

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CA33/2017**

**Appeal from Employment Tribunal Decision 32/2017**

**[2018] SCSC 559**

---

**LA DIGUE ISLAND LODGE**

Appellant

versus

**JEAN-BAPTISTE ROSE**

Respondent

---

Heard: 4 April 2018

Counsel: Mr. France Bonte Attorney at Law for the Appellant

Mr. Daniel Belle Attorney at Law for the Respondent

Delivered: 14 June 2018

---

**JUDGMENT**

---

**Burhan J**

[1] The Respondent Jean-Baptiste Rose was employed as a night auditor at La Digue Island Lodge, the Appellant in this case. The Appellant's contention is that the Respondent had on the 31<sup>st</sup> December 2016, tendered his resignation in writing from the post of night auditor and on the 1<sup>st</sup> of January 2017 failed to turn up for work. The Respondent had failed to turn up for work on the 2<sup>nd</sup> and 3<sup>rd</sup> of January 2017 as well. The absence of the Respondent for three consecutive days resulted in him being dismissed from work on the 4 of January 2017. This is borne out by the evidence of Mr. Luc Adrienne who was the supervisor of the Respondent at his place of work and in the submissions of the Appellant

it is stated that such termination was provided for in terms of Part II (a) of the Employment Act.

[2] The Respondent being aggrieved by the said decision of terminating his services, filed a grievance application before the Employment Tribunal. After hearing evidence from both parties the Employment Tribunal held that:

- a) the Applicant (referred to in this instant appeal as the Respondent) had been unfairly dismissed from the post of night auditor by the Appellant.
- b) the Applicant was therefore entitled to the following terminal employment benefits namely:
  - a. 1 month salary in lieu of notice.
  - b. Compensation for length of service.
  - c. 13 month salary and
  - d. 10.50 days annual leave.

[3] Being aggrieved by the decision of the Employment Tribunal, the Appellant has filed an appeal before this Court on the following grounds.

*(i) the Tribunal erred in not attending to the sworn evidence of the Applicant.*

*(ii) the finding of the Tribunal is against the weight of the evidence and moved for the judgment of the Employment Tribunal to be set aside.*

[4] It is the contention of the Appellant that the facts as borne out by the evidence led before the Tribunal, indicate that the Respondent admits he had written a letter of resignation. He further admits he had not gone to work on the 1<sup>st</sup> of January 2017 and wrote a letter to apologise for it. He had not tendered a medical certificate for his absence. The Respondent had not come to work on the 2<sup>nd</sup> and 3<sup>rd</sup> of January 2017. It is the contention of the Appellant that the Respondent was told not to come back to work because he had dismissed himself, by his continuous absence from work for three days.

[5] In his evidence before the Tribunal, the Respondent had explained himself stating he had worked on the 31<sup>st</sup> of December 2016 from 11p.m. until 8 a.m. He had fallen ill on the 1<sup>st</sup> of January 2017 and could not report to work. On the 2<sup>nd</sup> of January he had gone to explain his absence to Mr. Gregoire Payet and met him in the presence of his son. He had apologised and tendered his excuse letter to Mr Payet and had been told by Mr. Payet to leave his office and that they will communicate with him. Two days later on the 4<sup>th</sup> of January 2017, Mr. Luc Adrienne his supervisor had requested him to hand over the keys to his room and given him the fare to depart to Mahe. Mr. Luc Adrienne in his evidence before the Tribunal admits that he had done so, as they had decided to dismiss the Respondent as he was absent from work for a consecutive period of three days.

[6] On perusal of the Judgment of the Employment Tribunal paragraph 11 of the Judgment reads as follows:

*“We carefully observed the applicant’s demeanour when he testified at the hearing in this case. He was a genuine witness worthy of belief. He came on the 2<sup>nd</sup> January 2017 to apologize for his absent on the 1<sup>st</sup> January 2017. He genuinely believed, that when he was told by Mr. Payet that, “they communicate to him” Mr. Payet meant that he should not come to work until he receives communication from the respondent. The applicant had no intention to absenting himself from work on the 2<sup>nd</sup> and 3<sup>rd</sup> January 2017. If that was his intention, he would not have turned up with a letter of apology for his absence from work on the 1<sup>st</sup> January 2017.”*

[7] It is the view of this court that the Tribunal was in a better position to assess the demeanour and the evidence of the Respondent at the time he gave evidence. Therefore this court, will not seek to interfere with the findings of the Tribunal in accepting the evidence of the Respondent as on considering the evidence of the Respondent, it is not apparent to this Appellate Court that the his evidence in this instant case is so improbable that no reasonable Tribunal would believe it ***Akbar v R (SCA (Criminal Appeal) 5/1998)***.

[8] This court further observes that the sworn evidence of the Respondent that he met Mr. Gregoire Payet on the 2<sup>nd</sup> of January 2017 to hand over his written apology and his evidence that Mr. Payet asked him to leave his office that they will communicate with

him, has not been denied or challenged by Mr. Gregoire Payet himself as Mr. Payet has not given evidence before the Tribunal denying such a meeting took place.

[9] I also note that the evidence of witness called by the Appellant, Luc Adrienne the Respondent's supervisor, does not refer to the meeting of 2<sup>nd</sup> January 2017 between the Respondent and Mr. Payet. The supervisor Luc Adrienne who testified before the Tribunal was not present and does not claim to be present at the time the Respondent met Mr. Gregoire Payet and his son on the 2<sup>nd</sup> of January 2017, to hand over his written apology for not working on the 1<sup>st</sup> of January 2017.

[10] Having considered the aforementioned factors, I see no reason to interfere with the findings of fact as the findings are not perverse or arbitrary in nature but based on analysed and well considered grounds. Therefore this Court will proceed to uphold the employment benefits including compensation ordered by the Employment Tribunal totalling a sum of SR 24,464.05.

[11] For all the aforementioned reasons, I reject all the grounds of appeal and proceed to dismiss the appeal with costs.

Signed, dated and delivered at Ile du Port on 14 June 2018

M Burhan  
**Judge of the Supreme Court**