Auditor, Mrs Ross stated that it is an important post especially in a company like the defendant which is owned by American shareholders. Hence there are regular audits carried out in the company both by the parent company as well as by local and internal auditors. Being a security company, ethics and integrity form an integral part of the image of the company and hence the importance of this function within the company.

The above representative of the defendant company explained that after the meeting of 8 December 2011, Mr Dholah left his office earlier than the normal working hours without

authorization. On the 15 December 2011 plaintiff had also taken a half day leave without authorization and on 16 December he inserted in the company's attendance register of the finance department an arrival time which did not correspond to his true arrival time. These three grievances have their equal importance because there are procedures in the company whereby all requests for early departures must be communicated to superiors. These procedures applied to all employees of the defendant company. After the 1st letter sent to plaintiff following which he was suspended and convened to attend to a disciplinary committee (Vide Doc.A), on 22 December 2011 the company issued a second letter , which she identified as Doc.B, because it was found that the plaintiff had used the password of Mr Ashiq Bacha to gain access to his computer. Hence an additional charge was preferred against the plaintiff as spelt out in Doc.B and he was convened to attend to a disciplinary committee to held on 10 January 2012, which the plaintiff did. There were two hearings held namely on 10 and 12 January 2012.

The Committee was presided by Mr Ravi Yerrigadoo, an independent person to the company and during the two hearings Mr Dholah was assisted by Counsel. The minutes of the disciplinary committee were taken by Ms Rosy Chingamalum, who was at the material time an employee of the defendant company. She was acting as Secretary of the committee but has now left the company. Following the findings of the disciplinary committee the defendant company took the decision to put an end to plaintiff's contract of employment for gross misconduct and loss of trust. She explained that the acts and doings of the plaintiff were contrary to his function as Internal Auditor and they were considered as serious by the company because there were threats, aggressive attitude and also a breach of the internal rules of the company namely a breach of confidentiality of data and ethics. The defendant company being a company which deals with providing security services, has to comply with a code of ethics and hence the company could not in good faith maintain the plaintiff in his employment based on the above acts and doings of the plaintiff.

As regards the additional charge which was levelled against the plaintiff, Mrs Ross explained that plaintiff had used the password of Mr Ashiq Bacha, his superior and CFO of the defendant company, without his knowledge, to have access to the latter's documents which were on his computer. They were personal documents namely photos which had nothing to do with plaintiff and which he was not authorised to have access to. She stated that as representative of the defendant company it is not true to say that there was a plot to get rid of the plaintiff. She had a conversation with the plaintiff during which it was agreed that he was going to take up a position of responsibility, namely that of Internal Auditor, which in a company like the defendant is an important post. She maintained that the said appointment was never meant to cause plaintiff any harm. It is a post which was in the best interests of

the plaintiff and which has all its importance in the defendant company. The support to be given to him has been discussed on several occasions. A job description was also given to the plaintiff and it would seem that everything was well set for this new post to get started as agreed from the beginning. From 22 November 2011 when the plaintiff had signed the "avenant" to the date of the termination of the plaintiff's contract of employment on the 17 January 2012, there was no complaint from the plaintiff in respect of any case of constructive dismissal. After the meeting of 8 December plaintiff was still considered as an employee of the defendant company and was being remunerated accordingly. He was still working for the defendant company until 16 December 2011 when he was suspended.

Mrs Ross maintained that the purpose of the meeting of 8 December was to discuss the job description and the objectives of the plaintiff's new post. She did not agree with the plaintiff's version that because he made a complaint to Mr Michael Beech against Mr Ashiq Bacha that he was fired by Mr Eric Rey, CEO of the defendant company. She stated that Mr Michael Beech is one of the Presidents of the Europe and Asia Pacific region and Brink's Mauritius reports to this entity. She had heard that plaintiff made a complaint to Mr Michael Beech but she was not personally involved because the complaint was addressed directly by Mr Dholah to a person of the parent company. She explained that in such cases there is an enquiry which took place in an independent and confidential manner having regard to the entity of the defendant company, especially when it is a question of ethics and integrity. There was no outcome to the complaint made by the plaintiff though there was an enquiry conducted in Mauritius as well. She maintained that the complaint made by the plaintiff had nothing to do with the disciplinary committee set up by the defendant company. Same was based on facts totally different and which was initiated following the meeting of 8 December. She thus considered that the present claim entered by the plaintiff against the defendant company is unfounded.

Under cross examination Mrs Ross confirmed that plaintiff was recruited on the 16 January 2009 as Head of Processing and a year after he was promoted to Head of Debt and Information. She further confirmed that Mr Bacha was the plaintiff's immediate superior as he is the Chief Financial Officer. She stated that there is a performance appraisal exercise carried out every year for the employees of the company. She conceded that there was an email sent by the plaintiff concerning his performance appraisal by the CFO wherein plaintiff mentioned the following : "we discuss my past years performance……" and that he was awarded "60% of (his) personal performance bonus". She explained that in the said email plaintiff expressed his own views. She cannot confirm whether the performance appraisal was thereafter modified though she conceded that there was a formal discussion between Mr Dholah and his superior Mr Ashiq Basha in relation to the annual performance appraisal ,

the objectives that were set for the year were discussed and finalized, after which there was a validation of the discussion based on the objectives that were set and the results obtained.

She was informed that there was a complaint made by the plaintiff against Mr Bacha. She stated that this has nothing to do with the performance appraisal exercise which was carried out in March 2011 and at no time was this report being questioned. She explained that there are about 2500 employees in the defendant company and about 2-3 security guards who are actually posted on site namely in the administration and reception building of the defendant premises. The office of Mr Rey is situated not far from the main entrance of the company's premises, some 2 mins away from her office and that of Mr Bacha is found in the finance department at the main exit.

The defendant's representative confirmed that she received a report from Mr Rey and Mr Bacha in respect of the incident of 8 December. On the material date they reported the incident verbally to her, after which she received a written report from both of them. Between 8 to 16 December- on which date he handed over the letter of charges to the plaintiff, she did not talk about the above incident to the latter. She drafted the letter of charges after having read and considered the two reports. She did not agree that no mention was made of aggressivity in the said reports. She stated that it is clearly mentioned therein that Mr Dholah has an aggressive and defiant behavior towards his hierarchy. The two documents were produced (Docs.M & M1). She confirmed that Mr Rey's report is in French and her interpretation of its contents as well as the feelings of Mr Rey after the meeting of 8 December was that plaintiff had used strong words and had an aggressive attitude. She further confirmed that in plaintiff's letter the latter expressed some objections to the objectives assigned to him. She explained that it is the normal course of things that there are discussions between the employee and his superior in respect of objectives assigned to an employee and that was also the purpose of the meeting of 8 December.

Mrs Ross stated that she is aware that the plaintiff had protested to the amount of work which was requested from him and which he considered could not be achieved in three months but in 5 months. The meeting of 8 December was precisely to discuss those objectives with the plaintiff and Mr Ashiq Bacha. The probation period of three months is assigned to all employees who are transferred to a new post to see if the employee is doing well after which there is a performance appraisal in respect of this new posting. It's part of the company's process. She did not agree that after three months if ever plaintiff would not have completed his work he would have been fired. In no case the company can consider a dismissal after a period of 3 months. The company gives all its employees the opportunity to develop within the company and in their respective roles.

Mrs Ross stated that she was apprised that was an issue ethics in relation to Mr Bacha which was raised during the meeting of 8 December but she was not aware of all the details. She maintained that on 8 December plaintiff left earlier than his finishing time without authorization. The meeting lasted for about 20 minutes. She confirmed that Mr Carnarapen is an employee of the defendant company. On 8 December the latter was still working in the defendant company. She did not have any personal knowledge as to whether on the aforesaid date between 5 – 6 p.m plaintiff was in the office of the said Carnarapen. The company has the contact numbers of all its employees. On 8 December it was plaintiff's superior namely Mr Bacha who found that plaintiff was not in his office when he was looking for him. She did not know whether at the material time Mr Bacha had contacted plaintiff by phone or email. She explained that her first name is Karen and her maiden name is Ross. Her initials are K R G . Upon being shown Doc.J she confirmed that on the right of the said document it is written "photocopy done at 09 10 hours. A I is not yet in". She stated that it is possible that plaintiff was attending duty at 8h00 or 8h30 a.m but she did not know his exact hours of work. Generally when an employee is head of a department, he normally stays until 5h00 or 5h30 p.m. She considered it is normal when someone has been appointed in a new post with new responsibilities it may happen that sometimes the latter would finish work at 5h00 or 5h30. She did not personally verify plaintiff's attendance except for the purposes of the present case. There is a team of workers who check the attendance of all employees for payroll purposes and validate same with their respective superiors. Plaintiff was working for about 45 hours as per his contract from Monday to Friday and he might have come to work on Saturdays as and when required as is the case for any other employee of the company.

The defendant's representative maintained that plaintiff was satisfied of his new appointment as Internal Auditor. She admitted that the latter sent an email to Mr Bacha in which he expressed reservations concerning the objectives of his new appointment and that he considered it would be difficult to perform the work of accounting and internal auditing. She confirmed that plaintiff also mentioned that it would be a case of conflict of interest. She stated that was why a meeting was scheduled on 8 December so as to discuss the issues of job description and objectives of this new post with the CEO and CFO of the defendant company. She further confirmed that plaintiff submitted his annual evaluation report to Mr Bacha and same was finalised on 12 September 2011. She explained that a bonus was paid to the plaintiff before September, namely in the month of March or April 2011 when the annual evaluation interview took place and the bonus was paid based on the percentage of the objectives met by the plaintiff. She admitted that she received an email from the plaintiff and addressed to Mr Bacha in which plaintiff expressed his satisfaction of having obtained a

bonus after having sent his performance appraisal report. The said email dated 30 March 2011 was produced (Doc.N).

Mrs Ross stated that on 16 December in the afternoon she personally handed over the letter of suspension to the plaintiff, immediately after having drafted the said letter. She considered the incident of 8 December as very serious but the company followed all legal procedures and gave to the plaintiff an opportunity to offer his explanations in relation to what happened. She is the Human Resource Manager of the defendant company since about 10 years. She conceded that she was informed of the incident since 8 December but she did not immediately ask any explanations to the plaintiff. On 16 December the HR department had asked plaintiff to give verbal explanations but he refused to do so. She explained that the procedure took some time namely the company had to gather all information in relation to the incident of 8 December. She was not present during the meeting of 8 December. Being the Human Resource Manager she was made aware that plaintiff made a complaint to higher quarters and subsequently there was an enquiry initiated to that effect. She conceded that on 19 December 2011 she wrote a letter to plaintiff wherein she mentioned “following your mail sent to Mr Beech, CEO of Brinks” and that she requested plaintiff to be present for an enquiry. She explained that she only knew that there was a complaint in the form of an email but she was not aware of the contents of the said email, that was why an enquiry was initiated.

Defendant’s representative confirmed that in the letter of 16 December one of the charges against the plaintiff was that he recorded previous conversations with the Chief Financial Officer without his knowledge. She cannot say exactly how many recordings but there were more than one. She stated that she too has a password to log in on her computer. There can only be one password and same is to not be used for personal purposes. She confirmed that Mr Dholah raised an issue of ethics in relation to Mr Bacha but the manner in which plaintiff reacted was not proper towards his superior. She was informed that plaintiff was asked to leave the meeting because he started to raise his voice and used harsh and offensive language towards his hierarchy. It was in the month of December 2011 that she was informed of this problem of Mr Bacha’s password having been used by the plaintiff. It was Mr Bacha who informed her of this issue and there was also an enquiry conducted by the IT department.

She stated that there are keys which are remitted to the persons in charge of the building, in particular to Mr Bacha and his subordinates for them to lock the door. She is not aware whether there are personalized cards. She confirmed that there are computer crashes that take place quite regularly within the company since defendant company it is a big company

but she did not have the names of all the persons who had this problem because she is not posted in the IT department. Whenever there is a computer crash, it is not reported to her as it concerns primarily the IT Manager. She further confirmed that Clyde Carnarapen and Simla Bissessur were at the material time posted in the Finance department but the said Carnarapen is now no longer working for the company. Simla Bissessur was responsible of the franking machines. Shameer Burkhut was working in the IT department. She stated that she could not recall exactly whether there was a meeting between plaintiff and herself on 15 December as she had met the plaintiff on several occasions. She did not agree that Mr Bacha and later Mr Rey and herself wanted to get rid of the plaintiff.

In re examination Mrs Ross stated that the enquiry which she referred to earlier was conducted by Mr Patrick Nulliah, Director of IT department in the defendant company where he is still employed. She confirmed that she was present during the disciplinary committee to which plaintiff was convened to attend by letter 16 December. She further stated that it was Mr Dholah himself who expressed his satisfaction for the new post to which he was appointed by an email dated 1 December 2011 (Vide Doc.L).

The following witnesses were also called by the defendant in support of its case:

-Mr Eric Rey, Chief Executive Officer (CEO) of Brink's Mauritius and Indian Ocean since 2006. He knows the plaintiff, Mr Dholah who in 2011 was an employee of the defendant company and was occupying the post of Internal Auditor. He confirmed that there was a meeting on 8 December 2011 at the head office of defendant company at Solitude, in his office, in presence of Mr Ashiq Bacha, CFO of defendant company, the plaintiff and himself. The purpose of this meeting was in relation to the objectives assigned to Mr Dholah, in respect of which there was an exchange of emails between Mr Bacha and plaintiff which took a rather polemical turn. Hence the meeting was held to clarify this situation. He further confirmed that Mr Bacha was plaintiff's superior. He explained that as it was a new post there was a job description given to the plaintiff as well as the objectives which the company wishes to achieve with this new post. After having accepted this new post, there was an exchange of communication wherein the plaintiff questioned certain aspects of the job description and the defined objectives. It is not to his knowledge that plaintiff ever objected to his new appointment.

Mr Rey described the sequence of events which occurred during the meeting of 8 December in his office at Solitude. He started with the aim of the meeting which was to discuss the defined objectives of the new post. He explained to plaintiff the objectives attached to this new post and that same will be revised when taking into account how things will improve. Plaintiff then expressed the views that he cannot be judge and party because he cannot be

an auditor and at the same time ensuring a control on the company's expenses , purchases etc. This first part of the meeting lasted for about 20 minutes, at the end of which plaintiff agreed that the objectives were achievable, he was ready to embark on this new mission and that he will do the maximum to achieve those objectives.

Mr Rey further added that as it is a new post it was necessary to acquire some experience into what was possible to be done to have an internal control in the company. Hence plaintiff was assigned this post and it will be for the company to see what to be done for the objectives to be more coherent and achievable. He maintained that plaintiff was agreeable to start his new job and achieve those objectives and after some weeks to re assess this new assignment.

Mr Rey went on to explain that after having accepted the objectives set to his new post, plaintiff asked him a question in relation to Mr Ashiq Bacha namely what he intended to do in relation to an email which he had sent to him regarding the conduct of his superior. He stated that in the said email plaintiff expressed certain rumors and allegations regarding the alleged unethical behavior of his hierarchical superior towards the company. He then told the plaintiff that this was not the purpose of the present meeting, that there was nothing in the said email which would cause him or the Human Resource department to go further with this e mail and that the file has been closed. He also told the plaintiff that from his point of view there was nothing in the said email which would justify that he put into question the integrity of Mr Bacha. It was then that plaintiff became very aggressive and vindictive. Plaintiff told him that this was inacceptable and that he will report this information to higher quarters in the United States, to which he told him that it was his right to do so but that he must also be careful not to report any kind of rumors or allegations.

Mr Rey gave an explanation of the procedure which was in force at the material time regarding any complaints which an employee wished to make. He stated that Brink's Mauritius forms part of Brink's Indian Ocean which itself is a subsidiary of Brink's United States. Hence Brink's Mauritius has put in place a procedure which is of american type. Internet links and telephone lines are made available as well as a legal service which receives complaints from all over the world from any staff who considers that he is ill treated or that there is an ethical issue within the company. In the defendant company this procedure is communicated to the staff every year and once every year the telephone number and the different links available are communicated to each employee. It is open to any employee who considers that in his opinion the decision taken by the management lacks discernment and is not ethical, to direct his complaint to higher quarters provided there is a minimum substance in such a request. In fact this was what he imparted to the plaintiff

namely that he must be careful not to bring up things that are rumors and allegations, following which plaintiff became even more aggressive. Plaintiff then started to talk about the recordings he made without the knowledge of the CFO, and which according to him contain some important information.

Mr Rey further added that plaintiff went on to say that with such recordings he can sue the company and “que ca va couter très cher à Brink’s”, that he has an uncle who is a barrister and he will do his best to make them pay dearly for all this. Mr Rey described the behavior of Plaintiff at the material time as being very aggressive, violent, and threatening. Plaintiff was talking very loudly and he threatened the company and Mr Ashiq Bacha that he will make everyone pay. He therefore considered that plaintiff has greatly exceeded his limits and that this question of recording is inacceptable for the company. What plaintiff did is for him an important loss of confidence in an employee who was occupying the post of Internal Auditor. He therefore put an end to the meeting and asked the plaintiff to leave his office but which he did not and continued to be threatening. He had to do it three times for finally plaintiff left his office.

The whole meeting lasted for about half an hour. Mr Rey denied that he ever told the plaintiff that it was over for him and that plaintiff pleaded to him. He only requested him to leave his office. He denied that the meeting was expeditious and lasted for only 10 seconds. He further denied that the meeting was all a plot designed to get rid of plaintiff. He explained that the company wanted to trust plaintiff on this new post. It is an extremely important post because at the material time there was no Internal Auditor in the company and the latter had a number of needs in terms of control of expenses and purchases in a great number of fields. Hence it was more a real opportunity given to the plaintiff than a change in his posting. Furthermore it was an opportunity which was in line with what the plaintiff really wanted to do because he has expressed the wish to evolve and to change from his previous post of Head of debt.

The above witness stated that after this meeting he was very disappointed because he did not expect that sort of behavior and state of mind from the plaintiff. He was also worried because plaintiff’s behavior raised serious questions about ethics in respect of an employee who was going to assume the post of Internal Auditor. He considered that it is not conceivable that an employee records his superior or any other colleague without the latter’s knowledge. This is against the ethical values of the company which is a security company that deals with the security of people and goods all over the world. In Mauritius there are about 3500 employees who are involved in the field of transport, security, patrol, and

monitoring. Hence the company's image and credibility rest on its ethical values and integrity at all levels.

Mr Rey confirmed that plaintiff sent a complaint to higher quarters but he did not know the contents thereof. He came to know about the said complaint because it is the procedure that whenever there is a complaint made to the headquarters of Brinks, he is informed that there will be an independent auditor appointed by Brinks to carry out an inquiry into the complaint made by one of the company's employees. Hence in relation to the present matter, there was someone mandated by headquarters who had spent about 15 days interviewing all the parties concerned to the issue raised in the complaint namely plaintiff, Mr Ashiq Bacha, himself and a number of other persons. After the enquiry the case was closed and hence no further action was taken at the level of the local company.

Under cross examination Mr Rey stated that he is CEO of Brink's Mauritius since 2006 but he joined the company since 1987. In 30 years of service he had occupied several posts namely Regional Manager, Network Manager and Deputy Managing Director of the Brink's France group. Mr Bacha joined employment since about 8 years. He is on good terms with him as well as with all the employees in the company. He confirmed that the meeting of 8 December was in his office near which are found the offices of the legal department, commercial department and the reception. There are two security guards who are posted at the sentry gate at Solitude.

Mr Rey explained that he set up the meeting of 8 December at the request of the Human Resource Manager, Mrs Gangnard who asked him to put an end to these polemical exchanges. He further explained that Mr Dholah thought he would not be able to meet the objectives in 3 months. Hence they told him that after 3 months they would make a re assessment and necessary adjustments if need be because as it is a newly created post neither Mr Dholah nor themselves had a clear vision of this function. During the meeting he also explained to Mr Dholah that there was no conflict of interest because there was never a question of him being in charge of management. He further added that when the meeting started, plaintiff did not immediately accept the objectives but did so after 20 minutes of discussion and explanations.

He confirmed that during the meeting Mr Dholah made mention of an email which he had sent him. He stated that in the said email plaintiff made certain allegations against Mr Bacha which he had concluded were only rumors and allegations. The contents of the said email did not justify any enquiry. He was aware that Mr Bacha has a private business which deals with the sale of cigarettes. Mr Bacha had disclosed same when he joined the company and same was validated by the board inasmuch as he is a shareholder in this family business

and not an executive member. According to the policy of the company, any employee can be a shareholder in another company as from the moment the latter has disclosed it to the board which has validated same and that there is also no conflict of interest. In the case of Mr Bacha he considered that there was no conflict of interest because Mr Bacha is only a shareholder in the family business. He was communicated with a copy of the email which plaintiff had sent to Mr Michael Beech and the latter had also informed him that there was a complaint made by Mr Dholah. He explained that the procedure was triggered by the legal department of Brinks US which had then initiated an enquiry. The management is only informed that there will be an independent internal enquiry following a complaint made by an employee. Then he is the one who will inform all the protagonists that there will be an enquiry . He cannot recall when did he receive confirmation that there will be an enquiry but the enquiry was conducted by an Internal Auditor from Brinks US. It was him who took appointment with all the interested parties. He stated that as the post of Internal Auditor was a newly created post hence plaintiff was working alone.

The above witness for the defendant stated that the meeting of 8 December had an unexpected ending. He maintained that at a certain point in time plaintiff became aggressive and used threatening language. He had a behavior which he considered was inacceptable and inappropriate for a meeting. He was talking in a very high tone. He also used violent and threatening words. He could not recall all the words used by plaintiff as it is now more than 6 years ago but only some which were more shocking to his opinion namely that plaintiff stated that the company will pay dearly for all this, his uncle is a barrister and he will take a lot of money from them. He considered such a behavior as very serious. He did request plaintiff to leave his office immediately. It is possible that other persons might have heard plaintiff talking in a loud voice. He was not scared and he did not ask for any help. He requested him to leave his office which he did not, then he stood up and pointed to him the exit door asking him again to go out but he continued to be aggressive by threatening the company, Mr Bacha etc and it was only at the third request that plaintiff left the office. He did not report the matter to the police as there was no physical violence but he caused the internal procedure to be triggered and an enquiry for a disciplinary committee to be set up because this was the normal procedure in such a case. He did not have any idea of how many conversations plaintiff had recorded. It was plaintiff himself who informed them that he had done so.

Mr Rey denied that Mr Bacha and himself had already decided to take sanctions against the plaintiff. He did not agree that plaintiff did not behave in the way he explained above i.e in a violent and aggressive manner. He explained that he did not immediately fire him because there is an internal procedure in the company which gives rise to a proper investigation to be carried out and to give an opportunity to any employee to offer his explanations. He admitted

that the 1st part of the meeting whereby the question of independence and objectives of the job were discussed went on normally. It was only when he told the plaintiff that he will not take any action in relation to his complaint and allegations against Mr Ashiq Basha that plaintiff started being aggressive and threatening. He maintained that during the 1st part of the meeting there was an exchange of views. He stated that his letter to the HR Manager i.e Doc.M was to formally inform the HR department of what happened so that the procedure can be triggered.

The witness stated that if the post of Internal Auditor was proposed to plaintiff it was because he had given satisfaction in his work though his performance as Head of billing was not excellent based on the figures in terms of debt recovery. Upon being shown Doc.N he stated that therein it was mentioned that plaintiff's performance was 60% satisfactory. He denied that plaintiff remained calm all throughout the meeting. He explained that after 8 December plaintiff continued to work and was suspended on 16 December because it is the procedure that when an employee reported a complaint to the group management, the company has no right to terminate the worker's employment until the enquiry is over . He usually meets Mr Bacha practically once a day in the canteen if their hours coincide and then for meeting purposes they can meet on average 3 or 4 times a week. It is not to his personal knowledge that Mr Bacha had an issue with his password. It was to the IT department that Mr Bacha reported the matter.

-Mr Ashiq Bacha adduced evidence which was in substance as follows:

He is the Chief Financial Officer (CFO) in the defendant company since 2011. He confirmed that there was a meeting on 8 December 2011 in the office of the CEO, Mr Eric Rey at Solitude, which was the result of a polemic between plaintiff and himself arising from the transfer of plaintiff from the billing & recovery department to that of Internal Audit. At the material time he was plaintiff's superior. The said transfer was a consensual one and it was then validated by an "avenant" to plaintiff's contract of employment, which the latter has signed. The meeting started well and was cordial. Mr Rey explained to plaintiff the reasons as to why he was transferred from the debt and recovery department to that of Internal Audit, what was expected from him and the reasons for the defined objectives. Mr Rey also explained to the plaintiff that this department was newly created and he was considered to be the right person to occupy this post. Plaintiff was also told that whilst being independent to do an audit does not mean that there will be no accountability. After some time plaintiff agreed on his new post and stated that "oui, il est partant" . He even stated that it was his dream job and that he will do his best to deliver what was expected from him.

Mr Bacha confirmed the version of Mr Rey to the effect that plaintiff's behavior changed when Mr Rey told him that he did not intend to do anything regarding the letter which he sent him wherein he pointed out the lack of ethical and professional conduct on the part of the CFO. It was then that plaintiff started to raise his voice and told Mr Rey that if he did not take any actions against the CFO he will report the matter to the headquarters in the United States……. He pointed out that Mr Dholah also told Mr Rey the following : he has recordings against the CFO, he has an uncle who is a barrister, he will sue him and " ca va coûter très chère à Brinks". Mr Bacha described the plaintiff's behavior at this stage of the meeting as very violent and in a fighting mood. Hence Mr Rey told plaintiff that the meeting was over and to leave his office, to which plaintiff replied "vous me mettez dehors". Mr Rey again requested him to leave his office and the meeting ended at about 14h45. It lasted about 45 minutes. He described the atmosphere as being very tense and the behavior of plaintiff as being very unprofessional.

Mr Bacha went on to explain that as CFO he is aware that after this incident there was a disciplinary procedure which was initiated. He is also aware that in the letter of charges there are other incidents reported – namely that of the 15 December 2011 where it was found that Mr Dholah absented himself from office without authorization. He took a half day local leave without prior authorization from his superior in breach of the internal rules of the company. He identified Doc.G as the email dated 10 February 2011 which he had himself sent to all his colleagues and subordinates to the effect that for any local leave there must be written authorization 48 hours before. He explained that he sent this email because when he joined the company in 2010 he noticed that there were many absences on the part of the staff, who also came late and there was a problem of discipline as regards punctuality and notification of absences. Hence in this email he explained the procedures to be followed as regards punctuality and to inform the management of any planned local leave. The employees must ensure that they get the approval of their leaves 48 hours in advance and the onus is on them to ensure that their leaves have been approved. He also made mention of an attendance register to monitor punctuality. In the said register the names of all employees in the department are mentioned and there are 3 columns – the 1st one for "time in", the 2nd one for "time out" and the 3rd one for "signature". Mr Bacha pointed out that the name of Anis Dholah is also mentioned in the said register. On the 15 December plaintiff did not comply with the procedures as mentioned in Doc.G. He did not agree that based on Doc.K the plaintiff can say that he has complied with the procedures and that the complaint levelled against him regarding the unauthorized leave is not justified. According to Mr Bacha, leave approval is not by email. There is a specific form and it is the duty of the employee to come and see the CFO with the said form on which is inserted the date of the requested leave and

the reasons for such leave. Just sending an email is not the correct procedure. He stated that in this case even if the plaintiff has sent an email, there was no reply on his part, neither an approval nor a denial. Hence according to Mr Bacha plaintiff cannot contend that he has complied with all the procedures.

Mr Bacha also adduced evidence in respect of the issue of plaintiff having left the working premises earlier than the normal working hours after the meeting of 8 December. He stated that on 8 December when the meeting was over he went to see plaintiff in his office but the latter was not there. He was informed that he had already left the working premises. But when he checked the attendance register it was mentioned that plaintiff left office at 4h30. This aroused in him a little suspicion that plaintiff was not telling the truth about his attendance. As regards the incident of 16 December as mentioned in Doc.A, Mr Bacha explained that on the aforesaid date when he reached office at about 9h00 – 9h05 he went to see plaintiff but the latter was not yet in. When he put his attendance in the register book he saw that the column where plaintiff's name appears was empty. He then went to ask Mr Olivier Harel who at the material time was working with him whether he had seen Mr Dholah and Mr Harel replied in the negative. As he already had a doubt on plaintiff's attendance, he therefore decided to make a copy of the register book which he identified as Doc.H. Same was done at 09h10 and he inserted a handwritten note on the right of the document namely that "Anis not yet in" followed by his signature and that of Olivier Harel. At about 10h45 he went again to enquire with Olivier Harel whether plaintiff had come and he was told that he was already there. Thus he went together with Olivier Harel to check the time which plaintiff had inserted in the attendance register. And it was found that he had falsified the attendance book inasmuch as he had inserted the time as 8h45. Another copy of the register book was then made which he identified as Doc.H1 wherein near the name of Anis Dholah namely in the column "Time in" the time mentioned was 8h45 followed by plaintiff's signature in the column "Signature In". He considered that this act on behalf of the plaintiff coupled with all the above acts and doings of the plaintiff show that plaintiff is an employee on whom the employer cannot have trust.

The above witness confirmed that on 23 December a second letter was sent to plaintiff in which the latter was informed of an additional charge in relation to facts which occurred on 25 October 2011. In relation to the said charge Mr Bacha gave the following explanations:

On the aforesaid date at 09h00 when he reached his office he switched on his laptop a blue screen appeared. He immediately realized that there was a problem with his computer. So he called the IT department and one Mr Sameer Burkhut talked to him. He informed him of his laptop's problem and he was told him that his hard disc might have crashed, to switch it

off and he will come to see him. On the material date as it was the end of the month he was having a 'bad debt meeting' with his team in his office and plaintiff too was present. There were about 7 persons in his office and the meeting started at about 9h30. Whilst the meeting was going on Mr Burkhut came in with a spare laptop – namely a terminal laptop, and the latter told him that he will configure this laptop so that he can use it whilst he was going to repair the other one. Mr Burkhut then asked him his password which he told him twice and then he wrote it on a piece of paper which he remitted to Mr Burkhut telling him the following: "écoute tu me dérange pas dans mon meeting, je te dérange pas dans ton travail, garde mon mot de passe, configure mon PC et puis tu me fais savoir". After half an hour Mr Burkhut had finished with the configuration and he left his office whilst he continued with his meeting which ended in about 15 minutes.

Mr Bacha went on to explain that on the material date when he was leaving the conference table he received a call but as there is connection problem in his office he went outside to answer the call. After 10 minutes he came back to his office and continued with his work. Thereafter on 20 December he asked the IT Manager Mr Patrick Nouya to give him a list of all the employees who had access on all the computers in the finance department during the last three months so that he can carry out a control of access to computers provided to staff of the finance department as per the procedure. In so doing Mr Nouya drew his attention to the fact that during late afternoon of 25 October his user name and password had been used on a computer other than his. He then asked him to find out on which computer same was used and he was told that it was that of Anis Dholah. He thus requested Mr Nouya to enquire into the matter as he has not been on Mr Dholah's computer with his username and password and neither has he given permission to anybody to use his name or password. The enquiry then reveals that there was a folder on plaintiff's computer named Anis Desktop/Pictures where there were many digital photos concerning him and which he has never communicated to any person. There was another folder named Hoolooman & Associates in which there was a sub folder named "Pictures" in which there were his personal photos, those of his wife , of his nephew's birthday and of his house. For him it was like someone has violated his privacy and stolen his personal and family photos. He was very upset because he trusted Mr Dholah like a colleague of his office but what bothered him was that he was concocting something against him. Furthermore the company and himself had been very fair with Mr Dholah and had given him full support after he had at one point in time expressed his wish to change department. Hence the executive committee worked out a post which will suit him. But in the end plaintiff was trying to entrap him.

Mr Bacha stated that he had never asked Mr Dholah to keep his personal photos on his laptop and neither had he ever asked him to manipulate any technological device on his

behalf. He is aware that following the two letters sent to the plaintiff dated 16 December and 23 December 2011 respectively, plaintiff was convened to a disciplinary committee to allow him to give his explanations. He too attended the disciplinary committee and he gave the same testimony as he did in Court. He confirmed that during the disciplinary committee plaintiff was assisted by Counsel.

In cross examination the above witness confirmed that the defendant company has about 2500 employees. He is a qualified chartered accountant. His initials are A B but he cannot say how plaintiff will write his initials. Upon being shown Doc.H he confirmed that the said photocopy was done at 9h10 in presence of a witness namely Mr Olivier Harel. The latter used to smoke a cigarette with plaintiff every morning but on the material date at 09h00 when he went to see plaintiff in his office he was not yet in. He did not ask plaintiff any explanations when he saw that he had written 8h45 as "time in" in the attendance register. He explained that in both Doc.H and H1 there was no signature at "time out" because the photocopy was done in the morning. He only wrote on the photocopy of the document i.e on Doc.H and not on the original because he cannot tamper with an original document. On Doc.H1 he did not write anything because it is the original copy. He did not agree to plaintiff's version that in the month of December he did not write anything in the column "time in" and "time out".

Mr Bacha stated that on 15 December he did not send any email to the plaintiff. He explained that application for local leave is not done by email but on an approved form which the employee must bring to him as CFO for signature. Furthermore as per the email which he sent to all his team in February 2011 management has to be informed 48 hours before taking any leave. He could not recall whether plaintiff met him on the said date and apprised him of the half local leave. He denied that since quite a long time he had already decided to do everything to get rid of plaintiff. He maintained that on 8 December plaintiff left his office early. In fact when the meeting was over at about 14h45, he went to see plaintiff in his office which is found near his but he was not there and even when he went again to see him half an hour later he was still not to be found. His office was locked and the light was switched off. He reported the matter to the Human Resource Manager.

Mr Bacha further stated that after the event of 8 December plaintiff was absent for one or two days but he must verify the attendance book to confirm how many days plaintiff attended work between 9 to 16 December. He did not ask any explanations from the plaintiff regarding his absence from office after the meeting of 8 December. He considered that it was plaintiff's duty to inform the management. In his department he has 21 persons reporting to him and hence he cannot verify one by one who is absent and who has informed the management. It

is for the employee to report to the employer and not for the employer to do so. He can make available a copy of the attendance register for 8 December. It was on that date that he came to realise that plaintiff was falsifying his entry in the attendance book because he had written 16h30 when in fact he was not in the office at that time. Hence when plaintiff was not yet in the office on 16 December he decided to make a photocopy of the attendance book so as to have material evidence that plaintiff was tampering with the said document. He identified Doc.P as being a coloured photocopy of the attendance register for 8 December 2011.

As regards the incident relating to the alleged use of his password, Mr Bacha stated that it was on 20 December that he came to know his password had been used. He reported the matter to the CEO and the HR Manager on the 21 December. He gave the same explanations as in examination in chief as to how he came to know that his username and password had been used- namely during the control exercise concerning the information system access and access to computers which he requested the IT Manager to do as is the usual procedure every quarter in the finance department. He stated that it is a compulsory exercise which has to be done every quarter. On the same day he asked Mr Nulliah to investigate into this issue of his username and password having been used on another computer, and he was communicated with the results on the same day. He further explained that there are several servers in the company. The role of Mr Nulliah is to grant access and to monitor the server. Once he gives access to an employee the latter has to make reasonable use of it. In fact that is why there is a control done every three months to ensure that the control which the IT department has put in place is effectively working and that there is no risk of someone from outside or within the company tampering with the server.

In the present case it was found that the username and password of the CFO who has access on a number of information data in the company, have been used on a computer other than the one which was allocated to the CFO. Mr Bacha stated that this is a real danger. He further added that it is however not the job of Mr Nulliah to sit down and see who is logging on the system on a daily basis because it is practically impossible to do so.

Mr Bacha further confirmed that Mr Sameer Burkhut came to see him in his office with a spare computer which he had to configure since the old one had crashed. He conceded that he gave his password to Mr Burkhut who is an IT Administrator and hence he is the one who grants password in the company. Passwords are generated by the IT department. Those officers are custodians of the servers and they are the ones who allow access to the system. They can have access to all passwords in the company. He admitted that on the material date Mr Burkhut could have gone in his office to look for his (Mr Bacha) password in the system but it would have been unethical for Mr Burkhut to do so because he would have

access to all his folders, files etc. Hence it was more ethical for Mr Burkhut to come into his office and asked him to put his password. As he knows that Mr Burkhut is from the IT department he has no problem to give him his password on a piece of paper. At the material time there were only two persons working in the IT department- Mr Nulliah who was in charge and Mr Burkhut.

The above witness stated that he came to know that Mr Dholah made a complaint against him when there was an investigation being carried out in relation to same. He conceded that he has a company but he does not do any private business. He is the owner of a cigarette company where there are 20 people working with a Managing Director and an Accountant. He is not involved in the day to day business of the company. He is not aware of the contents of the complaint. He admitted he was questioned during the enquiry but he could not reveal the contents because it was a private enquiry. He did not agree that the meeting of 8 December lasted less than one minute and that it was just a matter of seconds. He further did not agree that plaintiff asked to be given a chance. The meeting was about telling plaintiff that the company believed in him. He denied that he fabricated this question of dream job and maintained that plaintiff himself said so during the meeting and quoted it in his email. He further added that it was plaintiff's opinion that there was a conflict between management and auditing.

Upon being referred to the original of the attendance register for 8 December 2011 (VideDoc.Q), Mr Bacha confirmed that in the said document it is written 16:30 as being the time inserted by the plaintiff. He explained that it is only in the photocopy i.e Doc.P that he has put the yellow highlights. At that time he did not ask for any explanations from the plaintiff because it was only at the end of each month that a control of attendances is being carried out for payroll purposes. It is only at that time that questions are asked if things are found not to be normal. In the plaintiff's case at the time the payroll was done he was not in the company and hence he could not be questioned. But at the same time it triggered in his mind that on 8 December Mr Dholah was not in his office after 14:45 and hence during the control of payroll which was about 23 -25 December he highlighted this fact and put the following remarks "that's not true". Mr Bacha admitted that he did not put the date on which he inserted this note but he denied that he had forged the hours of work on this photocopy i.e Doc.P. He did not agree that on 8 December plaintiff was in the office of Mr Clyde Carnarapen inasmuch as at the material time he had a working session with the said Carnarapen. He stated that on 9 and 12 December plaintiff was on sick leave. The 10 and 11 December were week ends and on 13, 14 and 15 plaintiff attended duty.

Mr Bacha stated that during the meeting of 8 December the discussion was mainly between plaintiff and Mr Rey and plaintiff was very violent towards Mr Rey. He hardly put 5 to 10 words to the plaintiff. He reported the incident of 8 December to the Human Resource Manager in writing but he could not recall the date on which he did so. Upon being shown Doc.M he admitted that same is his written report of the incident dated 16 December. He did not put up any report of the incident earlier because he was busy with other priorities. But as soon as he found himself more available he did it. He did not find anything strange that both Mr Rey and himself wrote their report of the incident on 16 December. He denied that there was a meeting of minds between Mr Rey and himself to get rid of plaintiff. He maintained that the meeting of 8 December started nicely; they talked about the objectives and the philosophy of the transfer. It all went on well to the point that plaintiff himself stated that he was happy with the objectives. Basically it was in the second half of the meeting that plaintiff started getting violent. He did not agree that there was a cover up and maintained that the contents of his letter to the HR Manager reflect the truth. He further added that he was really angry and he is still upset with this problem of his private data being stolen.

In relation to this issue of password Mr Bacha stated at that point in time when he gave the piece of paper on which he had written his password to Mr Burkhut, he did not know what the latter did with the paper. It was only when they were trying to figure out how could such a thing happened that Mr Burkhut told him he left the piece of paper on his table, and then he (Mr Bacha) recalled that after the meeting he went out to answer a phone call whilst his staffs were still in his office. There were 5 colleagues present at the meeting namely Mr A Lisbonne, Mrs Corinne Poiny, Mrs Veronique Thomas, Mrs Joy Prospère and Mr Benjamin Labonne. They all saw Mr Burkhut working on his computer but he could not say whether they witnessed him giving to Mr Burkhut the piece of paper because at the meeting they all had their backs to the table where Mr Burkhut was working. He considered that there was no problem in giving to Mr Burkhut his password because same is generated by the IT office and Mr Burkhut is an IT Administrator.

Upon being shown an email dated 6 December 2011 (Vide Doc.R) sent by the plaintiff to him and copied to Mrs Gangnard and Mr Eric Rey, the above witness confirmed that he did receive same in which plaintiff talked about the objectives he was requested to meet and the independence of any internal audit. He stated that he did have reservations of what was said in the email and hence the purpose of the meeting of 8 December. He explained that plaintiff was making a confusion about independence and accountability. An auditor needs to be independent and it was never told to plaintiff not to be independent. The company wanted to implement rules which will enable it to see whether everything is going on well. And plaintiff was expected to make a report based on what was happening in the different sectors where

he was asked to audit. He further added that he is guided by Brinks Guidelines and not by what one Mr Picket had said in his book which he himself has not read.

Mr Bacha denied that he ever told plaintiff that it is inhuman and impossible for him to achieve the objectives of his new post within 3 months. He did not agree that plaintiff was on probation for 3 months. Plaintiff was an employee of the company since 2009 and hence he was already confirmed. In fact he was given an evaluation period of 3 months and from there the company was going to see what can be done, what training and support needed to be given as he already pointed out to plaintiff in an email dated 1 December (Vide Doc.S). He stated that in the meeting of 8 December the question of training did not arise. Plaintiff was just contesting the objectives and he was then explained the philosophy behind them, namely what the company wanted him to do and why he was chosen for the said post. He maintained that the purpose of the meeting was precisely to sort out this issue of objectives with the plaintiff.

As regards the enquiry which was conducted in relation to the complaint made to Mr Beech, Mr Bacha stated that he was never asked questions in relation to his cigarette business. He was questioned as to the complaint made by plaintiff that he allegedly tampered in the latter's performance appraisal evaluation to which he had replied in the negative and for which he had asked whether there was any evidence put forward to that effect. He conceded that plaintiff had emailed him at his request his performance appraisal on 30 March 2011. He explained that same was a draft version before discussion with him. He denied that he tampered with the attendance register of 16 December namely the writing "photocopy done at 9:10" as well as the coloured photocopy of the attendance register of 8 December. He explained that the photocopy will be different from the original because on the photocopy he wrote his comments.

Mr Bacha further added that plaintiff was not given his full bonus but 30% of it. He admitted that on 12 September 2011 he asked plaintiff a copy of his performance appraisal sheet. He explained the whole process of how an evaluation is carried out in the defendant company- all the managers are given performance objectives at the beginning of the year. The HR Manager then send to all of them a template for evaluation of their staffs and based on that evaluation a management bonus will be paid. In the plaintiff's case he was entitled to a management bonus of Rs 60,000 based on whether personal and management objectives were both met. Hence when he received the email from the HR Manager for appraisal of staffs he sent an email to all his staffs together with a template of the evaluation requesting them to put in their objectives, self-evaluation and to send them back to him. Thereafter he had a discussion session with his staffs in his office and based on same a bonus was

allocated. The same procedure was followed for the plaintiff as for all the employees in the company.

In respect of the plaintiff's evaluation, Mr Bacha explained that in or about 29 or 30 March plaintiff sent him his first evaluation by email. But when he went through them he saw that it was not complete, the line and pagination was not correct, he did not put his comments, his real achievement and his training needs. Hence he put his comments and then he had a discussion with plaintiff during which he told him that he did not achieve both objectives (personal and management). But to be fair with the plaintiff he told him that he will be given 30% bonus. Same was paid in the March salary. But in the meantime plaintiff was to complete the performance appraisal to which plaintiff had to sign as well as himself. But the company had a "terrible" year. Almost the whole year there were auditors from US in his office and he did not have time to complete this part of his job. It was only in September that he realized same and thus he sent an email to plaintiff to inform him to finalize his appraisal and sent it back to him for him to sign and send to the HR Manager. However plaintiff sent him back the original document which he did in March which was not a reflection of the discussion he had with him and wherein he decided to give him Rs 18,000 as bonus. He therefore asked him to make some amendments, which plaintiff did. Thereafter plaintiff put his comments and at the end he too (Mr Bacha) put his comments to the effect that plaintiff needs more rigor and discipline in the department. Then they both signed the document. The said document is an original one and there was no tampering on his part of the said document. Upon being shown Doc.N he explained that plaintiff got 50% of his personal objectives but overall it was 30% of the total objectives which comprise both personal and company objectives. He did not reply to the said email as same was addressed to the HR Manager and he was in copy. But he did raise the matter with Mrs Gangnard and the latter is aware that it was 50% of personal objectives and not company objectives. He also sent an email to the plaintiff dated 12 September 2011 to inform him that his performance appraisal form was incomplete. He denied that he asked plaintiff for help to upload his photographs and that on the material date plaintiff stayed with him in his office till quite late. He further denied that he logged in on plaintiff's computer and that plaintiff created a file which was then transferred to his computer.

Mr Bacha confirmed that there is an alarm system in order to get out of the company premises but there is no personalized code. He explained that there is a general code in the building where everybody have access. Therefore if someone comes early in the morning he has to put in the code and he will have access into the building. When a person is leaving the company premises he will have to secure the zones that are under control namely windows, doors, and wherever there is a sensor. Then he has to press a button before

leaving the office and then close the door. There is only a button to be pressed and it gives a beep sound which indicates that it is 'armed' and so he can leave the office. The next morning when an employee comes in he has to open it with his key and it will give another beep sound. He admitted that there is a monitoring unit at Brinks.

Mr Bacha denied that he is trying to give untruthful explanations. As from March 2011 to 16 December 2011 plaintiff has been working with him in his department. But from March till November there has not been any single report made to anybody in the company. He admitted that it did not please him when plaintiff made a complaint against him concerning alteration of his performance appraisal form. He is not aware till now what complaint plaintiff made against him to Mr Michael Beech.

-Mr Olivier Harel, Compliance and Quality Manager in the defendant company was also called as a witness in support of the defendant's case. He deposed to the effect that in the year 2011 he was "Controlleur des Gestions" and SOX Coordinator for the defendant company. He stated that SOX stands for Sarbanes – Oxley. He explained that Brinks is an American company which is quoted on the New York Stock Exchange and hence the defendant company is SOX compliant i.e it has to comply with the rules set up by the parent company in the United States. Hence his function is to ensure that everybody in the defendant company is complying with all the internal procedures and internal control in force in the company.

In relation to the present case, his involvement is as regards the issue of falsification of the attendance book. As "Controlleur des Gestions" and SOX Coordinator he was responsible of all internal control and hence of the plaintiff's attendance. He identified Doc.G as being the email sent by the CFO Mr Ashiq Bacha to inform all parties mentioned in the said email of the procedure set up by him for verification of the attendance of all employees so as to ensure that they all attend work on time. Hence an attendance register was set up to verify the arrival and departure time of all employees.

In respect of the plaintiff's attendance on 16 December 2011, he explained that on the material date he reached his office at 8h00 and as per the internal procedures he inserted his attendance in the attendance register. Then he went into his office, switched on his computer to check his emails and at 8h30 – 9h00 he had his coffee break. During his coffee break he usually has his coffee and smoke a cigarette together with plaintiff. On the aforesaid date as he did not have his lighter, he looked for plaintiff in his office (which is found not far from his) as well as in other offices but plaintiff was not to be found. His car too was not to be seen under the tree where he used to park. Thereafter at about 9h10 the CFO, Mr Bacha came to see him and asked him to check if Mr Dholah was there. Then Mr Bacha

requested him to do a photocopy of the attendance book and to sign on it at 9h10. He identified Doc.H as being the copy of the attendance register of 16 December which he had signed at 9h10. Thereafter he signed a second copy of the attendance book at about 10h46 – which he identified as Doc.H1 and which shows that Mr Dholah had already inserted his arrival time. As in charge of internal controls, when compared the two copies he considered that plaintiff had falsified the attendance book in inserting his arrival time at a time when he was not on the working premises. He further added that at the material time he had very good relationships with Mr Dholah. The latter was his colleague and they had spent much time together smoking a cigarette and having a cup of coffee.

Under cross examination the above witness stated that he usually comes to office at 08h00 and he used to go and say hello to his colleagues. Upon being requested by Counsel for the plaintiff to read what was written on document H, he stated that same reads as follows "photocopy done at 09:10. AN is not yet in". He did the photocopy and it was Mr Bacha who had written the above comments. In respect of the second document i.e H1, he stated that he did not write any comments and did not sign it either. His initials are O H. He did not agree that on the material date Mr Dholah came to work at 8h20 and that after his arrival he went to another office.

-Mr Patrick Nulliah deposed as follows: He is an IT Manager in the defendant company and in 2011 he was occupying the same post. In such capacity he is responsible of the information system, servers, computers, networks, users and also to ensure respect of confidentiality, integrity and access to data. He explained that when an employee joins the company, the human resource department sends to him all the details of the employee, his name and surname and an account is created for him. Hence each new employee receives a username which enables him to connect to the company's network as well as an email address. Employees who are allocated a laptop/computer is also given a code. This is done in order to identify the person who makes use of a computer and at what time he is doing so. All these procedures are necessary in view of the nature of activities in which the defendant company is involved and also because Brinks forms part of the group of companies which are listed on the New York Stock Exchange. Hence the defendant company receives specific policies with precise instructions from the US group and it has to set up local procedures to comply with these policies.

In relation to the present case Mr Nulliah stated that he was indirectly involved in the investigation of some facts which led to the termination of the plaintiff's contract of employment. He explained that on or about 20 December 2011 Mr Ashiq Bacha informed him that he had noticed that some documents were missing on his computer and requested

him to carry out an investigation to that effect. The first thing that he did was to verify the logs because each time an accredited user of the company connected himself to a computer he has to insert his name and log in the system and hence there is a log which is created. As an IT Manager normally he does not check the logs everyday but does so quite regularly. He has all the logs in a folder in his email box. Hence in the course of his investigation he verified this folder and he found an anomaly, namely that the login of Mr Ashiq Basha has been used on another computer.

The above witness further added that during the course of his investigation whilst examining the logs he found that on 25 October 2011 at 18:52 the log of Mr Ashiq Basha, CFO was used on a computer allocated to Anis Dholah. He explained that whenever someone logs into the Brinks' network on a computer, automatically there is a log that is sent by email to the IT department and which gives information of who is connecting, on which computer and at what time. He produced a screenshot of all the logins of Mr Ashiq Bacha and which shows that several mails were sent on several dates (Doc.T). He stated that the computer allocated to Mr Bacha bears the reference MUSOLLT0033 and on Doc.T at the10th line it can be seen that his login has been used on another computer namely on computer bearing reference MUSOLLT0026. He produced another document which is a list of the different computers belonging to Brinks and which have been assigned to different employees (Doc.T1). He stated that as shown in the said document each computer has a specific reference which starts by the letters MUSOL and it can be seen that computer of reference MUSOLLT0026 which appears at the 12th line of the document relates to a computer which was attributed to Mr Anis Dholah. At the 14th line of the same document it can also be seen that the computer with the reference MUSOLLT0137 was attributed to Mr Ashiq Bacha.

Mr Nulliah further added that during the course of his investigation he found photos belonging to Mr Bacha on Mr Anis Dholah's computer namely on his desktop in a folder named "pictures" and in another folder named Hooloomann & Associates, more precisely in a sub folder named "pics". He produced a screenshot of the desktop of the plaintiff's computer (Doc.T2) as well as a screenshot of the folder "pictures" (Doc.T3) and a preview of the same folder (Doc.T4). The witness also produced a screenshot of the folder "pics" which is a sub folder of the folder "Hooloomann & Associates" (Doc.T5) , as well as a preview of the photos inside the said folder (Docs.T6 & T7). He explained that Doc.T2 gives a list of items found on the desktop of Mr Anis Dholah, among others the folders "pictures" and "Hooloomann & assoc." On Doc.T2 all the folders are in yellow. Doc.T3 gives a list of the contents of the folder "pictures" whilst Doc.T4 shows a series of photos contained in the said folder, among which one can identify Mr Bacha namely in the second row-(IMG00014-20101022-1724.jpg), and in the fourth row as well (IMG00040-20110313-1638.jpg). The

witness stated that the numbers on all these photos show that they have all been taken from the same camera. Doc.T5 is a list of items found in the folder “Hooloomann & assoc” which itself has a subfolder named “pics” and Doc.T6 shows the contents of the subfolder “pics”. In this folder too one can see photos of Mr Bacha in the second row (DSC00015JPG) and in the third row as well (DSC00030JPG). Doc.T7 is a subfolder contained in the folder “pics” and which is called “Raoul birthday”. He stated that therein are listed a series of photos among which can be seen a familiar face namely the fourth photo in the 4th row and the 8th photo in the fifth row. Mr Nulliah further added that all the above photos are not related to the activity of Brinks but are private and family photos of the CFO found in a sub

folder “pics” itself hidden in the folder “Hoolooman & Assoc. He stated that it is not normal to find the login of an employee being used on the computer assigned to another employee.

Under cross examination Mr Nulliah confirmed that he is Head of IT department and at the material time there was another colleague named Shamir Burkhut working in the same department. He stated that he knows whenever a person is connected to the company’s server. On the 25 October 2011 Mr Burkhut was in the office. He explained that there are several buildings on the working premises of the defendant company and on the aforesaid date Mr Burkhut might have left his office for a while to go to another building because in view of the nature of their work they have to move to different offices to help out people. Mr Burkhut must not necessarily inform him whenever he has to move to another office. He is aware that on 25 October 2011 Mr Ashiq Bacha’s computer had crashed. Upon being shown Doc.T the witness stated that in the column on the left there are several folders as well as the login and log off details but the screenshot is only in respect of the login details. He cannot say whether he can have a copy of the log off details. He cannot say where were Mr Bacha and Mr Dholah when they were connected to their respective computers. He confirmed that during the disciplinary committee he produced a document called AB Transfer File. It was at the request of plaintiff that same was produced but there was nothing in the said file. He explained that logs are verified by the IT department only when there is an incident reported. On 20 December it was Mr Bacha and the HR Manager who requested him to carry out an enquiry into those documents which went missing on Mr Bacha’s computer. This was done on the same day but he cannot recall whether he gave a report in writing or verbally.

Mr Nulliah further explained that each time there is a new employee the IT department allocates a password to him and the user will then have to change it. The password expires after 61 days and it is the procedure that every user has to change his password after 61 days. He stated that on 24 – 25 December if ever the password of Mr Dholah was expired he

must have changed it. He further added that the password of each user is private and confidential. He is not custodian of the password. The IT department cannot know the password of the user. It's a security measure and not even the system administrator will know the password of a user. Mr Nulliah stated that if during the enquiry the user is present, there is no need for the user to give his password. It's only when the person who made a request to do some verification on his computer but is not present when such verification is being carried out, then he must give his password but afterwards he has to change it. He stated that on Doc.T the log out times are not mentioned because same is in another file. Doc T was produced during the disciplinary committee to show the anomaly. But now documents are no longer available to have a print out of the log outs. He further added that the logins are more important and in any case when someone logs in he must also log out.

The above witness stated that on the material date as Mr Burkhut configured Mr Bacha's computer he must have logged in. Mr Bacha's computer was not repaired on the same day and in the meantime he was given a temporary space directly on the server. His computer was brought to the IT department. Mr Nulliah did not agree that he is not telling the truth. He knows Mr Bacha since he joins the company but he does not know his family. He explained that at the material time there were keys for all offices and not personalized codes or cards. He cannot say whether there is an alarm unit or monitoring unit which monitors the departure of employees from their offices. There is no alarm system in all offices but only in some sensitive units like the office where is found the server and where money is kept. He knows that there is an alarm system in the accounts department but he cannot say whether same existed at the material time.

Submissions

Counsel appearing for the defendant company submitted as follows:

It is the defendant's case that the employer had no alternative in good faith but to terminate the plaintiff's employment based on charges expressed in Docs. A & B. Those charges were the object of a disciplinary committee chaired by an independent Barrister at Law. As per the findings of the committee the acts and doings of the plaintiff amounted to gross misconduct and that in any event the relationship of trust between employer-employee had been severed. Hence the defendant was perfectly justified to terminate the plaintiff's employment without notice and without compensation.

It is contended that this Court has not been seized to determine whether Mr Ashiq Basha, the company's CFO has breached in anyway the code of ethics of Brinks and neither is this case about a complaint of constructive dismissal by the plaintiff. Same is very clear from the amended plaint where there is no averment of constructive dismissal. Counsel pointed out

that there was an attempt by the plaintiff to sidetrack the Court into considering facts which might have been relevant to a case of constructive dismissal but which should not at all be considered in the context of an alleged unjustified termination. Though Mr Dholah sought to demonstrate that he was being forced into signing a new agreement i.e Doc.E and that the company was conspiring to get rid of him, Counsel drew the attention of the Court to Doc.L the contract which bears plaintiff's signature and the email dated 1 December 2011 i.e Doc.L addressed by plaintiff to Mr Ashiq Bacha, his hierarchical superior wherein plaintiff stated the following "I think it suits me well and I intend to do my best to meet expectations". It is therefore submitted that the Court has to disregard any averment or any allegation on this score.

Counsel elaborated on the charges against the plaintiff as per Doc.A & B and which triggered the present case before this Court. In that context Counsel highlighted the nature of the activity of the defendant company which is a company held by an American company quoted on the Stock Exchange and hence subject to stringent rules, as well as the importance of the role of Internal Auditor of Mr Dholah. Thus the clause of "honorabilité" in the plaintiff's contract which explains why his acts and doings could not be tolerated by the defendant company. The meeting of 8 December was referred to and Counsel elaborated on the behavior of the plaintiff during that meeting which as per the defendant's contention was aggressive and threatening towards Mr Eric Rey, the CEO of defendant company. It is submitted that the version of Mr Rey and Mr Bacha in relation to this meeting was very fluent and corroborated each other. Besides this meeting, the other grievances expressed by the company against the plaintiff were also highlighted. Counsel pointed out that documents were produced in support of those grievances as well as evidence adduced by Mr Bacha, Mrs Ross and Mr Olivier Harel. Much emphasis was put on the alleged falsification of the attendance register by the plaintiff and it is submitted that such conduct on the part of the plaintiff who was occupying the post of Internal Auditor in a security company where integrity and morality are highly valued, was not acceptable in the circumstances.

As regards the additional charge against the plaintiff as per Doc.B, the evidence of Mr Bacha and Mr Nulliah were referred to as well as all the screenshots produced by the latter witness in support of same. Counsel contended that these screenshots unambiguously demonstrate that Mr Bacha's confidential password was used on Mr Dholah's laptop attributed to him by the company. This resulted in Mr Nulliah discovering personal data belonging to Mr Bacha namely photographs of his family, his nephew, and of himself on plaintiff's computer. This data was hidden in a folder entitled "Hoolooman & Associates". Counsel pointed out that Mr Bacha is plaintiff's superior and plaintiff had difficulties to get along with him. There is also evidence that plaintiff reported Mr Bacha for breach of ethics and that he took the habit of

recording conversations between him and Mr Bacha without the latter knowing. Hence the fact of finding hidden pictures belonging to Mr Bacha on plaintiff's computer is very unsettling. One can only surmise as to the reasons why an employee would keep personal data of his superior on his company's laptop. It is contended that the explanations put forward by plaintiff on that issue are far from being persuasive.

It is therefore submitted on behalf of the defendant company that all the above disturbing facts conclude that the decision of the management of Brinks to terminate the employment of the plaintiff was based on objective facts supported by several witnesses which show that the acts and doings of the plaintiff were constitutive of a "faute sérieuse" warranting the sanction that was effectively taken. And that in the alternative the acts and doings of the plaintiff were of such a nature that they rendered his "maintien au sein de la compagnie Brinks impossible" by virtue not only of his own role but also by virtue of the values cherished by the company. Counsel further submitted that the "perte de confiance" is founded on objective elements so that the employer was perfectly justified in taking the decision that it took. After all that had happened and everything that was disclosed by evidence the employer was left with a strong suspicion, at least of misconduct on the part of the plaintiff and hence it considered that it was impossible to continue with a bond of trust which is essential for good employer-employee relationship. The following cases were cited by Counsel appearing for the defendant – Abdurrahman v Total Mauritius Limited [2013] SCJ 480, Shibchurn v Sun Resorts Ltd [1999] and British American Tobacco(Mtius) PLC v Begue D A C [2016] SCJ 363. An extract from the book of Mr Fokkan namely at page 399 was also referred to.

Counsel appearing for the plaintiff pointed out that the law in matters of dismissals show a clear cut intention to ensure expeditiousness as quoted in the case of Savanne Bus Service v Peerbaccus [1969] MR pg 139. He further added that when Counsel puts questions in cross examination these are deemed to be instructions from his client as per the case of Mungly v The Queen 1988 SCJ 301. Paragraph 1(c) of the amended plaint which averred that plaintiff was working on a 5 day week basis was referred to as well as Docs. B and E which make mention of the 45 hours work of the plaintiff. Counsel pointed out that as per paragraph 7 of the plea defendant based itself not on the decision of the committee but on the charges. It is contended that the plea is bad in law.

Counsel referred to the Employment Relations Act and stated that in the present matter it will be right and proper for the company to get rid of the plaintiff straightaway because what supposedly took place on 8 December was very serious and inacceptable. Reference was made to section 38 (3) A (1) (2) (5) of the Act and Counsel stated that as soon as there is a

charge the worker must be given not later than 7 days to answer the charge. It is the contention of Counsel for the plaintiff that it must a written answer. It is submitted that either a worker answers the charge, action is taken and the dismissal occurs within 7 days or there is an oral hearing wherein the worker answers the charge and then after 7 days a written explanation in answer to the charge is required or it can even be verbal.

Emphasis was laid on the delay in instituting the disciplinary proceedings. It was pointed out that the first misconduct is alleged to have taken place on 8 December. On 16 December plaintiff received Doc.A, that is 9 days after – which is outside the delay of 7 days. Furthermore the institution of the proceedings were postponed to the 21 December. It is therefore submitted that the delay in the institution of the disciplinary proceedings is of essence in this matter. It was further noted that based on the following charges as per Doc.A namely the 2nd, 3rd and 4th charges, the defendant company should have taken action straightaway or at least within the 7 days but it failed to do so.

As regards the charge mentioned in Doc.B, Counsel stated that the particulars of the said charge were that the plaintiff was supposed to have logged into the system of Brinks (Mauritius) Ltd which Counsel contended is different from getting the pictures of Mr Bacha because those pictures do not form part of the system of Brinks (Mauritius) Ltd. He therefore considered that this charge is totally bad and that there is no evidence to prove that Mr Dholah had used the password of the CFO to log in the system of Brinks (Mauritius) Ltd.

Reference was made to the testimonies of Mr Rey, Mr Bacha and Mrs Gangnard as to when the alleged incident of the 8 December was reported to the latter and when she drafted the charges. Counsel considered that the charges could not have been drafted in the morning of the 16 December but after 1.00 p.m in view of the question put to the plaintiff during cross examination. He further contended that Docs.M and M1 concern only the supposed incident of 8 December and do not make mention of the other charges of the 15 and 16 December. Hence he considered that those two charges form part of Doc.A. It is thus submitted that those charges were false and had not been rebutted at any time during the proceedings.

Counsel also referred to the contract as per Doc.D and the 'avenant' to the contract i.e Doc.E, the satisfactory reports which were given to the plaintiff and his hours of work which Counsel pointed out were more than 45 hours. In that context he referred mainly to the testimonies of Mr Bacha and Mrs Ganganrd. It is therefore the plaintiff's contention that Mr Bacha has been lying. Regarding the complaint which Mr Dholah stated having made to Mr Beech on the 13 December, it was submitted that it was clear that it was this complaint which triggered the plaintiff's suspension and thereafter his dismissal.

It is also the plaintiff's contention that the disciplinary committee was not fair though chaired by a barrister at law and that it had failed in its duty in not giving reasons to justify the basis of its decision. An extract from "De Smith Judicial Review of Administrative Action" was produced which is to the effect that when it concerns the livelihood of a person reasons must be given. He further added that whenever there is an allegation or witnesses have been challenged they have to be present in Court to give evidence. Reference was made to the case of Jhootoo v State 2013 SCJ 373. It is the plaintiff's contention that the disciplinary committee was not independent and Counsel referred to the document in respect of the Findings of the disciplinary committee which is signed by the Management and he contended that the committee was working hand in hand with Brinks and is an instrument of the management.

It is further submitted on behalf of the plaintiff that the supposed clash between Mr Dholah and Mr Rey has been cooked up by the management to get rid of the plaintiff. Counsel pointed out that plaintiff has denied being aggressive. Furthermore though Mr Bacha and the management had the email address, phone number and even the address of the plaintiff yet between 8 December and 16 December no one had asked plaintiff to come and give his explanations of his absences from work. Concerning the alleged charge of recording conversations of the CFO, it is contended that in evidence there is only one piece of recording which has transpired though Mr Bacha stated that there were seven recordings. It was pointed out that as per the plaintiff's evidence the President of Brinks had mentioned to him that given the circumstances it was legitimate for him to have recorded the matter. Concerning the alleged departure of the plaintiff at 14h45 without prior authorization of his Head of department, Counsel pointed out that plaintiff had denied this and there is also the question as to whether Mr Bacha was there after 14h45. Further he did not deem it necessary to ask plaintiff for explanations and considered that it was for the plaintiff to come and tell him.

As regards plaintiff's absence on 15 December, it is submitted on behalf of the plaintiff that the latter had applied for leave and had even talked about it to Mr Bacha though the latter had denied same. However plaintiff did send an email to Mr Bacha but the latter did not reply to same. It is thus contended that the fact that the email had remained unanswered it means that he had acquiesced to it. In respect of the alleged charge of 16 December, Counsel noted that it was obvious that Mr Harel did not see plaintiff at 8h00 a.m in his office because the latter came at 8h20. The question of Mr Harel looking for the plaintiff to borrow his lighter did not hold water because Mr Harel himself said that he always carries a lighter with him to light up his cigarette. Counsel pointed out that the initials AN on Doc.H cannot be Anis Dholah and that there are about 3,500 workers in the company. It is submitted that a reading

by any reasonable or objective person of Doc.H clearly shows that it is written “AN is not yet in” and Counsel considered that AN cannot be equated to AD.

In relation to the issue of password Counsel stated that though Mr Bacha contended that Mr Nulliah and Mr Burkhut are custodians of passwords this has been denied by Mr Nulliah. The latter had also given a lie to Mr Bacha’s version to the effect that his computer had been repaired whereas Mr Nulliah stated that plaintiff was given “une espace virtuelle” and his computer was taken away to be repaired. It was also pointed out that Mr Bacha reported the matter on the 21 December and not on 20 December as mentioned in the charge . Furthermore Doc.T shows that Mr Bacha had used his computer at 8h45 a.m. Yet Mr Bacha stated that on 25 October as soon as he switched on his computer it had crashed. It is submitted that this is a total lie. It is equally pointed out that only the logins have been produced and the logouts have been deliberately omitted. Counsel also contended that the photographs cannot be equated to Mr Bacha and his family. Mr Bacha was not confronted with those documents and photographs. Further the confidential matter does not relate to the photographs of Mr Bacha but to the system of Brinks.

It is finally submitted that the plaintiff has been able to rebut everything regarding misconduct and that “perte de confiance” has to be looked at objectively according to the evidence. And the evidence does not show that plaintiff had done anything to justify “perte de confiance”.

In reply to the above submissions Counsel for the defendant highlighted to the Court that the question of delay and fairness of the disciplinary did not form part of the grievances of the plaintiff as per the amended plaint. However she pointed out that the statutory delay of 10 days as prescribed by the Employment Rights Act has been adhered to by the defendant. It was further pointed out that the issue here is not what the disciplinary committee did at the relevant time but the decision of the management in relation to Mr Dholah. An extract from the case of Planteau de Maroussem v Societe Dupou quoted in the Privy Council case of Smegh ltée (Ile Maurice) v Persad [2011] was cited in support of the above contention.

Analysis

I have carefully analysed all the evidence on record as well as the submissions of both Counsel.

It is common ground that the plaintiff was an employee of the defendant company since 2009 and was last employed as Internal Auditor. It is not in issue that on16 December 2011 plaintiff was suspended from work and thereafter he was convened to attend to a disciplinary committee to answer several charges levelled against him as per Docs. A and B. By letter dated 17.01.12 (Vide Doc.C) plaintiff’s employment was terminated by the defendant

company which considered that the charges which were levelled against the plaintiff as per Docs.A and B were found proved.

It is the defendant's contention that those charges amount to gross misconduct and furthermore in the alternative it considered that as a result of such acts and doings of the plaintiff the relationship of trust which must necessarily exist between an employer and its employee has been irretrievably severed. Hence it is the defendant's case that the termination of the plaintiff's employment without notice and without compensation was justified.

The plaintiff has denied all the charges levelled against him. It is the plaintiff's case that the defendant has terminated his employment without notice and without justification. Hence his claim for 3 months' wages in lieu of notice and severance allowance for 36 months' continuous service in the total sum of Rs 605,880 as well as interest at the rate of 12% per annum on the amount of severance allowance, compensation for wages lost and expenses incurred in attending Court.

The plaintiff's employment having been terminated on the 17.01.12 the law applicable in the present matter is the **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 some of the issues raised by the plaintiff in respect of the disciplinary committee set up by the defendant company regarding the charges leveled against him, after which the Court will analyse those charges which defendant considered amount to gross misconduct.

Issues relating to the disciplinary committee

The first issue raised by the plaintiff in respect of the disciplinary committee as averred in the amended plaint was to the effect that "no decision has as yet been given by the disciplinary committee" (sic) – see paragraph 1 (h) of the amended plaint. Indeed it is the plaintiff's contention that his employment was terminated without him being informed of the outcome of the disciplinary committee. Hence it was submitted on behalf of the plaintiff that the disciplinary committee was not fair inasmuch as it has failed in its duty in not giving any reasons to justify the basis of its decision. I find it apposite here to refer to the Supreme Court case of **G Planteau De Maroussem v. Societé Dupou [2009] SCJ 287** which explains the aim and purpose of a disciplinary committee as follows:

"……..the aim of disciplinary committee is merely to afford the employee an opportunity to give his version of the facts *before* ***a decision in relation to his future employment is reached by his employer……..."*** [Emphasis added].

In **Tirvengadum v/s Bata Shoe (Mauritius) Co. Ltd [1979] MR 133** the provisions of Section 32 of the now repealed Labour Act was considered in particular subsection 2 (a) and (b) which makes similar provisions as section 38 (2) (a) (ii) and 38 (4) of the ERA 2008. **Section 32 (2) (a) and (b)** of the repealed **Labour Act** are hereunder reproduced for ease of reference:

(2) (a) No employer shall dismiss a worker unless he has afforded the worker an opportunity to answer any charges made against him and any dismissal made in contravention of this paragraph shall be deemed to be unjustified dismissal.

(b) The worker may, for the purpose of paragraph (a), have the assistance of a representative of his trade union, if any, of an officer or of his legal representative.

The rationale of giving an opportunity to a worker to answer any charges against him was explained in the following terms in the **Tirvengadum v Bata Shoe** case (supra):

"It appears to be felt in certain quarters that section 32 (2) (a), particularly the closing words thereof, have created a new situation whereby the employer of a worker guilty of gross misconduct must, before dismissing him, turn himself into a court and hold a formal hearing.

This is clearly not so……..<u>What the law has done is to say that the worker must not be prevented from giving an explanation:</u> (the underlining is mine) this can take number of forms and it of course assumes all its importance in certain instances, such as those where the person or body of persons responsible for making the ultimate decision to dismiss hears of the misconduct at second hand, e.g from a co-worker or junior officer."

The above was also applied in the case of **P. Gopaul v. Le Meridien Hotel & Resorts Ltd [2011] SCJ 371** where it was held:
*"We agree with what was held in **Tirvengadum v. Bata Shoe (supra)** that an employer must not necessarily turn himself into a Court and hold a formal hearing where a worker is guilty of gross misconduct. However, the employee must not be prevented from giving an explanation and as was aptly held in that case."*

Based on all the above, it is clear that the purpose of a disciplinary committee is to give an employee an opportunity to answer any charge of misconduct. However it is also clear from the above that the disciplinary committee cannot take any decision in relation to the employment of the worker. The disciplinary committee is set up by the employer and it has to give its findings to the employer as to whether the charges have been found proved or not. It is then for the employer to take the necessary actions it deems fit and to communicate same to the employee as it did in the instant case. Indeed there is undisputed evidence on record that the plaintiff was communicated with the decision of the employer to terminate his employment by letter dated 17 January 2012 and the reasons are clearly spelt out in the said letter namely in the 2nd paragraph (Vide Doc.C).

Counsel for the plaintiff pointed out that as the heading of the said letter is *"Findings of the Disciplinary Committee Management Decision"* and it is signed by the Management hence the committee was not independent. Suffice it to say that it was never the contention of the plaintiff as per the averments in the amended plaint, to challenge the fairness of the disciplinary committee. But be that as it may, as stated above, the decision as to the course of action to be taken in relation to the employment of the worker rests on the employer. So in the case in hand it is all legitimate for the management to take a decision following the findings of the disciplinary committee and then to communicate same to its employee i.e the plaintiff.

Counsel for the plaintiff has also raised other issues in relation to the disciplinary committee set up by the defendant namely the delay in instituting same and the fact that once there is a charge against an employee the latter must give a written answer. Counsel made reference

to the delay of 7 days to state that though the misconduct was alleged to have taken place on 8 December it was on 16 December that plaintiff received Doc.A – the letter of charges that is 9 days after – which Counsel contended is outside the delay of 7 days. The Court bears in mind that those issues were never averred in the amended plaint and did not form part of the plaintiff's contention in relation to the present case before this Court. Further the Court was quite at pain to follow the submissions of Counsel on the above issues raised . However it is worth pointing out that as per the evidence on record the defendant-employer has duly complied with all the statutory delays as prescribed in Section 38 (2) of the ERA 2008 namely, firstly the 10 days delay for the notification of the charges to the plaintiff; secondly the statutory delay of 7 days in instituting the disciplinary committee for the plaintiff to answer the charges levelled against him and thirdly the 7 days delay for termination of the plaintiff's contract of employment after the completion of the disciplinary hearing. Documents A, B and C are clearly explicit to that effect.

Charges levelled against the plaintiff

The charges leveled against the plaintiff as per letter dated 16 December 2011 (Vide Doc.A) are hereunder reproduced for ease of reference:

(1) On Thursday 8th December 2011 at around 14:00 hours at Brink's Mauritius Limited Head Office, Solitude, during the course of a meeting with the Chief Executive Officer – Mr Eric Rey and the Chief Financial Officer – Mr Ashiq Bacha where the guidelines and job description for your new position of internal Auditor were discussed, you have misbehaved by acting in an aggressive manner by using threatening words such as "…ca va vous couter cher".

(2) You further remained in the office despite being requested to leave on more than 3 occasions.

(3) You also mentioned having recorded previous conversations with the Chief Financial Officer without his knowledge.

(4) On the same day, you left your post around 14:45, without prior authorization of your Head of department, Mr Ashiq Bacha - the Chief Financial Officer.

(5) On the 15th December, 2011, you took a half day leave in the morning without the authorization of your Head of department.

(6) On the 16th December, 2011, you inserted your attendance at work at 08:20 hours when in fact, you arrived around 09:40 hours.

An additional charge was leveled against plaintiff as per letter dated 23 December 2011 (Vide Doc.B) and same reads as follows :

(7) *On or about 25th October 2011 whilst using the computer made available to you by the Company for your professional use, you usurped the secret password assigned to the Chief Financial Officer to log in the system of Brink's Mauritius Limited, Solitude without lawful authorization and in utter breach of trust, thereby illegally accessing highly confidential data.*

In relation to the above charges, the issue to be determined by the Court is whether the decision of the defendant to terminate plaintiff's employment based on the above alleged acts and doings of the plaintiff was justified. Hence the Court has to determine first and foremost whether there was gross misconduct on the part of the plaintiff and in the alternative, a breach of trust in the relationship of employer-employee such that the defendant-employer has no other alternative than to terminate plaintiff's employment with immediate effect.

It is trite law that the burden of proving any misconduct rests on the employer and hence the burden is on the defendant company as employer to establish that the charges of misconduct levelled against the plaintiff as per paragraphs 1 -7 in the letter of charges (Vide Docs.A & B) were justified and that it had no other alternative than to dismiss the plaintiff (employee) from its employment. As stated in the case of **Harel Frères Ltd v Veerasamy [1986] MR 218** and which was quoted with approval in the Privy Council case of **Saint Aubin Limited v/s Doger de Speville [2011] UKPC 42** *"termination would only be unjustified when the employer has no valid reason at all to discontinue employing a worker(...)"*. However not any misconduct would justify a summary termination of employment. In the case of **Chan Man Sing v Wing Tai Chong Company Limited [2012] SCJ 82** it was held that *"each misconduct must be viewed in the specific context in which it occurred and in the light of the nature of the relationship existing between the employer and the employee. Also, whether in any given situation an employer cannot in good faith do otherwise than dismiss a worker for misconduct is a question of fact."*

Furthermore 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 degrès de faute (Harel Frères Ltd. v Jeebodhun [1981 MR 189]). Au bas de

l'échelle il y a les fautes légères qu'elles ne justifient pas un licenciement et entraineraient 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 considerée comme suffisamment grave pour écarter l'application de la S. 34, c'est-a-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'índemnité de licenciement dans la mesure ou 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).'

The above classification of "faute" is taken up again by the author in his second edition of Introduction au Droit du Travail Mauricien at pg 365.

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, entraine 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……"

Turning to the instant case, the Court proposes to deal with charges 1 and 2 together as they are all related to the alleged disrespectful behavior of the plaintiff during the meeting of 8 December 2011 whilst charges 3 and 7 will be lumped together inasmuch as they are both in respect of the plaintiff's alleged breach of ethical conduct in recording previous conversations of the Chief Financial Officer (CFO) and usurping the latter's password whilst charges 4, 5 and 6 will be taken together as they all relate to the issue of punctuality and indiscipline at work.

(i) Charges 1 and 2 – Alleged disrespectful behavior of the plaintiff during the meeting of 8 December 2011

It is not in issue that there was a meeting on 8 December 2011 in the office of Mr Eric Rey, CEO of Brinks (Mauritius) Ltd, at Solitude and wherein were present Mr Eric Rey himself, Mr Ashiq Bacha, CFO and the plaintiff. It came out in evidence that it was the plaintiff himself who requested for such a meeting to discuss the objectives of his new post as Internal Auditor as per the new contract. There is undisputed evidence that plaintiff was appointed to

a new post – that of Internal Auditor (Vide Doc.E) and for which he had expressed some apprehensions concerning the objectives assigned to him in relation to the said post. Hence the purpose of the said meeting. In fact same was admitted by the plaintiff during cross examination.

It is however the plaintiff's contention that the said meeting lasted for only 15-30 seconds because when he attended the said meeting he was immediately fired by Mr Rey who told him that it was finished for him and ordered him to leave his office in the following words *"sortez, c'est fini pour vous".* Plaintiff has denied having ever been aggressive and threatening towards the CEO Mr Rey. On the other hand it is the defendant's contention that the meeting lasted for about 30 minutes and it consisted of two parts, the first part was an exchange of views between the plaintiff and themselves regarding plaintiff's apprehensions on the objectives assigned to him in relation to his new post, after which he felt re assured and accepted to meet the challenge; and the second part which did not last long, was when plaintiff asked Mr Rey what he intended to do regarding an email which he had sent to him concerning the conduct of the CFO, Mr Bacha.

After careful analysis of all the testimonies of the different protagonists present during the meeting of the 8 December, the Court is more inclined to believe the version of the defendant as borne out by the witnesses who deposed on that issue namely Mr Rey and Mr Bacha. Indeed when taking into account the purpose for which the meeting was called for and in the light of all the evidence on record the Court is of the view that plaintiff's version cannot be believed in the circumstances. The Court finds it most implausible that a meeting called for at the request of the plaintiff to discuss the objectives of his new post, will last only 15-30 seconds as contended by the plaintiff and that he was fired on the spot.

Furthermore plaintiff was quite contradictory in his testimony to the Court regarding the manner in which the meeting took place. Though he contended that as soon as he came in he was ordered by Mr Rey to leave his office in the following words : "*"sortez, c'est fini pour vous"*, yet he stated that during the whole meeting he remained calm and polite and never raised his voice. This begs the question of how could the plaintiff have remained calm during the whole meeting if same was so expeditious – less than 30 seconds as he contended !!! In fact it could not even be called "a meeting" if plaintiff was immediately ordered to go out without him having time to say anything as per his contention. On the other hand the Court notes that both witnesses for the defendant company were consistent in their testimony under oath on that particular aspect of the meeting of 8 December 2011. Both Mr Rey and Mr Bacha maintained all throughout their depositions in Court that it was when Mr Rey told plaintiff that he did not intend to go further with the letter which he had sent to him

concerning an alleged breach of ethics by the CFO, that plaintiff became aggressive and violent. In fact the version of the above witnesses seems credible in the light of the admission of the plaintiff that during the said meeting at one point in time he did ask Mr Rey what he intended to do regarding his complaint of an alleged breach of ethics by the CFO. Hence it is clear that this question of alleged unethical conduct of the CFO was raised by the plaintiff and same also gives a lie to the plaintiff's version that the meeting lasted for only 15-30 seconds.

The Court further takes note of the evidence adduced by Mr Rey supported by Mr Bacha that after having been told that this matter of alleged breach of ethics by the CFO was closed the plaintiff threatened the CEO by pointing out to him that he has an uncle who is a barrister and that all this *"va vous coûter cher"*. The Court finds it most improbable that the CEO of the defendant company would invent the above words uttered to his address by the plaintiff.

All the above also lends support to the second charge against the plaintiff namely that though requested to leave the office he did not do so and had to be told on more than 3 occasions for him to comply with such an order coming from the CEO of his company. Indeed this second charge is linked to the first one inasmuch as if plaintiff would not have acted in such an aggressive manner there would have been no need for Mr Rey to order him to leave his office. Same was also confirmed by Mr Bacha.

Taking into consideration all the above facts and circumstances the Court is not prepared to give credence to the plaintiff's version that both Mr Rey and Mr Bacha had concocted the above allegations against him because of his complaint against the CFO and that they wanted to get rid of him. The Court is of the view that if the company really wanted to get rid of the plaintiff then he would not have been assigned to a new post which he himself considered in an email dated 01 December 2011 which he sent to the CFO as *"a role that suits (him) well*". True it is that plaintiff contended that it was a less important post than the post which he was previously occupying. However the Court bears in mind the evidence on record that the defendant company is a company which deals with security and money processing services and is quoted on the Stock Exchange hence subject to stringent rules. Thus it cannot be said that the role of Internal Auditor in such a company is a negligeable post. It is a post which carries important obligations and responsibilities. This explains the objectives assigned to this new post as per Doc.E and for which the meeting of the 8 December was called for.

In the light of all the above the Court finds that charges 1 and 2 were well founded in the circumstances.

(ii) Charges 3 and 7- alleged breach of ethics by the plaintiff

It is also the defendant's contention that plaintiff recorded previous conversations of the CFO without the latter's knowledge (charge 3) and furthermore he usurped the CFO's password to log in the system of Brink's Mauritius Limited without lawful authorization (charge 7).

As regards ***charge 3*** the Court notes that during cross examination by Counsel appearing for the defendant company, plaintiff admitted having recorded a conversation which he had with the CFO - Mr Bacha without the latter's knowledge (See proceedings of 13 December 2016 – pg 19). It is equally to be noted that during the same proceedings plaintiff also admitted having also recorded the conversation which he had with the HR Manager (pg 21). According to the plaintiff's version he considered that these recordings were lawful because they could be used as a proof that the company wanted to fire him.

Whatever be the tenor of the conversation which plaintiff had with the HR Manager or with the CFO, the Court is of the considered view that it was most improper on the part of an employee to record conversations which he had with the management and for the purposes of charge 3, with his immediate superior officer, the CFO without their knowledge. Such an action on the part of an employee inevitably leads to a breach of trust between the employee and his immediate superior especially in a company like the defendant which by the very nature of its activity put much emphasis on values such as integrity and ethics. In fact this explains the clause of "honorabilité" in the plaintiff's contract of employment – See Article XIII of Doc. D, which is considered as *"un préalable absolu à l'exécution du contrat de travail et le maintien de cette honorabilité constitue expressement et avec le plein accord du salarié une clause substantielle du présent contrat; et la perte de cette honorabilité emportera la rupture immédiate du contrat de travail."* This clause in itself lends justification to charge 3 in the light of the admission of the plaintiff during the course of his depositions in Court.

In support of ***charge 7*** which is in relation to the alleged usurpation of the password of the CFO by the plaintiff, the Court bears in mind the evidence of Mr Nulliah, IT Manager in the defendant company, to the effect that in the defendant company any computer assigned to an employee bears a specific reference number. Indeed as per Doc. T1 it can be seen that computer of reference MUSOLLT0026 relates to a computer which was attributed to Mr Anis Dholah, the plaintiff, whilst that of reference MUSOLLT0137 was attributed to Mr Ashiq Bacha. Evidence has also been adduced by the said witness that on 25 October 2011 at 18:52 the login of Mr Ashiq Bacha had been used on another computer - reference MUSOLLT0026 i.e the computer assigned to the plaintiff (See Doc.T, 10th line).

The Court takes into account the screenshots produced by Mr Nulliah of the desktop of the plaintiff's computer (Doc.T2) and the contents of the subfolder *"Hooloomann & Assoc"* (Doc.T6) which is itself located in the folder "pictures" (Doc.T4). After a perusal of same it

can clearly be seen that personal data belonging to Mr Ashiq Bacha namely photos of himself and his family were found in the sub folder "*Hooloomann & Assoc"* on the computer attributed to the plaintiff by the company. This of course begs the question of how could the personal data of the CFO who was at the material time plaintiff's superior, be found on the plaintiff's computer.

On the above issue it is the defendant's contention that those photos belonging to Mr Bacha landed on the plaintiff's computer because the latter had usurped the password of the CFO and hence got access to the personal data of the CFO which he then kept hidden in a folder on his computer. Whilst it cannot be denied that Mr Bacha's photos and those of his family were found in a folder on plaintiff's computer, however the explanations given by Mr Bacha how plaintiff could have access to his password seems to this Court quite farfetched, the more so that one Mr Burkhut whom Mr Bacha mentioned as being the person to whom he imparted his password was not called as a witness to confirm Mr Bacha's version – which was to the effect that he wrote his password on a piece of paper which he handed over to Mr Burkhut when the latter came in his office to repair his computer whilst he was holding a meeting with his team among whom was the plaintiff. It was only when he was trying to figure out how could his personal data be found on plaintiff's computer that the said Mr Burkhut told him that he left the piece of paper on his table when he left his office. According to Mr Bacha's version it was then that he remembered that after the meeting he went out to answer a call whilst his staffs were still in his office. Hence according to Mr Bacha it might be at this moment that plaintiff got hold of his password. It is to be noted that apart from that piece of evidence, there is no evidence whatsoever before this Court that on the material date plaintiff was actually seen either by Mr Bacha or any one of the personnel present during the meeting in his office, getting hold of this alleged piece of paper on which was written the password of Mr Bacha. Hence the defendant's version of this alleged usurpation of Mr Bacha's password by the plaintiff was based only on suppositions and presumptions.

The Court is of the considered view that it cannot rely on this piece of evidence as adduced by Mr Bacha of how possibly plaintiff could have got access of his password to justify charge 7 against the plaintiff. On the other hand the Court does not lose sight of the plaintiff's version as regards the presence of those photos on his computer which he did not deny but his explanations seemed quite plausible -namely that he was requested by Mr Bacha himself to upload those photos on his computer following the transfer of server in the company. Plaintiff had further explained that on the material date he was together with Mr Ashiq Bacha in the latter's office until 20h00 as they were both doing the exercise of write off of bad debts. They were both connected to their respective computer. As per plaintiff's version on the material date he wanted to give back those photos to Mr Bacha but the latter could not have

access to this folder so that Mr Bacha requested him to log out from his computer and then Mr Bacha himself logged in on his (plaintiff) computer and connected his USB to retrieve those photos. Plaintiff had maintained that on the material date it was Mr Bacha himself who had logged in on his computer.

Based on all the above the Court is of the view that charge 7 against the plaintiff was not warranted.

(iii) Charges 4,5 and 6 – issues of indiscipline and punctuality at work.

Charges 4 and 5 concern the plaintiff's alleged failure to seek prior authorization from his superior officer, Mr A Bacha before leaving his post earlier than the normal working hours on 8 December 2011 (Charge 4) and before taking a half day leave on 15 December 2011 (Charge 5), whilst charge 6 is in relation to the alleged falsification of the attendance register by the plaintiff on the 16 December 2011.

On all the above issues defendant has adduced evidence that there is an internal procedure in the company which all employees must comply with, regarding local leave and absences from work as well as attendance at work. This is borne out in Doc.G which is an email dated 10 February 2011 sent by Mr A Bacha to all his team regarding his concern about punctuality and indiscipline at work as well as absences without authorization.

Based on Doc.G it clearly transpires that there is a leave approval procedure to be complied with by any employee wishing to apply for local leaves and that it is the company policy to plan leaves in advance and to have approval of same at least 48 hours in advance. However exceptions are provided for exceptional cases where the 48 hours delay is not possible. It is equally to be noted that provisions are made regarding notification for absences for sickness and urgent locals for which the employee must inform his *"direct report or head of function"* and have to make sure that the next day the appropriate leave form is duly filled and management authorisation has been obtained. Mention is also made that it is for the employee to make sure that his leaves form have been duly authorised and any unauthorised leave will constitute a serious misconduct which can have disciplinary consequences. The Court also takes note of the introduction as from 14 February 2011 of the daily attendance record book to be filled in by all employees as soon as they resume duty and when they leave in the afternoon for proper monitoring of punctuality at work and absences in the finance department. During his testimony in Court Mr Bacha has also stressed on the importance of the above procedures to be followed by all employees so as to ensure punctuality and discipline at work.

Taking all the above into consideration it is clear that if any employee does not comply with the above internal procedures same will constitute a serious act of misconduct and disciplinary actions may follow. Hence in the instant case the issue to be determined by the Court in respect of the above alleged charges against the plaintiff is whether the latter has committed any act of indiscipline and /or misconduct in the light of the above existing procedures.

At the outset it is to be noted that though plaintiff has stated that he was not aware of the above email sent by his superior to all his team, however the Court does not lose sight that the plaintiff's name is clearly mentioned among the recipients of the said email.

Turning to ***charge 4***, it is the plaintiff's contention that on the 8 December after the meeting with Mr Rey and Mr Bacha, he went out for lunch for about 30 minutes and then came back to his office. As per plaintiff's version on the material date from 5 p.m to 6 p.m he was together with one Clyde Carnarapen to whom he was explaining the problems which he was having with the management. Hence he denied having left his post at around 14h45 hours without prior authorization of his Head of department, Mr Ashiq Bacha. The Court notes that it is not disputed that the said Clyde Carnarapen was at the material time an employee of the defendant company and was posted in the finance department. It also came out in evidence that the latter is no longer working in the defendant company.

The Court bears in mind the version of Mr Bacha in relation to this alleged charge against the plaintiff to the effect that on the material date after the meeting he went to see the plaintiff in his office but the latter was not to be found there. He was then informed that plaintiff had already left the working premises. However apart from the above piece of evidence adduced by Mr Bacha in support of charge 4 against the plaintiff, there is no other evidence which would tend to connect plaintiff to charge 4. No evidence has been adduced as to the person who allegedly informed Mr Bacha that plaintiff had already left the working premises. Furthermore it is on record that though Mr Bacha contended that he reported the matter to the HR Manager, however neither the latter nor Mr Bacha deemed it necessary to question plaintiff on the next day about his alleged absence from work on 8 December as from 14h45. True it is, as explained by Mr Bacha, it is for the employee to inform the management about any absences in line with the internal policy of the company, however in this particular case and situation where Mr Bacha had allegedly noticed that plaintiff was not in his office immediately after the meeting, and reported it to the HR Manager, one would expect at least the HR Manager to question the plaintiff on the next day about this alleged absence from his post at 14h45 without prior authorization. Furthermore it is on record that as per the attendance register for 8 December 2011 it is mentioned therein that plaintiff's

"time out" was 16:30 (Vide Docs.O &P). The Court is well alive of the note "Not true" on Doc.P which Mr Bacha contended having inserted in relation to the time "16:30" as mentioned by the plaintiff. But as admitted by Mr Bacha there is no indication of the date on which he inserted this note. According to Mr Bacha he highlighted this fact only in or about 23-25 December when the control of payroll was done. However the Court is not prepared to rely on the sole words of Mr Bacha which are not supported by any other evidence, to find charge 4 justified against the plaintiff.

As regards ***charge 5***, it is not disputed that on 15 December plaintiff took a half day leave but it is the defendant's contention that plaintiff did so without prior authorisation from his Head of department i.e the CFO, Mr A Bacha in breach of the internal rules of the company. According to Mr Bacha plaintiff did not comply with the leave approval procedure as set down in his email of 10 February 2011 (See Doc.G) and as elaborated above. On the other hand plaintiff had denied same and had explained that he did send an email to Mr A Bacha requesting for half local leave and prior to that he had also filled in the required form for request of a "half local leave". As per plaintiff's version thereafter the company even refunded him the money deducted for this allegedly non authorized "half local leave".

The Court notes that there is indeed an email dated 14 December sent by plaintiff and addressed to Mr Ashiq Bacha wherein plaintiff requested for a "half local leave in order to attend a family function" (Vide Doc.K). Whilst it is true to say that it is the internal policy of the company to encourage planned leaves and hence to get management approval of request for leaves at least 48 hours in advance in the appropriate leave form as detailed in Doc.G, however the Court does not lose sight that there are exceptions provided for exceptional cases namely absences on account of sicknesses and urgent locals, for which, it stands to reason, the prior notice of 48 hours cannot be complied. As clearly mentioned in Doc.G in relation to notification of absences for sicknesses and urgent locals the employee must inform his *"direct report or head of function"* and on the next day the said employee has to make sure that his leave form is properly authorized.

Turning to the instant issue in relation to the half local leave taken by the plaintiff on the 15 December 2011, in the light of all the above, the Court is of the considered view that the plaintiff had duly informed his Head of section of such a request for a half day leave in his email addressed to his Head of section, Mr Ashiq Bacha (See Doc.K) in line with the procedure set down by the latter in his email of 10 February 2011 (See Doc.G). The Court bears in mind the testimony of Mr Bacha that leave approval is not by email and all employees must duly fill in a specific form. True it is that as per the procedure set down for leave approval, employees have to fill in a leave approval form. However a careful reading of

the email sent by Mr Bacha to his team clearly shows that it was Mr Bacha himself who asked his team to send him a leave request by email so that he can have "visibility on the leaves in the department on any particular day."

Taking all the above into consideration it cannot be said that plaintiff failed to notify his Head of section of his request for a half day leave to be taken on the next day i.e on 15 December. Doc.K lends credence to the plaintiff's version that he did in the first place inform his Head of section of his intention to take a half day local leave. Furthermore in the light of the above evidence plaintiff's version that he also filled in the required form cannot be discarded. It is equally to be noted that the plaintiff's evidence that there was a refund made to him concerning the deduction of this alleged non authorized leave had remained unchallenged. Hence the Court is not satisfied that charge 5 against the plaintiff has been duly proved and same is not therefore considered to be justified.

In relation to ***charge 6*** which relates to the issue of alleged falsification of the attendance register by the plaintiff, there is undisputed evidence on record that there is indeed an attendance register in which all employees of the defendant company must record their "time in" and "time out" on a daily basis. As per the evidence adduced by Mr Bacha and supported by his email sent to all employees in his department (Vide Doc.G) same was done to monitor punctuality at work.

It is the defendant's contention that on 16 December plaintiff arrived at about 9h40 but he inserted his attendance at work at 8h20. On that score the Court is faced with the version of Mr Bacha supported by that of witness Olivier Harel, (who was at the material time occupying the post of "Controleur des Gestions" and as such was responsible of all internal control in the defendant company) to the effect that on the material date at 9h00 – 9h05 a.m plaintiff was not yet at work. According to Mr Bacha on the material date when he reached his office at about 9h00 – 9h05 a.m he went to see plaintiff but the latter was not yet in. Same was confirmed by Mr Olivier Harel who had adduced evidence that he usually takes his coffee break together with the plaintiff and they used to smoke a cigarette together but on the material date when he went to see the plaintiff during the coffee break at about 8h30 – 9h00 the latter was not in his office. According to the version of Mr Harel he also looked for the plaintiff's car in the parking space where he used to park his car but it was not there.

The Court takes note that the version of the above witnesses is supported by Doc.H which is a copy of the attendance register made by Mr Harel at 9h10 at the request of Mr Bacha. Same shows that at the time the copy was made i.e at 9h10 (as per the margin note) the column "time in" near the name of Anis Dholah (plaintiff) was empty. As per the evidence on record, a second copy of the attendance register was made by Mr Harel at about 10h46 -

(Vide Doc.H1). It transpires from the said document that in the column "time in" plaintiff had inserted his entry time as being 8h20. It is therefore the defendant's contention that plaintiff had falsified the attendance register in inserting his time of entry as being 8h20 when in fact at that time he was not yet at work.

The Court bears in mind that it has not been challenged by the plaintiff that on the 16 December 2011 he did insert his arrival time as being 8h20. But according to plaintiff's version on the material date he did reach his office at 8h20 but he did not sign the attendance register immediately on his arrival because he went to give to one Simla Bissessur of the finance department her franking machine, after which he went to the credit control department found in another building. He remained there until 9h30 and it was when he came back that he inserted his arrival time in the attendance book. However such explanations seemed quite farfetched to the Court to be relied upon especially in the light of the email sent by plaintiff's superior regarding the obligation of each employee to sign the attendance register upon arrival and upon departure from work (See Doc.G). It is clearly mentioned in the said email which was addressed to all employees of the finance department including the plaintiff that this daily attendance record book has to be filled in by every employee *"as soon as you resume duty and when you leave in the afternoon……..'*[Emphasis added]. As explained in the said email the main objective of this attendance book *"is to ensure that management has a visibility on who is at work and who not and who starts duty at what time".* In the light of same the Court finds it most implausible that an employee who allegedly reached his office at 8h20 would, instead of filling in the attendance book immediately upon his arrival, give priority to any other business and then after more than one hour inserted his arrival time in the attendance book.

Based on all the above the evidence, the Court is of the considered view that the evidence adduced by Mr Bacha, confirmed by Mr Olivier Harel and supported by the documents produced – Vide Docs.H & H1 can safely be relied upon to justify charge 6 against the plaintiff.

Decision

As pointed out above the Court is satisfied that in the light of all the evidence on record, charges 1,2 ,3 and 6 against the plaintiff have been proved by the defendant on a balance of probabilities. Those charges relate to acts and doings of the plaintiff which, when taking into account all the facts and circumstances of the present case and bearing in mind the nature of the activity in which the defendant company is involved, amount to gross misconduct and breach of trust on the part of the plaintiff. Indeed charges 1 and 2 amount to a most disrespectful behavior on the part of an employee towards his most hierarchical officer,

namely the CEO of Brink's (Mauritius) Limited whilst charges 3 and 6 show a breach of ethics and lack of discipline on the part of the plaintiff.

Now the question arises as to whether, in view of the above gross misconduct and breach of trust by the plaintiff, the defendant-employer had no other alternative than to terminate the plaintiff's employment. I find it apposite here to refer to **Jurisclasseur, Droit du Travail, - Licenciement pour motif personnel, under the heading Comportement du salarié notes 98, 99,108 & 112:**

98. – Principe. – Les salariés sont tenus à une attitude courtoise tant à légard de l'employeur que de leurs supérieurs hiérarchiques ou collègues de travail. Un manquement à ce principe peut être légitimement sanctionné par un licenciement, sauf circonstances particulières.

99. - Injures vis –à- vis de l'employeur. – L'attitude injurieuse, insultante, vis-a –vis de l'employeur, constitue à tout le moins une cause réelle et sérieuse de licenciement, qu'elle émane d'un salarié appartenant ou non au personnel d'encadrement.

112.- Menaces.- Dans la plupart des hypothèses, les menaces et les comportements menacants sont constitutifs de faute grave qu'ils soient dirigés contre l'employeur ou un collègue. Il en fut jugé ainsi à l'occasion de menaces de coups et blessures, ou de menaces de mort proférées verbalement envers l'employeur (Cass.soc., 5 juill.1978: Bull.civ.1978, V, no. 558.- Cass.soc., 4 juin 1987: Bull, civ.1987, V, no 353) ou par écrit (Cass.soc.,11 fevr. 1981: Cah. prud'h. 1982, p.56).."

As can be gathered above, insults, threats and aggressiveness of behavior amount to a "cause réelle et sérieuse de licenciement" whether such misbehavior is towards the employer or a superior or a colleague.

In the case in hand it is clear that the conduct of the plaintiff-employee during the meeting of 8 December 2011 did convey an attitude of disrespect towards his superior and furthermore the words uttered by him to the address of the CEO also contain an element of threat. Such misbehavior on the part of an employee against his most hierarchical superior namely the CEO of his company, was most disrespectful and cannot be condoned by any employer.

Furthermore the fact of recording conversations of his immediate superior without the latter's knowledge and falsifying the attendance register book demonstrates that plaintiff is an employee on whom the employer can no longer have trust. Based on the evidence adduced by the defendant company on the above two issues, the Court is satisfied that this breach of trust is based on objective facts justifying the defendant's contention that the bond of trust which must necessarily exist between an employer and its employee has indeed been irretrievably severed.

Conclusion

Based on all the above considerations, the Court is not satisfied that the plaintiff has proved his case on a balance of probabilities. On the other hand the Court is satisfied that the defendant company has established on a balance of probabilities that the termination of the plaintiff's employment on the grounds of serious misconduct and breach of trust was justified and that it could not in good faith take any course of action than to summarily terminate the plaintiff's employment.

I accordingly dismiss the present plaint against the defendant company.

I make no order as to costs.

This 23rd June 2020

K. Bissoonauth (Mrs)

President, Industrial Court.