Wong Chan See S. v Mauvilac Industries Limited

2022 IND 32

Cause Number 466/16

IN THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Stephanie Wong Chan See

Plaintiff

v.

Mauvilac Industries Limited

Defendant

Ruling

The averments of this plaint are to the following effect. Pursuant to a contract dated 5 May 2009, Plaintiff, an Accountant, was appointed Financial Manager of Defendant effective as from I June 2009.

She was in the continuous employment of Defendant until 3 June 2016. Her duties as Financial Manager comprised mainly of:

(a) Preparation of annual budgets;

(b) Review monthly management accounts prepared by the accountant;

(c) Review the bank reconciliation statement;

(d) review the creditors control accounts on a monthly basis;

(e) prepare the financial performance report;

(f) present a monthly statement of accounts to management;

(g) effect payment of salaries on behalf of the Defendant and a related company namely Dulux (Mauritius) Ltd;

(h) review the accounts of Dulux (Mauritius) Ltd; and

(i) prepare and/or review statutory returns including VAT return, NPF return, PAYE return, TDS return, Income Tax return and return of employees.

At all material times, Plaintiff reported to the Head of Finance and Accounts, who was previously known as the Financial Director or Chief Finance Officer, at the Defendant.

In or around July 2014, Adenia Partners, a private equity firm, acquired a majority stake in the Defendant.

Following the said acquisition, there were changes in the management structure of the Defendant. Since then, Plaintiff felt that by so doing, Defendant was looking for a reason to terminate her employment or a means of pressurizing her to resign.

Around September 2015, Defendant's auditors namely BDO De Chazal Du Mée observed that the bank reconciliations included several outstanding deposits which could not be traced to bank statements.

Around November 2015, Plaintiff together with other selected high ranked employees carried out an internal investigation to look into how the said mismatch between the bank reconciliations and bank statements had occurred. Their investigation revealed that a fraud had been committed by an accounts' clerk namely Mr. Veden Balasoopramanien Allagen.

By way of a letter dated 1 December 2015, Plaintiff was informed by Defendant that Management had just uncovered a fraud at the Finance section and had decided to appoint an external audit and forensic expert in order to investigate and make recommendations. At that moment in time, only one person seemed to have been the instigator of and/or involved in the fraud. However, it was only after the expert would hand in the report that Management would be in a position to decide

the way forward regarding others that might be involved, directly or indirectly, in that fraud. In the light of that report, Management might have to take disciplinary actions against those who had been involved in the fraud. In the meantime, she was specifically requested to help the ongoing investigation and report any matter which she thought might help in identifying those behind that fraud.

By 1 December 2015, Defendant was aware that the said fraud had been committed by Mr. Allagen and how it was committed.

On 12.2.2016, Plaintiff was convened to a meeting with the General Manager. He told her that he obtained a report from the external audit and forensic expert and the said report revealed that she failed in her duties as Financial Manager. He asked her to resign or he would take disciplinary action against her.

Plaintiff requested a copy of the said report but was refused same by the HR Manager. She refused to submit her resignation and stated that she would appear before a disciplinary committee upon Defendant's request.

Then, the General Manager handed to her a letter dated 12 February 2016 stating that Management considered that as Finance Manager, she 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 her part had resulted in the said fraud and that such acts amounted to misconduct and/or poor performance on her part. The letter concluded by stating that Management decided to suspend her and required her to appear before a disciplinary committee after the final report would have been handed over to Management by the auditors and the General Manager told her that she could think over her decision of whether to resign and that he was open to negotiate some kind of compensation to be paid by the Defendant to her in the event that she decided to resign.

Following her suspension from work, the HR Manager called her on 17,18 and 29 February 2016 respectively to ask if she would resign from her employment with the Defendant.

By a letter dated 10 March 2016, Plaintiff was informed that the Management was now in presence of the report of the external forensic auditors and she was convened to a disciplinary committee to 23 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 to 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."

At the sitting of the 23 March 2016, the Plaintiff denied the above mentioned charges before the disciplinary committee.

By letter dated 3 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 allegations and charges set out in the letters of 12 February 2016 and 10 March 2016 respectively are not true and were fabricated by the Defendant to pressurise her to resign from her employment.

Defendant therefore did not act in good faith by suspending her and convening her to appear before a disciplinary committee.

Therefore, the allegations and charges set out in the letters of 12 February 2016 and 10 March 2016 cannot and do not constitute valid reasons for termination of her employment by Defendant.

Since 1 December 2015, Defendant was or ought to have been aware of the charges which were later set out in the letters of 12 February 2016 and 10 March 2016 and Defendant has thus failed to notify her of such changes within the statutory delay provided in section 38(2)(a)(iii) of the Employment Rights Act.

Consequently, Defendant has unfairly, unjustly and unlawfully terminated her employment and that such termination was without good cause and justification.

Defendant, for its part, has denied liability. Its averments are as follows:

1. In or about January 2016, Plaintiff was requested by the new Head of Finance of Defendant to submit a list of duties which she did. Plaintiff submitted the tasks description of the Finance Staff performed on a daily, weekly, monthly, quarterly and yearly basis.

2. Pursuant to the Company Standard Procedure No.302 [Accounts and Debtors Management] which was effective when the Plaintiff was the Financial Manager of the Defendant, one of her duties was to ensure that all procedures relating to management of debtors were complied with.

3. One of the procedures which the Financial Manager had to ensure compliance with was being implemented by the Finance department pertained to the Daily Report which had to be sent to the Finance Manager summarizing the daily total receipts with total amount banked explaining any variation(s).

Plaintiff was reporting to the Financial Director of Chief Finance Officer of Defendant. It was a lame attempt by Plaintiff to create a smoke screen on her duties and obligations given her position and the hefty salary she was earning. It was correct to say that discrepancies were noted but the full extent of the fraud had not by then been detected and it was decided that the matter be further investigated in order to establish the root cause of the problem and identify those responsible. At that point in time Plaintiff was informed that Defendant had decided to appoint an external audit and forensic expert in order to investigate into the matter and to make recommendations. Therefore, the investigation of the fraud was ongoing and it was erroneous to say that the amount of the fraud was known to Defendant although it was true that the said Allagen was a suspect but not the only one. There was a meeting and Plaintiff was informed of her suspension on the ground of misconduct and or poor performance and there would be a Disciplinary Hearing and that she should think about her future.

Defendant suspended the Plaintiff in the light of the report of the external auditors in view of the status of the Plaintiff as the most senior officer of the finance department at the time and gave her an opportunity to give her explanations on the facts and matter reproached of her.

During the Disciplinary Committee, she admitted that she had specific duties under the Company Standard Procedure No. 302 to ensure that all procedures relating to the management of debtors were complied with.

She further admitted during the Disciplinary Committee that she also had the duty to handle the management of procedures regarding debtors.

She further admitted that the procedures pertaining to the daily report which had to be sent to the Finance Manager summarizing the daily total receipts with total amount banked explaining any variation were never implemented.

She finally admitted during her hearing that she had failed in her duties.

Defendant acted all along within the parameters of the law and the allegations of Plaintiff were but lame attempts to cover up the fact that the facts complained of had been proved leaving the Defendant with no other alternative but to terminate her employment. Plaintiff was in a position of trust and Defendant could not be expected to continue to employ her in such a position of trust given the evidence available and the findings of the disciplinary committee.

Plaintiff was examined in chief in the course of the trial. She has stated that the duties enumerated by her in her plaint did not emanate from Defendant but from her and which was from a verbal source and that the duties as set out pursuant to the Company Standard Procedure No.302 [Accounts and Debtors Management] was effective when she was the Financial Manager of the Defendant. She contended that as far as cash was concerned it also involved the Financial Director and those lower down in her hierarchy in the Finance Section.

It is significant to note that page 26 of the transcript of the Court sitting dated 2.7.2021 reads as follows:

"Q. However, on the 3rd of June 2016, the defendant wrote to you and informed you that the DC had found the charges proved against you?

A. Yes.

Q. And the defendant informed you that they had decided to terminate your employment?

A. That's right.

Q. *Right. You state that – Can you produce the letter?*

Letter dated 03.06.2016 is produced and marked as Document P

COURT: *Yes, there is no objection from Mr. Glover?*

MR. G. GLOVER,S.C: *No objection.*

MR R. PURSEM,SC PROCEEDS WITH EXAMINATION IN CHIEF

Q. You state, Mrs Wong that the defendant did not act in good faith in suspending you and dismissing you at the end of the day?

A. I don't agree.

Q. Right. As far as you are concerned, the allegations and charges which are set out in the letter of the 12th of February and 10th of March cannot and do not constitute valid reason for the termination of your employment?

A. Don't agree.

COURT:

Q. Please speak up.

A. I don't agree.

MR R. PURSEM, S.C. PROCEEDS WITH EXAMINATION IN CHIEF

Q. Alright. I wanted to take you to paragraph 2(c) of the defence. Paragraph 2(b), where the defendant says that one of your duties was to ensure that all procedures relating to management of debtors are complied with. Was that part of your duties?

A. Management of debtors I had explained, it was the duty of the Accountant cum Credit Controller and myself. I partly done part of the task."

Therefore, in the light of the above extract, it is clear that Plaintiff has admitted that Defendant in line with the findings of the Disciplinary Committee, that Defendant did act in good faith in suspending her and dismissing her and that the allegations and charges which are set out in the letter of the 12th of February and 10th of March can and does constitute valid reason for the termination of her employment.

Thus, the answers given by Plaintiff are in line with the plea of Defendant that she admitted the charges levelled against her at the Disciplinary Committee and against her own averments in her plaint which is a denial of the said charges.

Now, when the fraud was uncovered, auditors were involved and which also involved the new management in the person of one Mr. Koenig who was the General Manager. Objection was taken as to the production of a trail of e- mails emanating from Mr. Koenig and Plaintiff because it was not produced before the Disciplinary Committee and as per the averments of the plaint would have established that she was pressurized to resign so that the allegations and charges set out in the letters of 12 February 2016 and 10 March 2016 respectively are not true and were fabricated by the Defendant to pressurise her to resign from her employment.

The matter was accordingly fixed for arguments.

The main thrust of the arguments of Learned Senior Counsel for the Defendant is that in a case of unjustified dismissal before the Industrial Court, the onus is on the Defendant to prove that the termination was justified namely at the time the decision was taken what material was before it or ought to have been known to it when it was taking the decision and on the basis of which the Court will decide whether the termination was justified or unjustified.

It is not open to any party to bring along new evidence which was not before the employer at the time the employer was making its decision.

It cannot be that the employer cannot bring more evidence before the Industrial Court, but the employee can as it defies all logic, all legal principles as it would mean that the Plaintiff employee will have an unfair advantage on the employer. The principle which is applicable here is that in no circumstances whatsoever, it is open to the Plaintiff employee or to the Defendant employer to bring before the Industrial Court evidence which was never placed before the Disciplinary Committee and which was not before the employer at the time it took the decision to terminate. He relied on the case of **Smegh (Ile Maurice) Ltée v Persad D.** [2011 PRV 9] before the Board of the Privy Council, where principles of **Northern Transport Co. Ltd v Radhakissoon** [1975 MR 228] were followed in **Harel Freres Ltd v Beenath Tauckoor**[1999 SCJ 178] and **Bissondyal R. v The National Transport Corporation**[2013 SCJ 86] and **Berjaya Le Morne Beach Resort and Casino v Ravinand** [2011 SCJ 405].

At the stage of the Disciplinary Committee, the impugned documents which is the trail of email which the Plaintiff wishes to produce here were not produced or referred to at any point in time whether when Defendant was deposing or Plaintiff was deposing as confirmed by learned Senior Counsel for the Plaintiff.

At the end of the day, the *rationale* behind a Disciplinary Committee is to afford an opportunity to the employee to answer any charge that the employer would prefer against her. Therefore, the onus is on the employee to come before an independently constituted Disciplinary Committee to give her version, her explanations and it will be for the Disciplinary Committee to decide on the evidence adduced whether the facts reproached of the employee, sometimes called charges, have been proved or not. It is not for the Disciplinary Committee to decide to terminate or not to terminate. The Disciplinary Committee only makes a finding of facts whose application remains within the province of the management of the employer company. As such since these documents were not relied upon by the Plaintiff, were not relied upon by the Defendant , did not form part of the Disciplinary Committee, was not referred to at any point in time by the Plaintiff as being relevant to her explanations before the Disciplinary Committee and the decision to terminate was taken without these documents being brought to the attention of the employer or that it is said that it ought to be within the knowledge of the employer. The Court cannot accede to the request of his learned Friend to have the Plaintiff make use of these documents before the Court.

The main thrust of the arguments of learned Senior Counsel for the Plaintiff is that true it is that at some stage, he sought to produce two emails on behalf of Plaintiff. The gist of the objection of his learned Friend is to the effect that to the extent that these documents were not produced before the Disciplinary Committee, then it is not open to either party be it the employer or employee to produce the documents. His contention is that there is no authority which precludes the employee from bringing before the Court documents in support of her case. He is agreeable with the principles enunciated in **Northern Transport(supra)**. It is extremely important for the Court to look at the case of **Smegh (Ile Maurice) Ltée v Persad D.** [2011 PRV 9], the Privy Council case at paragraph.26, where Mr. Persad called two witnesses in Court who were not called before the Disciplinary Committee. The Magistrate was impressed by the evidence of these two witnesses and relied on it as corroborating the account given by Mr. Persad. But the Board does not consider that this means that there was an infringement of the **Northern Transport principle**

as it should not be extended to preclude the worker from relying in Court on fresh evidence which does no more than support the case which he has always run.

Learned Senior Counsel for the Plaintiff contended that probably the principle in **Smegh**(supra) will apply to both Plaintiff and Defendant to the extent that the employee is trying to buttress that line of defence by calling witnesses purely and simply to corroborate the version which was run be it before the Committee or the Court. It is not the case oi learned Senior Counsel for the Defendant that the document in any way is in conflict or runs counter to the version which the employee had run before the Disciplinary Committee. That fresh evidence is not objected on the ground that it runs counter to the case that Plaintiff had run before the Disciplinary Committee.

Learned Senior Counsel for the Defendant replied in **Smegh**(supra) that no objection was taken at trial stage when Mr. Persad sought to call the two witnesses which impressed the Magistrate. In that context, the Board decided that it was not an infringement of the **Northern Transport Principle**. What fresh evidence means was it evidence not available to Plaintiff at the hearing of the Disciplinary Committee which only became available at the trial or which was available but not adduced at Disciplinary Committee but fresh as now being adduced before the trial Court.

Learned Senior Counsel for Plaintiff replied that fresh evidence buttressing the case already run by Plaintiff before the Disciplinary Committee is allowed as corroborative evidence.

I have given due consideration to the arguments of both learned Senior Counsel.

At the very outset, I find it useful to set out the relevant provision of the Employment Rights Act 2008 applicable to the present case namely Section 38(2)(a) which reads as follows:

*"**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;

(ii) the worker has been afforded an opportunity to answer any charge made against him in relation to his misconduct;"

I subscribe to the submission of learned Senior Counsel for the Plaintiff that the Privy Council decision in the case of **Smegh (Ile Maurice) Ltée v Persad D.** **[2011 PRV 9]** is extremely important and I take the view that the principles propounded therein cannot be overlooked and which have been applied in the cases referred to by learned Senior Counsel appearing for the Defendant though at times in a diluted form.

Thus, the burden of proof is on the Defendant employer to establish that in the light of the evidence that was adduced at the Disciplinary Committee or which ought to have been reasonably available to him or to his knowledge at that time though not adduced, irrespective of the finding of the Committee it could not in good faith take any other course of action but to dismiss the Plaintiff employee so that the termination of her employment was not unjustified (see- **Smegh**(supra)). In that manner, the statutory requirements contained in Section 38(2)(a)(i) of the Employment Rights Act 2008 have been satisfied.

Smegh(supra) and the Supreme Court Case of **Moortoojakhan R. v Tropic Knits Ltd** **[2020 SCJ 343]** have also stressed that the onus is on the Plaintiff employee to dissuade her employer as regards the charges proffered against her so that she could keep her job and which explains why she is afforded an opportunity to give her explanations in that regard before the Disciplinary Committee. Likewise, in such manner, the statutory requirements contained in Section 38(2)(a)(ii) of the Act have been satisfied

Although the Disciplinary Committee which is the Disciplinary Committee of Defendant does not have the attributes of a Court of law so that its findings are not conclusive, it is a forum where both Sections 38(2)(a)(i) and 38(2)(a)(ii) of the Act are satisfied. The Court equally is a forum where both Sections 38(2)(a)(i) and 38(2)(a)(ii) of the Act are satisfied. Thus, it is abundantly clear why in **Smegh**(supra), it has been highlighted that neither the Plaintiff nor the Defendant can adduce

evidence before the Court which runs counter to the case they had run before the Disciplinary Committee which is in line with the **Northern Transport Principle**.

But then in the event that both Plaintiff and Defendant attempt to adduce evidence before the Court which does not run counter to the case they had run before the Disciplinary Committee in terms of fresh evidence meaning evidence not adduced before the Disciplinary Committee but within the ambit of the evidence that Defendant knew or ought to have reasonably known at the time of taking its decision to dismiss is allowed.

Had that fresh evidence been outside the ambit of the evidence that the employer knew or ought to have reasonably known at the time of taking its decision to dismiss, such evidence is not allowed although it does not run counter to the case they had each run before the Disciplinary Committee.

This is precisely because the burden of proof is on the Defendant to establish following the finding of its Disciplinary Committee though not conclusive, that its decision to dismiss the Plaintiff or to terminate her employment was justified taking into consideration all the evidence adduced before the Committee or which ought to have reasonably been within its knowledge though not adduced at that time, it could not in good faith have taken any other course of action (see- **Smegh**(supra)).

Thus, it would be misconceived to construe that the employee will have an unfair advantage in that she can call any evidence to support her case or corroborate her version while the Defendant is restricted in the sense that it has to rely on the evidence it had or ought to have been aware at the time it took its decision to dismiss only. In the same breath, I do not subscribe to the proposition that because there was no objection that the two witnesses that were called during the trial by Mr. Persad in **Smegh**(supra) and which impressed the Magistrate and such evidence was not brought before the Disciplinary Committee, the Board of the Privy Council held that it was only corroborating the version of Mr. Persad.

At this stage, I find it appropriate to quote an extract from **Smegh**(supra) at paragraphs 23 to 26 which reads as follows:

"23. (…) 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 (…).

24. Thus, if Mr Persad succeeded before the Industrial Court on the basis of a case which he did not run before the committee and/or of which Smegh was not and could not reasonably have been aware at the time of the dismissal, then the Northern Transport principle would have been infringed by the Court and the appeal should have been allowed.

25. There is no suggestion that Mr Persad changed his account in a material respect in relation to any of the 3 charges.(…) This was a serious allegation. (…)

26. In the argument before the Board, much was made by counsel for Smegh of the fact that Mr Persad called witnesses who had not given evidence before the committee, notably Mr Cooroopdass and Mr Rajkumarsingh. It is true that the Magistrate was impressed by the evidence of these witnesses and relied on it as corroborating the account given by Mr Persad. But the Board does not consider that this means that there was an infringement of the Northern Transport principle. First, 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. As was said in G. Planteau De Maroussem, an employer's disciplinary committee is no substitute for a court of law. It is the court which is given the power to decide whether a dismissal was justified. In the present case, the fresh evidence did no more than corroborate Mr. Persad's account which, in material respects, the committee had rejected and the Magistrate accepted. Secondly, at the time of the dismissal, Mr Cooroopdass and Mr. Rajkumarsingh were senior executives of the Group of which Smegh formed part. They gave evidence about matters which lay within their own spheres of responsibility. Their knowledge of such matters must be imputed to Smegh. In any event, Smegh could have taken statements from them and called them to give evidence before the committee. In these circumstances, Smegh cannot be heard to say that it was unaware of what they could say." ***(emphasis added)***

It is also appropriate to quote an extract from the Supreme Court case of **Moortoojakhan R. v Tropic Knits Ltd [2020 SCJ 343]** at pages 5 and 6 as follows:

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

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

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

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

(…) *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. The employee should however be given a fair opportunity to put forward his defence and give his version before the Disciplinary Committee. As the Supreme Court noted in* ***Drouin v Lux Island Resorts Ltd*** *[2014 SCJ 255] and* ***Cie Mauricienne d'Hypermarchés v Rengapanaiken*** *[2003 SCJ 233], in relation to provisions of the Labour Act akin to those of section 38(2) of the Employment Rights Act, the disciplinary hearing is not meant to be a mere "procedural ritual" to pay lip service to the requirement under the law that an employee be given a genuine opportunity to provide his explanations to his employer with a view to keeping his job (see also* ***Bissonauth v Sugar Fund Insurance Bond*** *[2005 PRV 68])".(****emphasis added****)*

I agree that the Plaintiff cannot adduce evidence in Court that runs counter to the case she had run before the Disciplinary Committee which is to dissuade her employer so that she keeps her job in relation to the charges that she has to answer pursuant to Section 38(2)(a)(ii) of the Employment Rights Act 2008.

Now, true it is that Plaintiff has denied the charges in her plaint while in Court has made an admission to the effect that she was liable in relation to both charges

and that Defendant has acted in good faith in terminating her employment. This is in fact an admission which is the best evidence available.

Such admission on her part supports the plea of the Defendant that she admitted liability at the Disciplinary Committee of Defendant. Indeed, she did not say in Court that she denied liability at the Disciplinary Committee in line with her plaint.

Thus, it stands to reason that the case run by the Plaintiff at the Disciplinary Committee was not to dissuade the Defendant so that she could keep her job but to admit liability which she did in Court. Therefore, the trail of email purported to be produced by the Plaintiff's Counsel was not meant to corroborate the case she had run before the Disciplinary Committee as such evidence were meant to show that she was pressurized to resign and that the termination of her employment was unjustified.

Now, in the event that the evidence that is being attempted to be produced does not run counter to the case that she had run before the Disciplinary Committee but is only corroborating her version of dissuading the Defendant so that she could have kept her job and which is within the ambit of the material which the Defendant knew or ought to have reasonably known at the time of her dismissal, then, she would have been perfectly entitled to do that. But now that she has admitted liability in relation to both charges, it is abundantly clear in such a serious case of fraud, the Defendant could not in good faith have taken any other decision but to terminate her employment irrespective of the fact that the fraud involved the participation of other players in the Finance Section in the sense that she was partly and not totally responsible. The need to dissuade which is what the evidence sought to be produced attempted to do and upon which objection is taken will not serve any meaningful purpose now in the light of the best evidence on record meaning an admission of liability.

That fresh evidence not produced at the Disciplinary Committee and to be produced at the trial assuming it does not run counter to the case she had run at the Disciplinary Committee does not have its *raison d'être* anymore as the Plaintiff no longer has to establish that she should be kept in her employment and that in the light of all the evidence adduced at the Disciplinary Committee or evidence which Defendant knew or ought to have reasonably known at the time of her dismissal, it could not in good faith have terminated her employment.

For all the reasons given above, the objection is upheld but not exactly for the same reasons. The matter is accordingly fixed *proforma* to 8.7.2022 for both learned Senior Counsel to suggest common dates for continuation in July 2022 or first two weeks of August 2022.

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

6.7.2022