SUPREME COURT OF SEYCHELLES

<u>Reportable</u>
[2019] SCSC 206
CA 22/2017
(Appeal from ET22/2015)

MEDICIE PHILOE **Appellant**
(rep. by Alexia Amesbury)

versus

SAINTE ANNE RESORT **Respondent**
(rep. by Charles Lucas)

Neutral Citation:	*Medicie Philoe v Sainte Anne Resort* ([CA22/17] [2019] SCSC 206 (1 February 2019)
Before:	Dodin J.
Summary:	Whether termination of Appellant's employment justified – Section 53(2) of Employment Act.
Heard:	7 December 2018
Delivered:	1 February 2019

ORDER

On appeal from the Employment Tribunal

Termination of the Appellant's employment was not justified. Respondent failed to comply with procedures set out in section 53(2) of the Employment Act. Appellant is entitled to all terminal benefits.

JUDGMENT

DODIN J.

[1] The Appellant being dissatisfied with the judgment of the Employment Tribunal which ruled that the termination of her employment by the Respondent was justified appeals against the said judgment raising a single ground of appeal:

"The Employment Tribunal erred by holding that the Appellant's employment was lawfully terminated despite the fact of its own admission that the Respondent failed to comply with Section 53(2) of the Employment Act which is mandatory by to specify the nature of the offence committed by the Appellant."

[2] Learned Counsel for the Respondent in response submitted that Section 53 is there for one purpose, to ensure that the aggrieved knows what are the allegations consisting the offence that she committed and this was put to her by the suspension letter, by the Police, by an interview which was never concluded, by a search, by a meeting. There was nothing more that the employer could have done to satisfy Section 53(2), 53(3) and 53(4). The employer decided to terminate her employment after having taken such measures, such investigations and she was informed in writing. The Appellant had knowledge of what were the allegations that had been levelled against her when she received the suspension letter. Learned counsel submitted further that if the Court finds that there were any lack of procedural steps in the process, such lapse was not fatal and urged the Court to dismiss the appeal for being frivolous.

[3] The relevant provisions of Section 53 of the Employment Act states:

"53. (1) No disciplinary measure shall be taken against a worker for a disciplinary offence unless there has been an investigation of the alleged offence or where the act or omission constituting the offence is self-evident, unless the worker is given the opportunity of explaining the act or omission.

(2) Where the disciplinary offence relates to a serious disciplinary offence, the worker shall be informed in writing with copy to the Union, if any, of the nature of the offence as soon as possible after it is alleged to have been committed and of the suspension of the worker, where the employer deems suspension to be necessary as a precautionary measure or for investigative purposes.

(3) The employer shall ensure that the investigation pursuant to subsection (1), even where it consists in no more than requiring an explanation for a self-evident act or omission, is conducted fairly and that the worker has, if the worker so wishes, the assistance of a colleague or a representative of the Union, if any, and of such witnesses as the worker may wish to call.

(4) Where a disciplinary offence is established, the employer shall decide on the disciplinary measure to be taken and, where such measure is termination without notice, shall inform the worker of the same in writing with copy to the Union, if any."

[4] The Appellant in this case had her employment suspended pending investigations into an incident which occurred on the 4th December, 2014 for which she was a suspect. The records showed that the Appellant had been requested to give a statement as required by Section 53(1). In fact all correspondences from the Respondent to the Appellant were in writing and the Appellant eventually gave a written statement through her lawyer dated 15th January, 2015.

[5] The Employment Tribunal in its judgment determined that the suspension of the Appellant from duty for the purpose of investigations was justified and in accordance with section 56 of the Employment Act. The Tribunal nevertheless stated:

> *"However the Tribunal notes that the letter of suspension of 7th January 2014 [A2] merely referred to an incident which took place on 4th October 2014 without specifying the nature of the offence which the Applicant was alleged to have committed at the time. To this extent the Respondent failed to comply with Section 53(2) of the Act which is a compulsory provision. However, having considered the whole of the evidence and the demeanour of the Applicant before the Tribunal in recollecting whether there was an incident that took place on the 4th December 2014, the Tribunal is not convinced that the Applicant did not know which incident was being referred to."*

[6] The letter of 7th January, 2015 is worded as follows:

> *"**Re: Suspension from duty***
>
> *This is to inform you that you are suspended from duty without pay with immediate effect until further notice pending investigations into an incident of 4th December, 2014.*
>
> *You would be contacted in due time for the outcome."*

[7] Since Section 53(2) of the Employment Act states that [w]*here the disciplinary offence relates to a serious disciplinary offence, the worker shall be informed in writing with copy to the Union, if any, of the nature of the offence as soon as possible after it is*

alleged to have been committed and of the suspension of the worker, where the employer deems suspension to be necessary as a precautionary measure or for investigative purposes."

The question is whether the content of the letter meets the requirement of Section 53(2) in stating the nature of the offence. An objective and solitary reading of the letter of suspension does not disclose any offence levelled against the Appellant. It only refers to an incident of 4th December, 2014. The Employment Tribunal obviously assumed that the Appellant knew or ought to have known what disciplinary offence was being levelled against her arising out of the incident of 4th December 2014. Section 53(2) does not allow for such assumption. Since Section 53(2) is clear that the employee *shall be informed in writing …, of the nature of the offence* the Tribunal cannot get around the employer's obligation by determining from the demeanour of the Appellant or from other surrounding circumstances as to whether the Appellant knew or ought to have been aware of the offence that was being levelled against her.

[8] I therefore find that the Employment Tribunal erred in failing to apply the mandatory provision of Section 53(2) of the Employment Act and that failing to do so was fatal since the question of whether the termination of the employment of the Appellant was justified depended greatly on the following of proper procedures by the employer.

[9] I therefore find that the termination of the Appellant's employment was not justified by reason of the Respondent not having abide by set legal procedures set out in Section 53(2) of the Employment Act and that the Appellant is therefore entitled to all terminal benefits.

[10] I therefore allow the appeal.

[11] I award costs to the Appellant.

Signed, dated and delivered at Ile du Port on 1 February 2019.

____

Dodin J.