

**STEPHANIE WONG CHAN SEE VS MAUVILAC INDUSTRIES LTD -  
Ruling**

**2024 IND 17**

**STEPHANIE WONG CHAN SEE VS MAUVILAC INDUSTRIES LTD**

Cause Number: 466/16

**THE INDUSTRIAL COURT OF MAURITIUS**

**(Civil Side)**

In the matter of:-

**STEPHANIE WONG CHAN SEE**

Plaintiff

**VS**

**MAUVILAC INDUSTRIES LTD**

Defendant

**RULING**

***Introduction***

The ruling follows an argument on a point of Law raised when Learned Senior Counsel for the Defendant objected to the production of documents from the Plaintiff on the ground that the said documents were not produced at the Disciplinary Committee held against the Plaintiff by the Defendant.

***The facts***

For the purposes of the present ruling, I will set out a summary of the facts to establish the background of the case.

The Plaintiff was in the continuous employment of the Defendant. By way of letter dated the 01<sup>st</sup> December 2015, the Plaintiff was informed by the Defendant that “*Management has just uncovered a fraud at the Finance section and has decided to appoint an external audit and forensic expert in order to investigate and make recommendations. At this moment in time, only one person seems to have been the instigator of and/or involved in the fraud. However, it is only after the expert hands in the report that Management will be in a position to decide the way forward regarding others that may be involved, directly or indirectly, in*

*this fraud. In the light of that report, Management may have to take disciplinary actions against those who have been involved in the fraud. In the meantime, you are specifically requested to help the ongoing investigation and report any matter which you think might help in identifying those behind this fraud”.*

On the 12<sup>th</sup> February 2016, the Plaintiff was convened to a meeting with the general manager of the Defendant, Mr Jean-Yves Koenig, the Human Resources Manager and the Head of Finance and Accounts of the Defendant. At the said meeting, Mr Koenig handed the Plaintiff a letter dated the 12<sup>th</sup> February 2016 stating that Management considered that as Finance Manager, the Plaintiff failed to ensure that procedures and adequate controls were in place to prevent such a fraud from occurring and that the alleged total lack of supervision on the part of the Plaintiff had resulted in the said fraud and that such acts amounted to misconduct and/or poor performance on the part of the Plaintiff. The letter concluded by stating that Management decided to suspend the Plaintiff and required her to appear before a disciplinary committee after the final report would have been handed over to Management by the auditors.

By way of letter dated the 10<sup>th</sup> March 2016, the Plaintiff was informed that *“Management is now in presence of the report of the external forensic auditors”*. In the same letter, the Plaintiff was convened to a disciplinary committee on the 23<sup>rd</sup> March 2016 to answer the following charges levelled against her:

1. In the course of your employment as Financial Manager, you failed to supervise and/or verify the tasks performed by a former employee namely Mr. Balasoopramanien Allaghen who was working under your direct supervision in your Department, so that cash sums received by the said Mr Balasoopramanien Allaghen on a number of instances, in the course of his employment, as evidenced by the ‘daily collection sheets’, were neither recorded on the lodgement sheet which was prepared by the said employee nor were those sums banked into the bank account of the Company as they should have been by him leading to a massive fraud in the tune of Rs. 10.9 million;
2. As Financial Manager, you failed in your duties to ensure that adequate procedures and controls were in place or set up within your department in order to prevent such a massive fraud amounting to Rs 10.9 million from occurring over the period July 2013 to September 2015.

The Plaintiff denied the charges against her at the disciplinary committee and by way of letter dated the 3<sup>rd</sup> June 2016, the Defendant informed the Plaintiff that the disciplinary

committee had found that the charges levelled against her were established and consequently, the Plaintiff's employment was terminated forthwith.

The Plaintiff averred that the Defendant has unfairly, unjustly and unlawfully terminated her employment and that such termination was without any good cause and justification. She further stated that her monthly remuneration over a period of 12 months ended 31<sup>st</sup> May 2016 amounted to Rs 236,170 and she claimed that the Defendant is liable to her for:

- a. The sum of Rs 236,170 representing the remuneration which the Plaintiff should have received in lieu of notice of termination of employment; and
- b. The sum of Rs 11,277,118 being severance allowance payable to the Plaintiff, together with 12% interest per annum on severance allowance as from the date of termination of the Plaintiff's employment to the date of final payment.

The Defendant denied being indebted to the Plaintiff in the sum claimed or in any sum whatsoever. The Defendant stated that it acted all along with the parameters of the Law and the allegations of the Plaintiff are but lame attempts to cover up the fact that the facts complained of, had been proved leaving the Defendant with no alternative but to terminate her employment. According to the Defendant, the Plaintiff was in a position of trust and the Defendant could not be expected to continue to employ the Plaintiff in such a position of trust given the evidence available and the findings of the disciplinary committee.

The Defendant further averred that the monthly remuneration of the Plaintiff amounted to Rs 192,991. The Defendant concluded that it was fully justified to terminate the Plaintiff's employment with immediate effect given the findings of the disciplinary committee and it was not indebted to the Plaintiff in the sum claimed or in any sum at all.

### ***Observations***

The point in issue for the purposes of the present ruling is whether the Court can allow the Plaintiff to produce evidence which was not produced before the Disciplinary Committee by the Plaintiff, namely documents including e-mails pertaining to the procedure for the receipt, retention and banking of cash received at the Defendant company.

### **THE LAW**

At the outset, it is important to bear in mind the purport behind a disciplinary committee. It has been laid down in the case of **DE MAROUSSEM G PLANTEAU v SOCIETE DUPOU (2009) SCJ 287** that:

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

The law is clear that the purpose of the disciplinary committee is to provide an opportunity to the Plaintiff to put forward his version of events. The findings of the disciplinary committee are not conclusive and ultimately it is for the Court to determine whether an employee has been unjustifiably dismissed. **(RE: DROUIN J A VS LUX ISLAND RESORTS LTD (2014) SCJ 255)**. There is no strict procedural formula attached to the conduct of a disciplinary committee. *“An employee does not therefore enjoy the same rights before a Disciplinary Committee set up by his employer as he does before an independent and impartial tribunal set up to determine the extent of his civil rights and obligations pursuant to section 10(8) of the Constitution. Indeed, a disciplinary hearing is not conducted with the same formality as a trial before a Court or tribunal”.* **(RE: MOORTOOJAKHAN R. v TROPIC KNITS LTD (2020) SCJ 343)**.

The conduct of a disciplinary committee is important because it has an impact on the Industrial Court. I say so because the duty on the Industrial Court to consider whether a dismissal by an employer is justified or not, rests on an assessment of the facts which were available to the employer at the time of the disciplinary committee. I deem it fit, at this juncture, to refer to the case of **THE NORTHERN TRANSPORT CO LTD. VS RADHAKISSOON (1975) SCJ 223** which is an appeal case whereby the Respondent (the worker) gave a completely different version of events in Court pertaining to his dismissal as compared to the version given by the Respondent to his employer and which led to his dismissal. The Court laid down as follows:

*“The Magistrate in finding for the respondent accepted the version given in Court by the respondent which is contrary to the one he gave to his employer on the day of the occurrence and which led to his dismissal. In so doing the Magistrate made a wrong approach to the problem posed to him as the issue he had to decide was*

*whether the appellant was justified, on the facts before him at the time, to dismiss the respondent”.*

This principle was applied in the cases of **GUNESH R VS NATIONAL TRANSPORT CORPORATION & ANOR (2015) SCJ 311** and **HAREL FRERES LTD VS BEENATH TAUCKOOR (1999) SCJ 178**. In the case of **BISSONDYAL R VS THE NATIONAL TRANSPORT CORPORATION (2018) SCJ 86**, the Court held: *“It arises out of all the principles alluded to that in considering whether or not the decision to dismiss an employee was justified, the Industrial Court has to be satisfied that the facts which the employer had before him at the material time justified his decision. These facts should be those on which the charges preferred against the employee were based and in relation to which the latter has been given an opportunity to give his version. The disciplinary committee is in the normal course the formal platform afforded by the employer to the employee to answer the charges against him and give his version of the facts.*

*It is, therefore, not the duty of the Court to conduct some sort of review of the findings of the disciplinary committee. The evidence of a disciplinary committee at the trial before the Industrial Court is merely meant to show that the employer has given to the employee an opportunity to answer the complaint against him before making his decision to dismiss him. This being so, unless it is in the contentions of either party that the charges or facts put before the committee were in a material particular different from those brought before the Court to determine whether or not the dismissal was warranted, there is no necessity for the whole record of the proceedings before the committee to be put in. At any rate, irrespective of the findings and recommendations of the disciplinary committee, what the Court has to decide is whether in the light of the complaint of the employer and the explanations of the employee, as they stood, the decision to dismiss the latter was justified or not.”*

Our case law makes it clear that in the event a party brings further allegations before the Court which did not form part of the charges before the disciplinary committee, such evidence should not be admissible. This is why in the case of **MAURITIUS CO-OPERATIVE SAVINGS & CREDIT LEAGUE LTD v MUHOMUD K B (2012) SCJ 107**, when further allegations arose through amendments in the plea, the Court had this to say:

*“The learned Magistrate rightly pointed out that those further allegations did not form part of the charges that were the subject matter of the Disciplinary Committee which took place on 9 April 2002. Accordingly, the trial Court could not substitute itself for the Disciplinary Committee which rightly or wrongly found proved the*

*following two charges and for which the respondent's employment had already been terminated (...)"*.

In view of the above, it is clear that any additional evidence not presented at the disciplinary committee and constituting a new charge, which is in addition to existing charges before the disciplinary committee, cannot be taken into account by the Industrial Court in considering whether the dismissal of the employee by the employer at the material time when the disciplinary committee was held, was justified or not. Similarly, any additional explanation given by the Plaintiff in Court which could have prevented a dismissal, but which was not favoured before the disciplinary committee, cannot be ushered in as admissible evidence before the Industrial Court, the reason being that the Court can only decide on the nature of the dismissal based on the complaint of the employer and the explanations of the employee at the time of the disciplinary committee.

Having said that, I find that a distinction must be made between evidence constituting a new allegation/charge by the employer or a new explanation by the employee and such evidence which is corroborative or in support of the existing charges or explanations at the time of the disciplinary committee. I deem it fit to refer to the case of **GENERAL CONSTRUCTION CO LTD VS PAYANIANDY (2008) SCJ 220** as follows:

*"It is well settled that in deciding whether a dismissal is justified, the court should also take into account the facts of the alleged misconduct as presented to the employer and on which it acted to dismiss the worker. This principle was laid down in The Northern Transport Co. Ltd v Radhakisson [1975 MR 228] and followed in Harel Freres Ltd v Beenath Tauckoor [1999 SCJ 178]. However, such principle is applicable in cases where there is a variance between the evidence brought before the employer and that which is placed before the court. In the present case, the evidence of the supervisor was accepted by the court and by the disciplinary committee".*

In the circumstances, the Court must determine whether the new evidence brought before the Industrial Court is at variance with the version put before the Disciplinary Committee. **(RE: BERJAYA LE MORNE BREACH RESORT AND CASINO VS RAVINAND S (2011) SCJ 405)**. If the new evidence constitutes fresh allegations by the employer and/or a new version of events from the employee which could have prevented a dismissal by the employer, the evidence is deemed to be not admissible. On the other hand, if the evidence does no more than support the case of the parties, more specifically the evidence which the Plaintiff has always presented to the disciplinary committee and which is to the knowledge of the Defendant, there is no reason why the new evidence should be disregarded.

## **APPLYING THE LAW TO THE FACTS**

In the present case, Counsel for the Plaintiff is seeking to bring documents inclusive of e-mails in support of its case pertaining to the procedure in relation to the receipt, retention and banking of cash received by the Defendant company instead of such cash being credited at the bank. Applying the principle of our case law, I have to determine whether the production of the said documents would be tantamount to supporting the version of the Plaintiff as presented to the disciplinary committee or whether it would run counter to the argument offered by the Plaintiff at the disciplinary committee. It is true to say that I have not been favoured with the proceedings of the disciplinary committee but it stands to logic that the argument run by the Plaintiff at the disciplinary committee would be in relation to the charges levelled by the Defendant against the Plaintiff.

I have perused the charges levelled against the Plaintiff by the Defendant at the disciplinary committee and they read as follows:

1. In the course of your employment as Financial Manager, you failed to supervise and/or verify the tasks performed by a former employee namely Mr. Balasooopramanien Allaghen who was working under your direct supervision in your Department, so that cash sums received by the said Mr Balasooopramanien Allaghen on a number of instances, in the course of his employment, as evidenced by the 'daily collection sheets', were neither recorded on the lodgement sheet which was prepared by the said employee nor were those sums banked into the bank account of the Company as they should have been by him leading to a massive fraud in the tune of Rs. 10.9 million;
2. As Financial Manager, you failed in your duties to ensure that adequate procedures and controls were in place or set up within your department in order to prevent such a massive fraud amounting to Rs 10.9 million from occurring over the period July 2013 to September 2015.

It is clear that what was reproached to the Plaintiff as reflected in the charges levelled against her is that she failed in her supervisory duties such that cash received by an employee under her supervision was not properly recorded nor banked. She also failed to ensure adequate procedural control to prevent a fraud.

The line of questioning of Learned Counsel for the Plaintiff in her examination in chief directly relates to the sums of money which were obtained at the Defendant company but which were not banked. This is the basis of the charges against the Plaintiff. In Court, the latter was in the midst of explaining the procedure behind the receipt, retention and banking of cash

received by the Defendant when Learned Senior Defence Counsel objected to the production of documents evidencing the version of the Plaintiff.

The test in relation to the admissibility of such evidence has been laid down in the case of **SMEGH (ILE MAURICE) LTÉE v PERSAD DHARMENDRA (2011) PRV 9** where the Court endorsed the principle as laid down in the cases of **THE NORTHERN TRANSPORT Co.LTD. VS RADHAKISSOON** and **MAURITIUS CO-OPERATIVE SAVINGS & CREDIT LEAGUE LTD v MUHOMUD K B** to state as follows :

*“The question whether an employer justifiably dismisses a worker must be judged on the basis of the material of which the employer is or ought reasonably to be aware at the time of the dismissal. If the dismissal is justified on that material, it is not open to the worker to complain on the basis that there was other material of which the employer was not, and could not reasonably have been, aware which, if taken into account, would have rendered the dismissal unjustified”.*

However, the Judicial Committee of the Privy Council went further to qualify the above principle by stating : *“the principle should not be extended to preclude a worker from relying in court on fresh evidence which does no more than support the case which he has always run”.*

In the case of **SMEGH (ILE MAURICE) LTÉE v PERSAD DHARMENDRA**, two witnesses were summoned by the worker to give evidence before the Court although these witnesses did not depone before the disciplinary committee. The Judicial Committee of the Privy Council found that the evidence before the Court was in line with the case run by the worker before the disciplinary committee and was to the knowledge of the employer.

Recently, in the case of **MICHEL LAFRESIÈRE VS NEW MAURITIUS HOTELS LTD 2022 PRV 23**, the Judicial Committee of the Privy Council reaffirmed the decision of **SMEGH (ILE MAURICE) LTÉE v PERSAD DHARMENDRA** in relation to the legal principle that the dismissal of a worker ought to be based on the material which the employer had or was aware at the time of the dismissal. The merits in the case of **MICHEL LAFRESIÈRE VS NEW MAURITIUS HOTELS LTD** concerned adequate pleading and the need *“for employers that they must properly plead the reasons for the dismissal and that those reasons must be the same as the reasons given at the time of the dismissal and, further, to make clear to those presiding in Industrial Courts that they must focus their fact finding exercise on those reasons”.*

I find that the points taken in the case of **MICHEL LAFRESIÈRE VS NEW MAURITIUS HOTELS LTD** do not find its applicability to the present case as it no way

overrules the principle of **SMEGH (ILE MAURICE) LTÉE v PERSAD DHARMENDRA** that evidence which is supportive or corroborative of the Plaintiff's case is admissible before the Industrial Court, albeit the absence of such evidence at the disciplinary committee.

In the present case, I find that the documents which the Plaintiff was seeking to produce were directly related to the procedure behind the receipt, retention and banking of cash within the Defendant company. Therefore, these documents have a direct link with the charges levelled against the Plaintiff since the thrust of the charges was that the Plaintiff failed in her supervisory duties to ensure the right procedure for the receipt, retention and banking of cash received at the Defendant company, leading to an alleged massive fraud. If such are the charges against the Plaintiff, it goes without saying that the argument run by the Plaintiff at the disciplinary committee would be in relation to these charges. It also stands to logic that any document in line with the argument run by the Plaintiff, would be supportive of the case for the Plaintiff, including her version as presented at the disciplinary committee and her testimony in Court.

I find that the documents which the Plaintiff intends to produce in Court will not run counter to the line of argument of the Plaintiff before the disciplinary committee. I say so because the line of argument of the Plaintiff before the disciplinary committee can only amount to explanations from the Plaintiff in relation to the charges levelled against her. There has been no dispute that the testimony of the Plaintiff in Court constituted her explanations towards the charges as levelled against her before the disciplinary committee. Hence, her testimony in Court was in line with her argument before the disciplinary committee. Any document supporting the testimony of the Plaintiff would be consonant to documents supportive of the case of the Plaintiff, which is in harmony with her line of argument before the disciplinary committee.

In view of the version of the Plaintiff through her examination-in-chief whereby she testified in line of her argument in relation to the charges levelled against her at the disciplinary committee, namely her evidence in relation to the procedure for the receipt, retention and banking of cash received at the Defendant company, I find that the documents which she intended to produce were in support of her line of argument, against the charges levelled against her at the disciplinary committee. The version of the Plaintiff together with the documents will provide the platform explaining the reasons of the Plaintiff to sustain her alleged unfair dismissal.

## ***Conclusion***

In view of the above, I find that there is no evidence suggesting that the documents can be construed as new evidence which run counter to the arguments of the Plaintiff at the disciplinary committee, the moreso that the documents emanate from the Defendant and were, for all intents and purposes, to the knowledge of the Defendant.

Consequently, I find that the documents which the Plaintiff intends to produce are admissible. Having said that, I open a parenthesis to state that this ruling cannot in any way be construed so as to provide an open window for the Plaintiff to produce any document. The documents which I find to be admissible in Court, at this stage, are the documents pertaining to the procedure for the receipt, retention and banking of cash at the Defendant company. The ruling will certainly not apply to any other document which is extraneous to the specific issue of procedure for the receipt, retention and banking of cash at the Defendant company, since such was the basis of the charge levelled against the Plaintiff by the Defendant, the argument run by the Plaintiff and the testimony of the Plaintiff in Court.

I rule the documents to be admissible at this stage.

Ruling delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Ruling delivered on: 30th May 2024