

A Public Body may declare vacant the post of an officer who is absent from duty for having left the country to work abroad despite not having received any approval for leave without pay (PSC Regulation 43).

The Appellant challenged the decision of Respondent to declare his post vacant. The decision was initially communicated to Appellant in a letter dated 1 July 2008. Since the Tribunal became operational only in June 2009, the jurisdiction of the Tribunal would have been ousted. However, the Appellant had asked Respondent to reconsider its decision and in a letter of 26 February 2010, Respondent informed the Appellant that the decision could not be changed. The decision then became final and the jurisdiction of the Tribunal was restored as the appeal was submitted within the 21 days mandatory delay.

According to the Appellant, PSC Regulation 43 provides that *“A public officer who is absent from duty or who fails to return to duty on expiry of leave granted is liable to be treated as having vacated his office or to be summarily dismissed, and such absence from duty shall be reported by the responsible officer to the Commission which may declare the office of the public officer to be vacant or summarily dismiss the officer”*. He averred that on 31 January 2007, he attended duty and made an application for leave without pay for the purpose of employment in a foreign country. He received no reply in respect

of the application. He averred that in the letter notifying him, it was said that: *“According to records available, it has been noted that you never communicated your overseas address and consequently your correspondences have been addressed to you at your residential address in Mauritius”*. The Appellant contended that, except for the letter notifying him, he received no correspondence at all from any quarters regarding his employment. He further contended that any presumption of mail received by him would be unwarranted, given the prescribed recourse to registered mail under Regulation 47 of the PSC Regulations. The Appellant stated that it could be reasonably assumed that the Ministry had no proof of any correspondence being sent to the Appellant. The Appellant further stated that he was never informed about the developments that led to his post being declared vacant. The decision of the Respondent to declare his post vacant was in disregard of basic procedural rules.

The Respondent averred that the Appellant was informed by the Responsible Officer of the Ministry that his request to work overseas had not been acceded to, in view of the exigencies of the service and the acute shortage of staff in the unit he worked. He also explained that the Responsible Officer (RO) wrote to the Appellant and informed him that he was not attending duty since 15 October 2007 and, according to Regulation 43 of the

PSC Regulations, disciplinary action would be initiated to declare his post vacant if he did not resume duty. The same request was made to him in three subsequent letters. The Responsible Officer wrote to the Respondent and recommended that the post of Appellant be declared vacant. Following the approval of the recommendation, the Responsible Officer wrote to the Appellant to declare his post vacant.

The Respondent averred that the Appellant did not take heed of all the letters written to him and, in defiance of the authority of his employer, stayed away from duty. He never cared to contact his Ministry to enquire about the fate of his request for leave, knowing full well that he had not got any approval to go overseas on leave in the first place. The Appellant was given all the opportunities to resume duty and he did not do so. He had flouted the PSC Regulations and the appeal ought to be set aside.

The Tribunal had found that the Respondent had acted responsibly and had not faulted in taking this crucial decision. Respondent gave all the chances to Appellant to resume duty in spite of his complete defiance of Respondent's stand not to approve his application for leave to work overseas. The officer did not convince the Tribunal that he was not aware that the act of not attending duty on time was liable to disciplinary action against him. The Tribunal found, on a balance of probabilities, that the averments of the Appellant that he was

not aware of the letters sent to him were questionable. The Tribunal determined that the Appellant had knowingly committed a serious offence as he defied the authority of the employer and the declaration of his post vacant was the consequence of this act. The Tribunal found that the Respondent had not faulted in its decision and it had respected the relevant procedures. The appeal was therefore dismissed.