

Det 29 of 2017

An Appellant who refuses to obey instructions given by his supervisor must prove that in fact he did not do so and the Supervisor had an ulterior motive to report him. The onus of proof rest with the Appellant (Section 7(3) of the PBAT Act 2008).

The Appellant is challenging the decision of the Respondent to inflict a warning upon him under Regulation 42(3)(a) of the Public Service Commission Regulations.

Appellant's case

The Appellant, a MAMR/Senior MAMR, worked in the SECP Section of the GOPI Department.

The Appellant was posted on the ... machine but on ... that machine broke down and was under repair. The Appellant asked, in the meantime, that he be put on the TERO Machine in the DL Unit as there were usually three officers on the TERO machine and two were absent on that day. The Supervisor, however, decided that he should be posted to work on the GATO machine. He averred that he never refused to go and work on the GATO machine. The reason was that there was already someone who was working on the GATO machine and there was no need for him to be there. In fact he worked on the GATO in the morning and during the lunch time *"mone faire ene deal avec mo supervisor lerala li finne laisse moi alle dans TERO a condition qui mo pas alle aucun place parceque souvent nous gagne l'occasion shifter alle lor les autres machines tout sala"*.

The Appellant stated at the hearing that he had gone to the TERO machine but following protests from other staff members, the Supervisor insisted that he should go and work on the GATO machine. He further averred that he had protested to management in the past that he was not getting the chance to work on the TERO machine and there was a decision that there should be rotation so that all staff members be given the chance to work on the different machines. The Appellant said

that an officer who was recently recruited went straight to the TERO machine. Appellant had added that some officers with less years of service than him also worked on the TERO machine.

The Appellant believed that the Supervisor reported him to the Responsible Officer (RO) which led to the disciplinary action because he refused to lend money to the Supervisor as the latter was known not to be good at refunding money advanced to him.

The Appellant also stated in his Statement of Case that he had some problems with the Acting Responsible Officer (ARO). However, this was not in the Appellant's Grounds of Appeal and could not be canvassed at the Hearing.

The Appellant accused the Supervisor of acting with partiality against him and he was blamed/reported for things happening at the GOPI Department even if he did not participate in any actions against Management.

He apologized for what happened on ... but he insisted that he never refused to work on that day as he had worked on many types of machines for more than nine consecutive years. A colleague of the Appellant called by Appellant as witness confirmed that he saw the Appellant and the Supervisor talking on two occasions in the morning but he was not privy to the subject of their conversation.

Respondent's Case

The Respondent averred that on ..., the Appellant was ordered several times by the Supervisor to work on the GATO machine which he knew how to operate but he refused to heed the order and instead stated that he would work on the TERO Machine in the DL Unit. Since this was causing a disruption in the smooth running of the ... Section, the Supervisor had no alternative than to report the incident on the same day to Management. The Appellant was required according to his Schedule of Duties to work on various machines. But it was not yet his turn to work on the TERO machine.

On that day the Appellant was asked several times to work on the GATO machine but he blatantly refused to do so. The Appellant was asked in a letter dated ...

to give his written explanations on the matter and given ... days to do so. If he did not provide his written explanations by that date it would be assumed that he had no explanations and appropriate action would be taken against him. The Appellant gave his reply on....

On..., the ARO informed the Appellant that his explanations had been carefully examined but were not found satisfactory. A warning was administered to him on the ground of unsatisfactory conduct, in accordance with PSC regulation 42(3)(a). Respondent felt that the warning administered was *"fully justified in view of his uncooperative attitude at work and in order to act as a deterrent and change his behaviour"*.

The Respondent did not accept that the Appellant could raise the issues concerning the ARO which was not in his grounds of Appeal.

The Respondent agreed that there had been a request for rotation of staff so that they could work on all types of machines and instructions were given to Supervisors that all employees be given the chance to work on these machines. However, the Appellant and some other officers were told that they were not well-versed with the different types of machines and were still on training. The Appellant and the said officers were informed that an officer required a two-year period of training to be well accustomed and well-versed to operate the different machines. It was not the turn of the Appellant to work on the TERO machine.

The Respondent averred that the appeal had no merit and should be set aside.

The Tribunal called the Supervisor who deposed before the Tribunal and stated categorically that he did not act under pressure when he asked the Appellant to move to the GATO machine. In fact he said that he spoke to the Appellant at around 9.00 a.m. on that day, then at around 11.00 just before lunch and again after lunch and the Appellant blatantly refused to obey his orders and even invited the Supervisor to report him to management. The Appellant was given the chance to cross-examine his Supervisor but the latter maintained his version. Further Appellant never questioned him

on the loan issue or of partiality with regard to him though he was asked several times if he had more questions.

The Supervisor was adamant that there were two officers working on the TERO machine and not one as the Appellant insisted. The Supervisor also averred that the Appellant was not working on the TERO but was moving around and seen near different machines.

Determination

The Tribunal has to address two questions concerning this appeal:

- (1) Whether the Appellant refused to obey instructions given to him by his Supervisor to work on the GATO machine?
- (2) Whether the Supervisor decided to report him because of ulterior motives?

On the first count it is agreed that on the..., the ... machine on which Appellant normally worked was not in order and was awaiting repair. As the Appellant had to wait for the technician to effect the repair works, the Supervisor asked the Appellant to go and work on the GATO machine. From there, the Tribunal had the version of the Appellant that he never refused to do that work but he was already on the TERO machine. He said that there was already somebody working on the GATO but only one person was present for the TERO machine when normally three persons should have been there. The Appellant averred that the decision to send him on GATO by the Supervisor came after the latter got complaints from other staff members about the presence of the Appellant on the TERO machine. The Respondent on its part averred that the Appellant blatantly refused to obey orders and this was disrupting work at the Department. The Supervisor had no alternative but to initiate action against the Appellant. The Respondent stated that it sought explanations from the Supervisor regarding the alleged lending of money issue between the Appellant and the Supervisor. The Respondent said that the Supervisor denied that there was any problem.

This brings us to count (2) as to the averment that the Supervisor was acting in an unfair manner towards him, mainly because of the refusal of the Appellant to lend

him money but this was never proved by Appellant on whom rests the onus of proof. It seems that there may have been some problem in the posting of officers on certain machines, as explained by the Appellant. However, the responsibility for rotation of officers on the different machines rests with the Supervisor and the exigencies of the Department. The Supervisor struck the Tribunal as being a responsible officer and there was no reason to doubt his word.

All this said, it is clear that the Appellant had not followed the instructions of his Supervisor. He kept maintaining what should be done instead of what happened.

The warning administered to the Appellant is reasonable and Respondent acted in accordance with powers vested upon it by the Constitution and the PSC Regulations.

The appeal is set aside.