

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 205
CA 19/2018
(Appeal from Ministry of
Employment)

HERICK TREVOR ANTOINE
(rep. by Nichol Gabriel)

Appellant

versus

**MINISTER OF EMPLOYMENT
IMMIGRATION AND CIVIL STATUS**
(rep. by Jonji John)

1st Respondent

PUBLIC UTILITIES CORPORATION
(rep. by Rajasundaram)

2nd Respondent

Neutral Citation: *Antoine v Minister of Employment Immigration and Civil Status & Anor* (CA 19/2018) [2019] SCSC 205 (6 March 2019).

Before: Dodin, Judge

Summary: Appeal against the decision of the Minister of Employment, Immigration and Civil Status that the grievance lodged by the Appellant was out of time – Over 4 months delay - unreasonable delay. Whether filing of grievance amounts to registration requiring hearing on the merits.

Heard: 30 January 2019

Delivered: 7 March 2019

ORDER

On appeal from decision of the Minister of Employment, Immigration and Civil Status for upholding the Competent Officer’s decision that the Appellant’s grievance was registered out of time. Filing of grievance does not amount to a valid registration of grievance. The 1st Respondent was only required after filing to consider the admissibility of the grievance. The decision of the 1st Respondent was not wrong in law or fact nor wrong in principle. The appeal is dismissed in its entirety. Employment Act Sections 61 and 65, Schedule 1 Part II.

JUDGMENT

DODIN J.

- [1] The Appellant, Herick Trevor Antoine was employed by the 2nd Respondent, Public Utilities Corporation as a technician grade 5 in August 2011 and later promoted to technician grade 4 in February 2016. On the 16th February 2017 he was suspended by the 2nd Respondent. By letter dated 6th March 2017, which the Appellant maintained he received on the 27th March, 2017, the Appellant's employment was terminated with effect from the 17th February, 2017.
- [2] On the 7th August 2017, the Appellant filed a grievance against the 2nd Respondent, paying the required fees. On the 10th August 2017, the Appellant was requested by the competent Officer to furnish a written explanation for the delay in filing his grievance. It is unclear whether the Appellant did give the explanation as required. On the 3rd January 2018, the Appellant was informed by letter from the Competent Officer that his grievance has not been accepted.
- [3] The Appellant appealed the decision of the Competent Officer to the Minister of Employment, Immigration and Civil Status, the 1st Respondent. By letter dated 21st March 2018, the Minister ruled in favour of the Competent Officer, maintaining that filing the grievance on the 7th August 2017 was unreasonable delay and no reasonable explanation was given for the delay which could justify the filing of the grievance outside the prescribed period of 14 days of the Appellant becoming aware of the grievance.
- [4] The Appellant now appeals against the decision of the Minister on the following grounds:
- i. The decision of the 1st Respondent is wrong in law and fact as it is against the evidence provided by the Appellant to both the 1st and the 2nd Respondents.
 - ii. The decision of the 1st Respondent is wrong in law as it did not address fully the arguments raised by the Appellant in his application to the Competent Officer.

iii. In all circumstances the decision of the 1st Respondent is wrong in law and in principle and did not address the real issues before the Competent Officer.

[5] Learned counsel for the Appellant submitted that the Appellant had filed his grievance, paid the necessary fee for which he received a receipt, which is evidence that the grievance had been accepted and expected a date for hearing. Learned counsel submitted that the Appellant had been going back and forth to the 2nd Respondent during the time before he filed his grievance and that the procedure followed by the Competent Officer was contrary to Section 61(1A to 1E) of the Employment (Amendment) Act 2008.

[6] Learned counsel for the 1st Respondent submitted that the decision of the Competent officer was correct and in accordance with the provisions of Part II Schedule 1 of the Employment Act requiring that a grievance be lodged within 14 days. Learned counsel submitted that the Competent Officer has discretion to register a grievance out of time provided reasonable explanation was given for the delay but in this case the Appellant gave no reason for the delay. Learned counsel submitted that the 1st Respondent carefully considered the Appellant's appeal and sought the advice of the Employment Advisory Board and concluded that there was unreasonable delay on the part of the Appellant to file his grievance. Hence the decision of the 1st Respondent was correct and should be upheld.

[7] Section 61(1) of the Employment Act states:

61. (1) A worker-

(a) whose contract of employment is terminated-

(i) pursuant to section 57(2)(a) or (b);

(ii) for a serious disciplinary offence pursuant to section 57(4);

(c) who terminates his contract under section 60(2)(a) or (b),

may initiate the grievance procedure.”

[8] Section 65 of the Act also makes provisions for appeal to the Minister.

65. (1) *Subject to subsection (2), wherever an employer or worker is aggrieved by an authority, approval, decision or determination of a competent officer, the employer or the employers' organization on behalf of the employer, the worker or the Union on behalf of the worker, may appeal against it to the Minister.*

(2) *An appeal under subsection (1), other than an appeal against a determination of the competent officer consequent upon initiation of the negotiation or grievance procedure, shall be lodged with the Chief Executive within 14 days or such other period as may be prescribed after the date on which the authority, approval, decision or determination was given.*

(3) *Where the competent officer who gave the original authority, approval, decision or determination is the Minister, the right of appeal under subsection (1) gives place to a right of review by the Minister.*

(4) *Upon an appeal or review under this section, the Minister may consult with the Employment Advisory Board before giving the ruling on such appeal or review.*

[9] The other relevant provisions are found in Schedule 1, Part II which regulates the timeframe and the registration and hearing process in respect of grievances.

PART II

GRIEVANCE PROCEDURE (SS. 53(5), 61, 64)

1....

2. (1) *Wherever an employer or worker is empowered by or under this Act to initiate the grievance procedure, the employer or worker may, within 14 days of becoming aware of the event, act or matter giving rise to the grievance, register a grievance with the competent officer furnishing the officer with all the information the officer may require.*

(2)....

(3) *An employer or worker who fails to register a grievance within the time specified under subparagraph (1) loses the right to do so, but the competent officer, if satisfied that the failure to do so is not attributable to the fault of the employer or worker as the case may be or if the officer has himself suspended registration under sub-paragraph (2), shall allow registration out of time.*

[10] All three grounds of appeal contend that the 1st Respondent's decision was wrong in law, on facts and in principle and can be taken together. The Appellant did not specify section of law the Minister is alleged to have breached but made one reference to section 61 (1A to E) of the Employment Act as amended in 2008. The provisions referred to in Section 61 state:

(1A) Where a worker or employer has registered a grievance, the competent officer shall endeavour to bring a settlement of the grievance by mediation.

(1B) A competent officer in mediating a settlement, shall draw up a mediation agreement which shall be signed by the parties and be presented to the Tribunal for endorsement as a form of judgment by consent.

(1C) If a party breaches the mediation agreement or any part thereof, the agreement shall be enforced by the Tribunal.

(1D) If the competent officer is unsuccessful in the mediation he shall issue a certificate to the parties as evidence that mediation steps have been undergone by such parties.

(1E) A party to a grievance shall bring the matter before the Tribunal within 30 days if no agreement has been reached at mediation.

Section 61(1A to 1E) clearly applies where a grievance has been validly and properly registered. A grievance would be properly registered if it is registered within the prescribed timeframe or with valid reason for late registration as provided for by Section 61(1) read with Schedule 1 Part II of the Employment Act. This provision obliges the Competent Officer to scrutinize every grievance filed to ensure that it meets the requirement of the law before it is registered and activated upon as per Section 61(1A to 1E). Learned counsel for the Appellant is therefore not correct to equate the filing of the grievance and the payment of the required fee to the valid registration of the grievance.

[11] From the above, it follows that since the Competent Officer's duty at the filing of the grievance was to ensure that the grievance deposited met all the legal requirements, namely, that the correct forms were completed, that the correct fee has been paid and that the grievance procedure is being initiated within the prescribed period and if not that it meets the requirements of paragraph 3 of Part II of Schedule 1 for it to be allowed to be registered out of time. In this case the Appellant was requested to give reasons for the late filing of the grievance and there is no record that he did so. At this stage the Competent Officer was only required to determine whether the grievance could properly be registered.

[12] Going to the Appellant's grievance itself, it is not in dispute that the Appellant was suspended on the 16th February 2017. On or around the 27th March, 2017, by letter dated 6th March 2017, the Appellant's employment was terminated with effect from the 17th

February, 2017. Hence the Appellant was in doubt that he had a grievance by end of March 2017. On the 8th August 2017, the Appellant filed a grievance against the 2nd Respondent. On the 10th August 2017, the Appellant was requested by the competent Officer to furnish a written explanation for the delay in filing his grievance. There is no record that he did so. On the 3rd January 2018, the Appellant was informed of the Competent Officer's decision that his grievance has not been accepted as it was filed out of time.

- [13] The Appellant appealed the decision of the Competent Officer to the 1st Respondent. By letter dated 21st March 2018, the 1st Respondent ruled that filing the grievance on the 7th August 2017 was an unreasonable delay and no reasonable explanation was given for the delay which could justify the filing of the grievance outside the prescribed period of 14 days of the Appellant becoming aware of the grievance.
- [14] Considering the period of over 4 months it took the Appellant to file the grievance and considering that no germane reason has been advanced by the Appellant for the delay, I find that both the Competent Officer and the 1st Respondent made decisions well within the bounds of the provisions of the Employment Act based on the evidence at hand.
- [15] I therefore find that the decision of the 1st Respondent was not wrong in law or fact nor wrong in principle. Further I find that at this stage the 1st Respondent was only required to consider the admissibility of the grievance particularly, whether it met the requirements of Schedule 1 Part II in respect of it having been timely made. There was no necessity to consider the merits of the grievance.
- [16] I therefore find no merit in all three grounds of appeal and I dismiss the appeal in its entirety.
- [17] I make no order for cost.

Signed, dated and delivered at Ile du Port on 6th day of March 2019.

Dodin J