

*France G.F. v Compagnie Sucrière de Bel Ombre Ltd*

**2023 IND 48**

**Cause Number 333/19**

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

**In the matter of:-**

**Mr. Guillaume François France**

**Plaintiff**

**v.**

**Compagnie Sucrière de Bel Ombre Ltd**

**Defendant**

**Judgment**

The averments of this plaint are to the effect that Defendant is a company incorporated under the laws of Mauritius, specialised in, *inter alia*, poultry farming, hunting and other related activities.

By virtue of a contract of employment dated 30.4.2010, (the “**Agreement**”) Plaintiff, a French national, was in the continuous employment of Defendant as “*Responsable d'élevage de Petits Gibiers*” since 15.5.2010. His agreement has been renewed on two occasions namely on 9.4.2013 and on 25.4.2016 for subsequent periods of 3 years respectively.

He was remunerated at monthly intervals at the terminal basic rate of Rs 61,610 per month. Since the time when he was employed by Defendant, he has never received a full month pay as end of year bonus.

As per a letter dated 15.1.2019, he was unfairly and without just and reasonable cause suspended with immediate effect by Defendant. By a letter dated 17.1.2019, he was convened before a Disciplinary Committee scheduled for 25.1.2019. At the said hearing, he was not represented by a legal representative and Defendant caused a number of Plaintiff's subordinates to depone and make gratuitous, vexatious, frivolous and false allegations against him.

By a letter dated 28.1.2019, he was informed by Defendant that his contract of employment was terminated with immediate effect on the ground of an alleged misconduct during the course of his employment. His contract of employment was unfairly and unjustly terminated without notice.

Plaintiff is therefore claiming the sum of Rs 2,012,970 representing one month's notice as indemnity in lieu of notice: Rs 61,610, alleged unpaid and outstanding end of year bonus: Rs 349,500 and severance allowance for alleged unjustified termination of employment (Rs 61,610 x 3 months x 104/12): Rs 1,601,860.

Defendant in its plea has denied that Plaintiff was in the continuous employment of Defendant as he was under a fixed term contract expiring on 10.5.2019. The agreement under which Plaintiff was working at the time of his dismissal was one of fixed duration of 3 years starting on 11.5.2015 and expiring on 10.5.2019. It was not a contract of indeterminate duration.

Plaintiff has always been paid all sums due by Defendant. He was suspended with immediate effect by way of a letter dated 15.1.2019 and Defendant has denied that it was unfairly done, or without just or reasonable cause. It has denied that the witnesses made gratuitous, vexatious, frivolous or false allegations against Plaintiff but deponed truthfully before the disciplinary committee. There were serious acts of misconduct committed by him.

Plaintiff was summoned to appear before a disciplinary committee to answer the charges set out in the Defendant's letter dated 17.1.2019. Plaintiff chose not to be represented by a legal representative at the disciplinary committee in spite of the fact that such possibility has been clearly granted and expressed to him in the said letter.

The disciplinary committee which was chaired by Mr. Steven Obeegadoo, concluded that both charges levelled against Plaintiff had been proved. The charges

laid against Plaintiff were very serious and amounted to “*faute grave*”. Defendant acting in good faith and as a reasonable employer, had no other alternative but to terminate his employment with immediate effect on the ground of “*faute grave*”. It has thus, denied liability and has denied being indebted to Plaintiff in any sum whatsoever and has moved that the plaint be dismissed with costs.

The **case for the Plaintiff** rested solely on the evidence given by him in Court which is to the following effect. He was employed by Defendant to develop hunting and breeding of small wild animals to be hunted for food in Mauritius as per his contract of employment (Doc. P1) as from 30.4.2010 signed on 4.5.2010.

His job also consisted of developing the breeding and the sites for hunting in order to cater for commercial hunting. At that time, there was no hunting of small wild animals done by Defendant but the breeding only which was meant for hunting.

His contract of employment was renewed on two occasions namely in April 2013 and April 2016 as per Docs. P2 and P3. During the period for which he was employed by Defendant, at each month of December when he was paid his bonus, he was not paid for the total sum of his monthly salary as bonus but was paid only half that amount which was Rs 34,000. He has produced his pay slips as from December 2010 to December 2018 collectively as per Doc. P4. On 15.1.2019, he was suspended with immediate effect by Defendant represented by its Chief Executive Officer (CEO), Mr. Michel Pilot by way of a letter signed by him in that capacity as per Doc. P5 explaining the reasons for his suspension:

*“Ces raisons sont liées à un incident qui aurait eu lieu le samedi 12 janvier 2019 (rapporté à la Direction le lundi 14 janvier 2019) où vous auriez agressé verbalement et physiquement, et ce de manière violente, le travailleur Heman Ramkissoon devant deux de ces collègues.*

*Par la suite, le 14 janvier 2019, lorsque votre Chef de Département, Monsieur Nicolas Chauveau, vous a demandé par téléphone, des premières explications concernant cet incident, vous lui auriez répondu de manière arrogante. Durant votre conversation avec lui, vous auriez même insinué que vous n’allez pas changer votre attitude vis à vis des travailleurs sous votre responsabilité.*

*Vous serez appelé à vous expliquer devant un comité disciplinaire dont la date et l’heure vous seront communiquées ultérieurement.”*

Thereafter, he received a second letter dated 17.1.2019 again signed by Mr. Pilot as CEO as per Doc. P6 wherein two charges of misconduct were levelled against him:

*"1. Le samedi 12 janvier 2019, vous auriez agressé verbalement et physiquement, l'employé Heman Ramkissoon;*

*2. Le lundi 14 janvier 2019, vous auriez aussi répondu à votre Chef de Département, Mr. Nicolas Chauveau au téléphone de manière arrogante quand ce dernier vous a demandé des premières explications concernant cet incident. Durant votre conversation avec lui, vous auriez insinué que vous n'allez pas changer votre attitude vis à vis des travailleurs sous votre responsabilité."*

Doc. P6 also mentions: "*Lors de la tenue du comité disciplinaire, vous pourrez être assisté d'un avocat ou en l'absence d'un avocat, d'un officier du Ministère du Travail.*" He was convened to appear before a disciplinary committee on 25.1.2019. At his hearing, he was neither assisted by Counsel nor by a Labour Officer.

At the disciplinary committee, he said that he had nothing to say in relation to the first charge so that the charge was not denied namely the incident of 12.1.2019 involving Mr. H. Ramkissoon. However, he denied the second charge in relation to his attitude communicated to his hierachal Head, Mr. N. Chauveau. He never gave his version of facts in terms of explanations in relation to both charges because they all talked with the same voice. He agreed that should he aggress a colleague physically in the course of his work and who was lower in the hierarchy than him and working under his orders was a *faute grave*. He did not think that if he had told his Superior "*démerdez vous avec votre caca*", it was a *faute grave* on his part.

In relation to the 2 charges made against him by Defendant, he admitted in Court that Mr. H. Ramkissoon was his subordinate working under his orders. Mr. Ramkissoon did not succeed in pulling a "*liane*" in order to dislodge a branch as he did not try on 12.1.2019. In fact, Plaintiff pulled that "*liane*" which caused him to be projected to three metres high and he remained up as he did not have the strength to lower it down. He slipped and fell down on the ground but the "*liane*" did not come out which did not please him as his job was not completed. At that time, Mr. Ramkissoon had 2 colleagues namely Mr. Nitishwar Bojawan and Mr. Devendra Gooriah who went to walk around sufficiently far away from where they were. At

some point, he candidly admitted in Court that on Saturday 12.1.2019, that at the disciplinary committee, he did not deny the first charge namely having aggressed physically and verbally Mr. H. Ramkissoon as he was tired with his laziness and that a kick had never killed someone.

As regards, the second charge, he said in Court that he did answer to Mr. Nicolas Chauveau, his Head of Department. As he was driving and was over the phone, he was not arrogant but told him that when he reached office that they could have continued with the conversation and explanations would be given there as he was saying a lot of things to him over the phone and the said Plaintiff cut the line. He only said to Mr. N. Chauveau "*débrouillez-vous de votre affaire*" as he would not change his conduct as it was his conduct that made the system work. He had to teach the employees what they had to do. When one passed from 2000 birds to 10,000, he thought that he succeeded to do what he had to because that was the reason for him to be employed. He did not share the same view as Mr. M. Pilot, the CEO, as the latter wanted to have birds in cages and his objective was to leave them wild. So, he told Mr. M. Pilot that so long he would be there, that would not be done. On Saturday 12.1.2019, the work did not proceed fast enough so that a few words were said to speed up the work and that was all.

Through a letter dated 28.1.2019, he was informed by Defendant that his contract of employment was terminated with immediate effect as per Doc. P7. He stated that his contract of employment was unjustly terminated by Defendant and made his claim as per the breakdown given in his plaint.

**The case for the Defendant** is to the following effect. Mr. Dooshant Kistomohun in his capacity as Human Resource Business Partner gave evidence in Court. In that capacity, he followed the file of Plaintiff. The termination of Plaintiff's employment was justified and the reasons in relation to the 2 charges levelled against Plaintiff were proved at a disciplinary committee. During the last month Plaintiff was employed, Mr. N. Chauveau was Plaintiff's hierarchical Superior as Livestock Manager. He was not aware of the number of birds present at Defendant before the coming of Plaintiff. As regards the specific incident that occurred on 12.1.2019, Mr. H. Ramkissoon reported to him personally as the second person as to how it happened. The first person he reported to was Mr. N. Chauveau, his hierarchical Superior for that sector. The matter was then reported to the HR department. Mr. H. Ramkissoon explained that there was an incident on a Saturday which he reported on a Monday that Plaintiff physically aggressed him at his place of

work by dealing him kicks at his hip. His deposition was taken and he was asked whether he had any witnesses and he mentioned 2 persons who were working together with him. Then, those 2 persons after having given their versions, it was found that it was a case of violence at work. Thus, Plaintiff was suspended and then convened to appear before a disciplinary committee to give his explanations in relation to the charges levelled against him. Mr. H. Ramkissoon and Mr. N. Chauveau came to see him in office, then they heard the explanations of Mr. Ramkissoon and on the same day in the afternoon they heard the versions of the 2 witnesses. He also heard the version of Mr. N. Chauveau who told him that he called the Plaintiff who misbehaved over the phone.

Mr. Heman Ramkissoon in his capacity as an animal breeder gave evidence in Court. He was working for the farming of poultry for Defendant and which he had been doing for 8 years. He was working on 12.1.2019 at Case Noyale which was a Saturday. There was himself, Plaintiff and his 2 colleagues who were doing the cleaning up of a branch. There was a branch which was entangled by a "*liane*". Plaintiff asked him to hold the branch and to pull the "*liane*". He pulled it twice but did not succeed. Plaintiff got angry and pushed him. Then, Plaintiff pulled the "*liane*" twice, slipped and fell down. He saw a little smile in the faces of his 2 colleagues namely Mr. N. Bojawan and Mr. D. Gooriah and he smiled as well. When Plaintiff stood up, without wasting time, he dealt him 2 kicks at his hip and swore at him by saying "*Fainéance, caca*" accompanied by other swear words. Mr. D. Goorlah and Mr. N. Bojawan, his 2 colleagues were about 3-4 metres away from where the Plaintiff was. After having been aggressed physically, he got into the van reluctantly with his 2 colleagues at it was time to go home. He made a declaration to the police, was issued with a PF58 and ultimately followed treatment. He reported the matter to his Superior on Monday 14.1.2019 and explained to him the incident concerning Plaintiff in relation to him on 12.1.2019.

On several occasions in the past, Plaintiff had sworn at him and at his said 2 colleagues and treated them like dogs by illtreating them and saying that no one could do anything and that no one could move him, nor the police and nor by the application of the law. It was the first time that he treated him that way in front of clients just because of a branch, he was treated by those swear words and kicked at his hip. It was not for the first time that he was illtreated like that. There was another incident where he felt threatened when he used a gun to kill three pigeons. He went to fetch them and could find only two. Plaintiff started to get angry and used swear

words, took his gun and pointed it to his chest and told him “*ein taler je te tue trou du cul*”. In relation to that incident, he did not give any declaration against him to the police. But now he started aggressing him both verbally and physically which was going too far and which he could not ignore. He started employment around the year 2014 and joined directly the team of Plaintiff and had been working all the time under his orders. He had been working with Plaintiff for about 5 years on a daily basis on site and he had 2 colleagues and they were three in all working with Plaintiff on site. Their job consisted of ensuring effectively that the place was kept very clean for the hunting of birds. They had to feed the animals that were meant to be hunted so that the work was quite physical and a person who was very well built was needed to do that kind of job every day. On 12.1.2019, he and his 2 colleagues were instructed by Plaintiff to remove that “*liane*”. He did not succeed in pulling the “*liane*” although he tried twice and while he was not succeeding, his 2 colleagues were laughing at him and Plaintiff was looking at him. When he said that he was not able to do so, Plaintiff pushed him causing him to slip and at the same time told him the following: “*to pénan nanier dans to ventre. To ene caca, to ene ici to ene labas.*” But as Plaintiff held the branch, and tried to pull the “*liane*” once and then twice and then he slipped and fell down. When he stood up, Plaintiff gave him two kicks on his person and swore at him which he had no right to do and it was not a matter of whether he was injured or not because he did not insult him and did nothing to him. In the past Plaintiff asked him to push a wheelbarrow in wood from there to the main road when he had a 4x4 vehicle handy and he did tell Mr. N. Chauveau about his previous grievances. Mr. Chauveau asked him to listen to Plaintiff as he was his head but at no time told him that Plaintiff was allowed to deal him kicks on his person. He would never accept an excuse from Plaintiff for what he has done to him.

Mr. Nitishwar Bojawan in his capacity as Supervisor gave evidence in Court. He had been working for Defendant for 27 years and on 12.1.2019, he was in its employment at Case Noyale near an aviary. There were also Plaintiff, Mr. H. Ramkissoon and Mr. D. Gooriah working at that time. He was working in the aviary. Mr. H. Ramkissoon and Plaintiff were clearing branches which were not too far. They almost ended work and were about to go home when there was a branch that Plaintiff had cut on the top which got entangled in a “*liane*”. Plaintiff asked Mr. Ramkissoon to pull that “*liane*” which he did twice but could not succeed. Mr. Ramkissoon told Plaintiff that he was not able to do so. Then, Plaintiff pushed him with his right hand and pulled that “*liane*” twice and slipped and fell down. Then, Plaintiff stood up and he dealt Mr. Ramkissoon 2 kicks at his hip on the side because

they laughed at him and he reacted violently although Mr. Ramkissoon did not laugh at him. He saw that incident as he was 3 metres away from them but he could not hear what they were discussing. Plaintiff continued to discuss with him. Then, they went to Bel Ombre to go home as their work ended at that time. As a superior he asked Mr. Ramkissoon to report the matter to Mr. N. Chauveau who was a higher Superior on Monday. He had been working with Plaintiff as from 2010 when Plaintiff joined till 2019. The work that had to be done was on the hunting site namely clearing of forest, and raising animals. He did have discussions with him but he did not bother too much as Plaintiff struggled for him to get a promotion and he was doing all Plaintiff's work. Mr. H. Ramkissoon joined employment in 2014 and he had been working with Plaintiff for about 6 years. They were three in all working at the hunting site for Plaintiff and they did an excellent work as they did their work with dedication. When Plaintiff joined the Defendant company, there were about 2000 birds for hunting purposes. In 2019 when Plaintiff was dismissed, there were about 10,000 birds which caused the productivity to be increased by about 5 times. Plaintiff had the same attitude at work and the employees working with a Superior like him were under pressure as he did not change let alone his swear words and which was unacceptable as he said that the law concerning employees was in his hands and that nothing could be done to him.

Mr. Nicolas Chauveau in his capacity as Livestock Manager gave evidence in Court. He had been working with Defendant for 32 years. He identified Doc. P3 which contained his signature as well as that of the CEO, Mr. Richard Koenig at the third page showing that the contract of employment of Plaintiff was first renewed for three years. Both Mr. R. Koenig and he continued the recruitment of Plaintiff. On Monday 14.1.2019, the employees of the Section of Poultry Farming under the responsibility of Plaintiff reported to him that there was an incident on the Saturday 12.1.2019 where Plaintiff physically aggressed one of the employees who was Heman Ramkissoon. He was Plaintiff's Superior. He reported the matter to the department of Human Resources and called Plaintiff over the phone on the same day. Firstly, he wanted to know what happened from Plaintiff and then to tell him that be it in whatever circumstance, it was not acceptable to have an employee aggressed. Plaintiff was quite nervous and told him that "*ce sont des fainéants c'est la seule façon de le traiter que ça ne va pas s'arrêter*" and that if he was not happy "*de nous d'emerder avec notre caca*". Plaintiff did not deny having physically aggressed his subordinate namely Mr. H. Ramkissoon on 12.1.2019. Plaintiff's tone was very aggressive and very arrogant at the same time. He asked him to calm

down and to come and see him at the office so that they could discuss about it. Plaintiff came to see him in his office, they discussed and Plaintiff maintained his position and left. According to him that was the way to deal with those workers as they were lazy employees. At that time, Mr. Michel Pilot was the CEO. As per Doc. P5, he was suspended on 15.1.2019 under the signature of Mr. M. Pilot and as per Doc. P6, he was convened by Mr. Pilot to appear before a disciplinary committee on 25.1.2019 as per that letter dated 17.1.2019. Mr. N. Chauveau deponed before the said committee. Plaintiff was employed by Defendant in 2010 as per Doc. P1 and which was signed in his presence by Mr. Daniel Thomas as head of Human Resources and Mr. Richard Koenig as CEO at that time. He employed Plaintiff as he was in charge of that department. He did the recruitment and Mr. Thomas as HR finalized same. He was recruited with the approbation of the Board represented by Mr. Eric Espitalier Noel in relation to the farming side and it was agreed by all those concerned for his recruitment. He was in contact with Plaintiff which was normal. At the time of Plaintiff's recruitment in 2010 there were about 100 birds. He was mainly concerned for the farming and hunting of stags at Bel Ombre and Case Noyale. The department of poultry was a minor one in his department under his responsibility. There was himself and Mr. Bojawan who were looking principally of the department like did the Plaintiff and there was not someone specific doing that. In 2019, when Plaintiff's contract of employment was terminated, there was a substantial increase in the number of pheasants as Plaintiff was recruited for that purpose from France. At the time Plaintiff was recruited there were 3 persons involved and when he left there were still 3 persons. When Plaintiff was recruited it was at the beginning of that activity which was meant for him to develop. He was not present in relation to the incident that happened on 12.1.2019 at Case Noyale. He was told about it in the morning of the 14.1.2019. Before that, a lot of verbal aggressions were reported to him by employees of that farming and hunting department meaning that Plaintiff regularly had an aggressive and vulgar behaviour towards the workers. He had discussed with Plaintiff on several occasions in his office and he was there every day. On Monday 14.1. 2019, he contacted Plaintiff through phone. He was arrogant towards him in the sense that he thought that he could not be touched as he did not bother about the seriousness of the situation and that he would continue to do what he wanted to and that he would not change his conduct. He used to do that with the workers and not with him. It was the first time over the phone that he was like that towards him. Plaintiff came to his office on the same day on 14.1.2019 as far as he could remember prior to having given him his suspension letter.

There were several complaints in the past from the workers in relation to his behaviour towards them and he said that he was above all and that the workers were all “*fainéants*” in Mauritius. It was part of his personality but there was never physical aggression but this time he went too far. He was not aware of an article concerning Plaintiff and Defendant in a French magazine. There were several journalists coming to Mauritius in relation to hunting of small animals and at that time Plaintiff was in employment and guiding the journalists. He was always a bit arrogant and did not bother about the rest as he thought that he was right but this time his tone was louder. He deserved to appear before a disciplinary committee as Plaintiff as an employee could not physically aggress another employee.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for Plaintiff and learned Senior Counsel for Defendant. True it is that Plaintiff as “*Responsable d'élevage de Petits Gibiers*” since 15.5.2010 pursuant to his contract of employment dated 30.4.2010 was for a determinate duration of 3 years as per Doc. P1. As per letters dated 9.4.2013 and 25.4.2016, his contract of employment was extended for subsequent periods of 3 years respectively as per Docs.P2 and P3. Thus, his contract of employment which was for a determinate duration and which was to end in May 2019. It is also true that it is not contested that there were 3 employees working under Plaintiff's control so that at the time of the termination of his contract of employment, the business for which he was responsible made substantive progress with the same number of workers being 3 in number.

However, it remained unrebutted that Plaintiff used to verbally aggress his subordinate colleagues although they did an excellent work as they did it with dedication and which was the subject of frequent complaints to Plaintiff's Head namely Mr. N Chauveau who accepted same as being part of his personality, being a bit arrogant, he did not mend his ways and treated all Mauritian workers as “*fainéants*”. Now, it remained unrebutted on the part of Mr. H. Ramkissoon whose testimony was supported by his Supervisor viz. Mr. N. Bojawan who saw him being physically aggressed by Plaintiff on 12.1.2019 for something Plaintiff himself could not do and that the incident was also witnessed by Mr. D. Gooriah. Thus, I do not agree when Plaintiff said for the first time in Court that Mr. H. Ramkisson did not try to dislodge that branch. Indeed, Plaintiff admitted not having been successful himself and that he did fall down after having slipped and swung with the “*liane*”. Subsequently, he candidly admitted that he did not deny having verbally and

physically aggressed Mr. H. Ramkissoon on that day namely on 12.1.2019 as he was tired with his laziness and that a kick did not kill anyone. It remained unchallenged that on a previous occasion, Plaintiff did threaten the said Mr. H. Ramkissoon to do him bodily harm by using vulgar words to his address. It further remained unchallenged that when contacted over the phone by his Head, Mr. N. Chauveau, on 14.1.2019, he was arrogant and disrespectful saying that he would not change his conduct entailing physical aggression of his subordinate and after having been convened to appear to the office of his said Superior, he maintained that he would not change his conduct in an arrogant and disrespectful manner and then left and also more importantly he did not deny having physically aggressed Mr. H. Ramkissoon to his said Superior Mr. N. Chauveau. Thus, because such physical aggression could not be tolerated, Plaintiff was suspended on the 15.1.2019 after the 2 witnesses of Mr. H. Ramkissoon were also heard.

Plaintiff appeared before the disciplinary committee and the 2 charges were proved against him as he did not give his version of facts. He did not deny the first charge at the said committee as according to him all the witnesses were saying the same thing. But he only denied the second one without giving his version of facts.

Now, it is abundantly clear that the case run by Plaintiff at the disciplinary committee in relation to the charges levelled against him was not to dissuade his employer at all so that he could have been kept in employment as he admitted not having given his version of facts although there were witnesses for the Defendant deposing against him in relation to both charges.

Furthermore, in Court, he corroborated the case he had already run before that committee by failing again to dissuade his employer so that he could keep his job by maintaining to his Superior, Mr. N. Chauveau, that he would not change his conduct towards his subordinate colleagues under his responsibility.

As regards the Defendant, there is no evidence to show that it departed from the case it had already run before the disciplinary committee in that Plaintiff ought not to have physically aggressed Mr. H. Ramkissoon, his subordinate on 12.1.2019 at his place of work and that physical aggression could not be tolerated at the workplace by an employee of Defendant towards another employee the more so as he said to his Superior, Mr. N. Chauveau in an arrogant and disrespectful manner that he would not change his conduct showing no remorse. Thus, the **Northern Transport Principle**

as propounded in the Privy Council case of **Smegh (Ile Maurice) Ltée v Persad D.** [\[2011 PRV 9\]](#) has not been infringed.

Hence, I take the view that the Plaintiff employee has utterly failed to discharge the onus which rested upon him to dissuade his Defendant employer as regards the charges made against him so that he could keep his job and that was the reason why he was afforded an opportunity to be heard before the disciplinary committee of Defendant as conferred by Statute pursuant to the provisions of Section 38(2)(a)(ii) of the Employment Rights Act 2008 (see- **Moortoojakhan R. v Tropic Knits Ltd** [\[2020 SCJ 343\]](#)).

Furthermore, it is significant to note that It was held in the Supreme Court case of **Plaine Verte Co-operative Store Society v Rajabally** [\[1991 SCJ 227\]](#) that the refusal of an employee to offer his explanations when convened before a disciplinary committee is construed as an act of defiance and justified the employer to dismiss him summarily on that score. It is abundantly clear that no matter what the other witnesses had to say before that committee in relation to those 2 charges, Plaintiff did not bother as he has decided not to change at all his conduct towards both his subordinates and now Superior as he thought that it would be allowed or tolerated given his success in causing the reproduction of pheasants in Mauritius.

It is apposite to note that in the Supreme case of **Khedoo O. v New Mauritius Hotels Ltd** [\[1999 SCJ 364\]](#), the following authority from Jurisclasseur Travail – Rupture du Contrat Fascicule 30-70 was quoted :-:

*“La faute grave peut d’abord se caractériser par les perturbations immédiates qu’elle apporte à la bonne marche de l’entreprise. Elle déorganise matériellement un service (V. cass.soc., 16 oct 1980: Bull. civ. V, no. 750 – 19 juill. 1988: Bull. civ. V, no.463). Elle porte atteinte à l’autorité de l’employeur (V. cass. soc., 25 mai 1989: Bull civ. V. no. 393; jurispr. Soc. UIMM, no. 520, p. 410). Elle crée un trouble dans les relations entre collègues de travail (V. cass. soc., 28 nov. 1989: Bull.civ.V, no.684- 5 mars 1987: Liasons soc. no. 5955, jurispr. P.13”.*

The case of **Khedoo** (supra) went on to say the following:

*“There is no hard and fast rule that a single act of misconduct can never entail a summarily dismissal from work. The crucial issue is whether the misconduct complained of is of such a nature as to “rend impossible le maintien du contrat de travail.”*

(...) It is well established that, as a general rule, la voie de fait on the workplace constitutes a faute grave.

We find useful in this respect the following note from **Jurisclasseur (op. Cit.) note 73**

*Les altercations violentes, rixes, voies de fait, qui se produisent pendant le temps de travail ou à l'occasion du travail, entre salariés ou entre un salarié et le chef d'entreprise sont, le plus souvent, constitutives d'une faute privative des indemnités de rupture. Est, en principe, une faute grave: -"*

It is relevant to quote an extract from the Supreme Court case of **Sotravic Ltd v Chellen J.C.** [\[2021 SCJ 425\]](#) as follows:

*"We need instead to be guided by the following extract from "Introduction au Droit du Travail Mauricien – 1/Les Relations Industrielles de Travail" (2eme edition – 2009) at page 365 which refers to termination for misconduct under the ERA –*

*"Le législateur définit la notion de 'misconduct' essentiellement par rapport à sa gravité. En effet un 'misconduct' pouvant justifier un licenciement sans indemnité de licenciement doit être telle que l'employeur "cannot in good faith take any other course". Il existe en effet divers degrés de faute. Au bas de l'échelle il y a les fautes légères qui ne sauraient justifier un licenciement et entraîneraient en cas de licenciement le paiement de l'indemnité de licenciement. La faute n'étant que légère l'employeur aurait dû sanctionner l'employé autrement que par le licenciement. Le deuxième degré de faute est la faute sérieuse. Bien que la faute justifie ici la sanction ultime du licenciement, elle n'est pas considérée comme suffisamment grave pour écarter le paiement de l'indemnité de licenciement. Au sommet de la hiérarchie des fautes nous retrouvons les fautes graves, les cas de 'gross misconduct', qui elles justifient un "summary dismissal", c'est à dire sans préavis et donc éventuellement sans indemnité de licenciement.*

*L'appréciation de la gravité de la faute se détermine non seulement en fonction de la faute en elle-même mais également en fonction de toutes les circonstances de l'espèce."*

*(the underlining is ours).*

*Indeed in Deep River Beau Champ Ltd v Beego [1988 SCJ 432], it was held that the degree and seriousness of the misconduct are valid considerations in deciding whether the misconduct warrants a termination of the employment so as to make it a justified dismissal. Gross misconduct or “faute grave” is therefore at the highest end of the spectrum of degrees of “fautes” and would alone justify summary dismissal, without payment of severance allowance (...).”*

Thus, I find that Defendant has successfully discharged the burden of proof placed upon it because the acts of misconduct as per the 2 charges levelled against Plaintiff were gross enough in the sense that they were tantamount to a ‘*faute grave*’ viz. of such a nature as to “*rend impossible le maintien du contrat de travail*” in the context of the Employment Rights of 2008 (see – Smegh(supra)) so that Defendant following the outcome of its disciplinary committee, in view of all the evidence that it was aware or the material of which he was reasonably aware at the time it dismissed the Plaintiff, it could not in good faith take any other course of action but to terminate his employment so that his dismissal was not unjustified. Indeed, Section 38(2)(a)(i) of the Employment Rights Act 2008 provides:

***“38. Protection against termination of agreement***

*(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;”*

Now as regards the item claimed by Plaintiff which boils down to the arrears of the end of year bonus in the sum of Rs 349,500, it is governed by the End of Year Gratuity Act. Plaintiff is unable to claim for the year 2019 pursuant to section 3(2) of that Act given that his contract of employment was not terminated on the ground of redundancy as per section 3(2) of the End of Year Gratuity Act as clearly stipulated below:

***“3. Payment of gratuity***

*(2) Subject to subsection (4), the gratuity payable to an employee who reckons continuous employment with his employer –*

*(a) for the whole or part of the year and who is in his employment on 31 December, shall be equivalent to not less than one twelfth of the*

*monthly basic wage or salary of the employee payable in respect of the month of December, multiplied by the number of months during which he has worked in that year;*

*(b) for only part of the year and –*

- (i) whose employment has been terminated by reason of redundancy; or*
- (ii) who retired in the course of the year in compliance with the provisions of any agreement or enactment,*

*shall be equivalent to not less than one twelfth of the monthly basic wage or salary of the employee payable for the last month of his employment multiplied by the number of months during which he has worked.” (**emphasis added**)*

However, being in continuous employment with Defendant since May 2010, Plaintiff is qualified to claim for the arrears of end of year bonus for the year 2018 as he was in continuous employment on 31.12.2018 and he was entitled to be paid as per his pay slip viz. Doc.P4 (Rs 61,210 – Rs 35,710): Rs 25,500. Likewise, for the years 2017 and 2016, Plaintiff is qualified to claim for the arrears of end of year bonus as per his pay slips viz. Doc. P4 (Rs 60,850 – Rs 35,350): Rs 25,500 and (Rs 60,500 – Rs 35,000): Rs 25,500 respectively as he was in continuous employment with Defendant on 31 December 2017 and 2016. However, Plaintiff cannot claim for the other previous years as he is time barred by virtue of Article 2279 of the Civil Code.

For all the reasons given above, the case for the Plaintiff having failed on the issue of severance allowance entailing notice as I hold that his dismissal was justified because the Defendant in good faith could not take any other course of action but to dismiss him, I order Defendant to pay to Plaintiff the sum of (Rs 25,500 x 3): Rs 76,500 as arrears of end of year bonus only. I make no order as to costs.

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

**19.6.2023**

