EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 58/25

DETERMINATION

Before: -

Shameer Janhangeer	**-**	**Vice-President**
Greetanand Beelatoo	**-**	**Member**
Ghianeswar Gokhool	**-**	**Member**

In the matter of: -

Mr Frédéric Francois LAW KWANG

Disputant/Complainant

and

PRINCES TUNA (MAURITIUS) LIMITED

Respondent

The present matter has been referred to the Tribunal for determination by the Supervising Officer of the Ministry of Labour and Industrial Relations pursuant to *section 69A (2)* of the *Workers' Rights Act 2019* (the "*WRA*"). The Terms of Reference of the dispute read as follows:

> *Whether the termination of employment of Disputant is justified or not in the circumstances and whether Disputant should be reinstated or not.*

Both parties were assisted by Counsel. The Disputant was assisted by Mrs P. Ramdhain whereas the Respondent was assisted by Mr N. Boolell, who appeared together with Ms H. Nabeebocus. Both parties have submitted their respective Statement of Case in the matter. At

the hearing of the dispute, the Disputant adduced evidence on his own behalf and Mr S. Thumaiah, Labour and Industrial Relations Officer was called as his witness. On the other hand, Mr M. Rambhorose, Operations Manager and Chairman of the disciplinary committee, Mr E. Dibenson, Line Supervisor and Mr L. Nellatamby, the Respondent's representative and Human Resource Operations Manager were called to adduce evidence on behalf of the Respondent.

The Disputant worked for over 12 years with the Respondent and was employed as a Turner, Industrial Mechanic and Welder. He received two awards at work. On 17 June 2025, he received a letter whereby he was informed that he was suspended as there was an internal investigation being carried out regarding an incident which happened during approved overtime hours on Sunday, 8 June 2025. On 20 June 2025, he was convened to attend a disciplinary committee on 30 June 2025 for unauthorised engagement in personal work (brake disc skimming). By letter dated 4 July 2025, he was informed that the charges against him were found proved and that his employment was terminated. On 7 July 2025, he wrote to management to appeal against the termination of his employment.

The Disputant first went to the Labour Office on 21 June 2025 and was told to come back a few days before the holding of the disciplinary committee. He then called at the Labour Office on 27 June 2025, gave a statement and sought assistance for the upcoming disciplinary hearing. It must be noted that he attended the disciplinary committee on 30 June 2025 unassisted despite having sought assistance from the Labour Office as he was influenced by friends/colleagues not to be accompanied at the disciplinary committee. Following his termination of employment, he called at the Labour Office on 8 July 2025, where he gave a statement asking for reinstatement.

Learned Counsel for the Disputant submitted that the Disputant explained his version and has maintained throughout that he obtained the permission of Mr Etienne Dibenson prior to doing the personal work of Mr Mosun Allee. It has not been disputed that he did the personal work of Mr Mosun Allee, but the Disputant's contention is that Mr Dibenson was aware. As per the Disputant's evidence, it has been confirmed that there was CCTV footage, but this has neither been produced before the disciplinary committee nor before the Tribunal nor communicated to the Labour Officer, who testified on behalf of the Disputant. Although Mr Mosun Allee has not deposed before the Tribunal, he did give a statement to the Labour Officer, whereby he explained how Mr Dibenson was at all times aware of the personal work carried out by the Disputant.

As regards the disciplinary proceedings, it has been submitted that there are certain procedures in terms of fairness and transparency that ought to have been followed. It is a chance for the employee to give his version of events, but it is also a chance for the employee to cross-examine the employer's witnesses, if any. However, no witnesses ever deponed and no evidence whatsoever be it oral or documentary was produced at the disciplinary hearing. It is questionable whether the right of the employee was adhered to. The Report of the Chairperson of the disciplinary committee does not highlight the procedures or the reasoning as to how he came to the conclusion that the charges were proved. When he testified, the Chair stated something other than what he stated in his report. The Chair was also not independent and impartial, given that he was an employee of Metal Packaging Company Ltd, a company that has a business relationship with the Respondent. A fair-minded and informed observer, when considering these facts, would conclude that there was a real possibility of bias in the Chairperson's conduct.

On the issue of Mr Nellatamby's testimony, it was submitted that he became aware of the complaint through a group of employees, but he chose not to disclose the names of these employees as they wished to remain anonymous and this is a failure in the employer's investigation. Both Mr Nellatamby and Mr Rambhorose stated that the Disputant admitted to the charges at the disciplinary committee. However, as they are questioning the independence and impartiality of the Chairperson and that the persons in attendance were employees of the Respondent, it is questionable whether there is any proof, other than the Chairman's report, that the Disputant in fact admitted to the charges at the disciplinary committee.

Regarding the issue that the Disputant was influenced by colleagues in order not to be represented at the disciplinary committee, it was submitted that the Labour Officer testified to this effect. He recorded statements from certain employees on how this happened. Regarding the sanction imposed on Mr Law Kwang, Counsel believes that it was a convenient opportunity for the employer to terminate the Disputant's employment, but she disagrees that it had no other alternative than to terminate the employment. It has been submitted that the dismissal was unjust and unlawful and the Tribunal should set aside the dismissal and order reinstatement or make any other appropriate order.

On the other hand, Learned Counsel for the Respondent has notably submitted that they are aggrieved by the referral made by the Ministry to the Tribunal and that the Tribunal has the opportunity to determine, upon having heard the facts and the evidence, if the Supervising Officer was right to conclude that there was a *bona fide* case for reinstatement. Alluding to *section 70A (3) & (4)* of the *Employment Relations Act* (the "*ERA*"), it was submitted that the

Disputant has to make out his case. Reference was made to the cases of *Boolell v Independent Commission against Corruption* [*2023 SCJ 53*], whereby it was held that averments made in a plaint need to be proved in court by adducing sworn evidence; *Hurnam v Jugnauth* [*2019 SCJ 216*], which is to same effect; as well as *Tostee v Property Partnerships Holdings (Mauritius) Ltd* [*2015 SCJ 41*].

It was also submitted that Counsel for the Disputant has mentioned two crucial pieces of evidence. Firstly, in relation to the CCTV footage, and secondly, in relation to the evidence of Mr Mosun Allee. The Disputant's Statement of Case does not make reference to the CCTV footage and the only reference regarding Mr Mosun Allee is that he was let go and given a retirement package with full benefits. These two pieces of crucial evidence are uncorroborated by the Disputant's Statement of Case.

Regarding the Disputant's evidence before the Tribunal, it was submitted by the Respondent that at no point in time did he deny or said that the reproach made against him was untrue. On the contrary, he admitted it. He said that the did the personal work with the authorisation of another colleague, Mr Mosun Allee. One does not need CCTV evidence to know that you cannot do the personal work of a friend on the site of work. Regarding the use of machinery, there is a risk involved and doing personal work is not allowed. What if something went wrong? There would be an incidence on the employer's liability.

Concerning the Disputant's attendance at the disciplinary committee, it was submitted that it is clearly stated in the letter of charges that the worker has the right to be accompanied and he did seek the assistance of the Ministry of Labour. However, he was not properly advised by his friends, who did not turn up to give evidence. Concerning the question of overtime, it is an unrealistic and far-fetched proposition that this was a convenient way to part ways with him. Regarding the Chairman of the disciplinary committee, the proper test to be applied is the *Porter v Magill* test and the mind of the Chairman was not corrupted by the fact that he works for Metal Packaging. On the issue of reinstatement, the employer has stated that there is no prospect of reinstatement given the gravity of what is at play. There has been a breach of trust as result of the employee's own doing.

The first issue raised by the Disputant concerns his version that he has maintained throughout that he obtained the permission of Mr Dibenson prior to carrying out the personal work of Mr Mosun Allee. It is his contention that Mr Dibenson was aware. It must be noted that

Mr Dibenson was called as a witness by the Respondent before the Tribunal and he denied that he was aware that the Disputant was refreshing the brake disc of Mr Mosun Allee. He notably stated that although he saw the Disputant refreshing a brake disc, he was told by the Disputant that he was doing same for the Mechanic Forklift Team. He was not aware that same belonged to Mr Mosun Allee and never gave instructions to the Disputant or Mr Mosun Allee for this work. He also maintained his version when questioned by Counsel for the Disputant. On the other hand, the Disputant is relying on a statement given by Mr Mosun Allee to the Labour Office, whereby he explained that Mr Dibenson was at all times aware that the Disputant was carrying out personal work. This statement was produced before the Tribunal by Mr Thumaiah, Labour and Industrial Officer who deponed on behalf of the Disputant.

The Tribunal, in considering the evidence on this issue, can only find that the sworn evidence of Mr Dibenson, which has also been subject to cross-examination, carries more weight than a statement given by a person who opted not attend the Tribunal to depose. Although Mr Mosun Allee was duly summoned by the Tribunal to attend the hearing, he was not present and the Disputant did not insist on calling him. Moreover, despite the Disputant's version that Mr Dibenson was at all times aware that he was refreshing the brake disc of Mr Mosun Allee, Mr Dibenson has categorically denied same in his evidence. The Tribunal cannot therefore find that the Disputant had Mr Dibenson's permission to do the personal work of Mr Mosun Allee.

It must also be noted that the Disputant has not denied that he performed the personal work of Mr Mosun Allee in refreshing the brake disc. He recognised that was using the Respondent's machinery to do and did so when he was doing overtime work on a Sunday. Thus, he performed the personal work when he was supposed to be working for his employer. When at work, a worker is supposed to be at the disposal of his employer (*vide Mohabeer v Food and Allied Industries Ltd* (*2014 IND 5*)) and is not supposed to engage in personal work. It should be noted that as per the evidence of Mr Nellatamby, the employees know that they cannot do their own work or friends' work at the factory as daily, weekly sessions carried out with them. The Chair of the disciplinary committee also stated that he confirmed with the Disputant as to whether he is aware of the policy preventing employees doing personal work, to which the latter responded that they are not allowed to do personal work except if they get permission from the employer.

The Disputant has also raised the issue that the CCTV footage was not produced at the disciplinary committee or before the Tribunal. It has not been denied that where the Disputant was working, there were cameras. Mr Nellatamby was questioned on this issue by Counsel for

the Disputant and notably stated that the footage showed the Disputant operating his machine and that he did not agree that the CCTV footage was crucial evidence nor that the company had something to hide by not showing the CCTV footage. He also confirmed that the Disputant was shown the CCTV footage on the phone of one Mr E. Pauvaday, the Respondent's Maintenance Manager. It must be noted that the Disputant did not state when deposing that no CCTV footage was produced at the disciplinary hearing despite having mentioned the presence of cameras in the workshop nor did he ever state he was shown the CCTV footage as was stated by Mr Nellatamby.

The Tribunal notes that despite the fact that the CCTV footage was not made available, it should be noted that the Disputant has not denied that he carried out the personal work of Mr Mosun Allee at the material time, despite contending that Mr Dibenson was aware of same. In any event, as previously noted, Mr Dibenson did state that he did see the Disputant refreshing the brake disc, but was told that he was doing same for the Mechanic Forklift Team. The Tribunal cannot therefore see what new element the CCTV images could have brought nor has this aspect been submitted upon by the Disputant.

Another issue that has been raised is that no witnesses were called before the disciplinary committee and that the Disputant should also have been given the chance to cross-examine the Respondent's witnesses. It should be noted that as per the evidence of the Chair of the committee, Mr Rambhorose it was clearly stated that there were two employer representatives, namely Mr Avanish Nursimulu and Mr Janish Rajnath. The former was invited to give details of the matter following which the Chair asked the Disputant to give his version of events. The Chair agreed that no witnesses were called on behalf to the employer. He also stated that the Disputant admitted to the charges and that once it was proved that the Disputant did the personal work, he did not need to seek further evidence from management. Mr Rambhorose also stated, under cross-examination, that he did inform the Disputant as to whether he wanted to call witnesses although this does not appear in his report. It can also be noted that Mr Nellatamby, when cross-examined, notably stated that they had other people who could be called before the disciplinary committee, but once the Disputant confessed there was no need to go further.

It is trite law that a disciplinary committee is not a substitute for a court of law nor has it got its attributes. The following can be noted from the case of *Planteau De Maroussem v Société Dupou* [*2009 SCJ 287*], which was cited with approval in *Smegh (Ile Maurice) Ltée v Persad* [*2012*] *UKPC 23*:

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.

Likewise, the following can also be noted from *Moortoojakhan v Tropic Knits Ltd* [*2020 SCJ 343*]:

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.*

On the facts of the present case, it has not been disputed that the Disputant did give his version of events before the disciplinary committee. Thus, the Respondent has discharged its obligation in setting up a disciplinary committee to enable the Disputant to put forward his version in relation to the charges laid against him. It can also be noted that as the Disputant had admitted to the charge as per the evidence of the Chair of the committee and Mr Nellatamby, there was no need for the Respondent to call witnesses. The Tribunal cannot therefore find that there has been any unfairness caused to the Disputant by the fact that the Respondent did not call any witnesses before the disciplinary committee.

Counsel for the Disputant also submitted that the report of the Chair is questionable as it does not highlight the procedures or the reasoning as to how he came to the conclusion that the charges were proved. It was also submitted that when he deponed, the Chair stated something other than what was in his report. As has been previously noted, the purpose of a disciplinary committee is to enable the worker to give his version in relation to the charges laid against him and it has been noted that the Disputant did duly give his version before the committee.

It must also be noted that the decision to terminate the worker's employment is that of the employer whatever be the conclusions of the disciplinary committee. In this vein, the following was held in *Planteau De Maroussem* [*supra*]:

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 Tribunal has also noted that this particular issue has not been pleaded in the Disputant's Statement of Case and it would not be appropriate for the Tribunal to ground its determination on same. In this regard, the following may be noted from the case of *Ramjan v Kaudeer* [*1981 MR 411*]:

Be that as it may, once a party has stated the facts on which he relies, these facts are binding and the court cannot ground its judgment on other facts which may come to light in the course of the trial.

It must also be noted that although the Tribunal is not strictly a court of law, it has been equated to a court of law by the Supreme Court in *Sooknah v CWA* [*1998 SCJ 115*]. Moreover, in *Greedharee v Mauritius Port Authority* [*2016 SCJ 111*], it was notably held that the decision of the Tribunal is, for all intents and purposes, a judgment. Thus, the Tribunal cannot see any validity in this particular ground put forward by the Disputant.

The Disputant has also questioned the independence of Mr Rambhorose as the Chair of the disciplinary committee given that he is an employee of Metal Packaging Company Ltd, which is a company that has a business relationship with the Respondent. The fact that the Chairman's employer has a business relationship with the Respondent has not been disputed. But what has to be considered is whether this business relationship affects his independence and impartiality as Chair of the disciplinary committee in the eyes of fair-minded informed observer.

It must at the outset be noted that Mr Rambhorose does not have any direct relationship with the Respondent as it is his employer which has the business relationship with the Respondent. The business relationship between the two companies is not therefore personal to him. In evidence, Mr Rambhorose also stated that he did ask the Disputant if he had any issues with him chairing the committee and there was no objection. He also maintained under cross-examination that he was not biased against the Disputant. It must also be noted that the Disputant in his evidence has not raised any issue regarding the independence and impartiality of the Chair nor did he state that he did not agree to Mr Rambhorose chairing the disciplinary committee.

It would also be apposite to note the following from the case of *Planteau De Maroussem* [*supra*], where the independence of the Chair of the disciplinary committee was questioned being none other than the legal adviser of the respondent in that matter and the brother-in-law of one Mr Poupard, a co-sociétaire of the respondent:

> *There is no doubt that the choice made of the chairman of the disciplinary committee was not the ideal one; he could obviously have found himself in an unenviable position whereby, being the Attorney of the respondent, he could have been called as a witness before the Industrial Court. The propriety of his accepting instructions from the respondent in the case lodged by the appellant before the Industrial Court and on appeal before us is opened to question.*
>
> *Nonetheless, we hasten to say that at the time he sat on the disciplinary committee instructed by the respondent, there was strictly no ethical bar for him to undertake that task on the sole ground that he was the attorney usually retained by the respondent and related to one of its co-societaire. We may here refer to the following pronouncement in Cooraban M.A. v Mauritius Institute of Education [1995 SCJ 271] on the appellant's complaint that the composition of the disciplinary committee set up to enquire into charges leveled against him - whereby the Registrar of the respondent, who was also one of the members who sat on the disciplinary committee, had requested another employee to reduce in writing his complaints against the appellant - had deprived him of a fair hearing:*
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> *"We do not find that the mere fact of Mr. Deeljore requesting Surnam to put his complaint against the applicant in writing disqualified him, as the Registrar of the respondent, to sit on the disciplinary committee, along with other officers, to hear the applicant's case. As it has been said before a disciplinary committee is not a Court of law and it is often difficult to find committee members who are totally unaware of complaints which have to be heard."*
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> *We may also refer to another pronouncement of this Court viz. Govinden v Riche-en Eau Co-Operative Society Ltd [1997 SCJ 265] that "there was no impropriety in the Chairman of the respondent who acted as the representative of the Committee which drafted the charges in also sitting on the Committee to hear the charges when he was the one who sent all the letters to the appellant," with regard to the informal character of a disciplinary committee.*
>
> *We wish also to add, as it was fairly conceded by learned counsel for the appellant, that the composition of the disciplinary committee was not challenged by*

the appellant at the hearing. The argument that the appellant was inops consilii at the hearing can be of no avail to the latter whose choice it was not to be legally assisted.

Having considered the evidence on record as well as relevant case law on the matter, the Tribunal cannot find that the fair-minded informed observer would conclude that there was a real possibility that the Chairman of the disciplinary committee was biased towards the Disputant by reason of him being an employee of Metal Packaging Company Ltd. In any event, it must be borne in mind that a disciplinary committee is not a court of law nor is it conducted with the same formality of a court of law (*vide Moortoojakhan v Tropic Knits Ltd* [*supra*]).

It has also been submitted by the Disputant that there is no proof, other than the Chairman's report, that the Disputant admitted to the charges at the disciplinary committee. On this issue, it has not been disputed that both Mr Rambhorose and Mr Nellatamby stated in evidence that the Disputant admitted to the charges. On the other hand, it must be noted that the Disputant, in evidence, did not state whether he disputed the charges before the disciplinary committee or otherwise. Thus, the only evidence before the Tribunal on this issue is that of Mr Rambhorose and Mr Nellatamby who have also maintained their respective versions under cross-examination. It can also be noted that the Disputant's Statement of Case is silent on this issue.

It was also submitted on behalf of the Disputant that there was a failure in the Respondent's investigation as Mr Nellatamby, in his evidence before the Tribunal, choose not to disclose the names of the employees who made a complaint against the Disputant as they wished to remain anonymous. The Tribunal cannot see how there has been a failure in the investigation by the employees who made the complaint wishing to remain anonymous. It must be noted that the Disputant has not denied that he carried out the personal work of Mr Mosun Allee at the workplace, his contention being that Mr Dibenson was aware of same. Thus, the fact that the aforesaid employees wished to remain anonymous would have no bearing on the matter as the Disputant did acknowledge that he did do the personal work. It can also be noted that when cross-examined, the Disputant notably agreed that it was Mr Dibenson who reported him.

It was also submitted on behalf of the Disputant that the Labour Officer recorded statements from certain employees which showed that the Disputant was influenced by them not to be assisted at the disciplinary committee. It has not been disputed that the Disputant was influenced by colleagues not to be assisted at the disciplinary committee and this has transpired in the enquiry conducted by the Labour Officer, whereby statements were produced from two

employees, namely Mr S. K. Jharry and Mr G. Allengen. Their statements are mainly to the effect that the Disputant will regain his job and that he should go to the disciplinary committee alone.

Although it is clear that the Disputant was influenced by his colleagues to attend the disciplinary committee unassisted, this is a personal choice that he made having been wrongly advised by his colleagues. However, this cannot in any way be imputed on the Respondent who did inform the Disputant, in writing as per the letter of charges dated 20 June 2025, of his right to be accompanied by a representative of his trade union or a legal representative or both, or an officer of the Ministry of Labour and Industrial Relations at the hearing. It should also be noted that the Disputant was well aware of his right to be assisted per his evidence before the Tribunal and even stated that he did go to the Labour Office on 27 June 2025 to seek their assistance for the disciplinary committee but was later told to go alone by his colleagues. The fact that the Disputant went unaccompanied to the disciplinary committee cannot therefore be attributed to the Respondent.

It has also been submitted that it was a convenient time for the Respondent to terminate the Disputant's employment as regards the sanction imposed on him because of the overtime cost cutting policy of the company. Counsel for the Disputant even disagreed that the Respondent had no other alternative than to terminate. *Section 64 (2)(a)(iv)* of the *WRA* notably provides that an employer shall not terminate the worker's agreement unless he cannot in good faith take any other course of action. In this regard, the following can be noted from the Judicial Committee of the Privy Council judgment in *United Docks Ltd v De Speville* [*2019*] *UKPC 28*:

> *24. A question whether the company had a valid reason to dismiss the respondent is obviously different from a question whether it could not in good faith take any other course than to dismiss him. The former asks only whether the misconduct was a ground for dismissing him. The latter asks whether in all the surrounding circumstances the only course reasonably open to the employer was to dismiss him. In other words, was it, as the Board said in para 17 of its judgment in Bissonauth v The Sugar Fund Insurance Bond [2007] UKPC 17, "the only option"?*
> (The underlining is ours.)

It must be noted that Mr Nellatamby, when questioned on this issue by Counsel for the Disputant, agreed that he stated that the company was talking about cost cutting in overtime and that in the private sector, cost cutting is a must. He however denied that it was a convenient opportunity for the Respondent to terminate the Disputant's employment and save costs. He

also denied that the Respondent could have taken a lesser sanction than to terminate the Disputant's employment. It can also be noted that the representative notably stated that by giving a warning, it would be difficult to prevent other workers from doing their own personal work on site.

On the other hand, it must be noted that the Disputant has not stated in evidence that he has lost his job because of his overtime hours. He only stated that his rights were not respected and that he believed that he did not have to lose his job. It must also be noted that Counsel for the Disputant has not substantiated her submission as to why she disagreed that there were other alternatives than to terminate the Disputant's employment. The Tribunal cannot therefore find, on the basis of the evidence presented before it and submissions offered, that it was a convenient time for the Respondent to terminate the Disputant's employment for the reasons put forward on behalf of the Disputant in submissions.

In the circumstances, having considered the various grounds raised before it as well as the evidence on record, the Tribunal cannot find that the Disputant's claim for reinstatement is justified. It must be noted that as per the recent case of *Badal v Employment Relations Tribunal* [*2025 SCJ 239*], it was notably held that the Tribunal should not have adopted an over restricted approach of only considering whether the termination of employment was justified and that the Tribunal was bound to consider whether the claim for reinstatement was justified in light of the relevant circumstances of the case. This is moreover consistent with what has been provided under *section 70A (3) & (4)* of the *ERA*, where the duty is on the Tribunal to find whether the claim for reinstatement is justified.

Having found that the Disputant's claim for reinstatement is not justified, the Tribunal cannot order that the Disputant should be reinstated.

The matter is therefore set aside.

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(SD) Shameer Janhangeer
(Vice-President)

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(SD) Greetanand Beelatoo
(Member)

.....
(SD) Ghianeswar Gokhool
(Member)

Date: 24th October 2025