

An appellant who has been given many opportunities to explain his continuous absence from work cannot merely base his appeal on humanitarian issues. The Tribunal is not empowered to deal with such issues which should have been canvassed before a Disciplinary Committee.

The Appellant, a REC at the Municipal Council of ..., is appealing against the decision of the Respondent to declare his post vacant.

Appellant's Case

The Appellant averred that his dismissal was unfair. His grounds of appeal were that:

“Am at present without job and can't sustain my family welfare as I am the only breadwinner with 2 (two) children under 18 years on top of that I have a loan to repay”.

The Appellant claimed that ever since he was employed as REC at the Council he had *“been punctual and always deliver the goods at the satisfaction of my supervisor. I neither had any warning given for gross misconduct nor for being absent from work carelessly”.*

He stated that *“To my surprise when I was recently sick and absent from duty upon permission due to a spinal cord problem (Medical Record as proof) caused by accident 3 (three) years ago, I was sent a letter notifying that I was dismissed from work abruptly without any warning. I was not given the opportunity to sit in a disciplinary committee to explain the reason of my absence”.* He was dismissed without receiving *“any severance allowance and was not paid any accumulated leaves”.* He was surprised that the Council had been so fast and, in a short span of time had reported him to the Respondent and his post was declared vacant.

The Appellant did not submit a Statement of Case. The Appellant requested the Tribunal to look into his case as he was suffering tremendously, being unemployed.

On cross examination, the Appellant conceded that he had been on unauthorised leave for a number of occasions and had not given his medical certificate on time. He averred that he had backache and serious personal problems on which he did not want to expatiate before the Tribunal. After having pretended that he was illiterate and did not understand the Statement of Defence of the Respondent, he also agreed that in the past he had been sanctioned with regard to his absence. He agreed that the list concerning his record of leave which was produced by Respondent was correct.

He was very confusing regarding a Disciplinary Committee which he did not attend. Finally, he agreed that the Local Authority had the right to declare his post vacant.

Respondent's Case

The Respondent in its Statement of Defence averred as follows:

- (a) the post of REC held by Appellant was declared vacant in accordance with regulation 43 of the LGSC Regulations 1984 with effect from ... for being absent from duty without authorization;*
- (b) Appellant joined the Local Government Service, on... , as REC and he reckons a record of continuous unauthorized absences;(sic)*
- (c) On..., Appellant was informed that his attendance would be closely monitored for a period of 2 months and in case of no improvement, disciplinary proceedings under regulation 39 of the LGSC Regulations, 1984 would be initiated against him;*
- (d) On..., Appellant was requested to appear before a disciplinary committee following his numerous absences without authorisation but, he did not attend the said committee as he was absent from work without authorisation from.... He was thereafter requested to submit his explanations, in writing, subsequent to which he was administered a warning under regulation 42(2) of the Local Government Service Commission Regulations, 1984;*

- (e) *On..., Appellant was given a letter in view of his frequent absences on sick leave and on..., the Responsible Officer submitted his recommendation to the Commission to have Appellant examined by a Medical Board to ascertain his fitness at work;*
- (f) *On ..., Appellant had to call on the Regional Health Director, Dr A. G. Jeetoo Hospital, Port Louis for an examination by the Medical Board but he failed to appear before the Board;*
- (g) *On..., a disciplinary committee was held, following which Appellant was administered a reprimand on ... in accordance with regulation 42(1) (a) (ii) of the LGSC Regulations 1984;*
- (h) *On...Appellant attended the Regional Health Director, Dr A. G. Jeetoo Hospital, Port Louis for an examination by a Medical Board which found him fit to discharge the duties of his post;*
- (i) *On ..., Appellant was convened before a disciplinary committee regarding his absences from work following which he was administered a severe reprimand on..., in accordance with regulation 42(1)(a)(ii) of the Local Government Service Commission Regulations 1984. He was also informed that an equivalent amount to the number of days on which he had been absent from work without authorization would be deducted from his monthly salary;*
- (j) *On..., Appellant was requested to show cause, in writing, as to why he should not be retired on ground of public interest in accordance with regulation 39 of the Local Government Service Commission Regulations, 1984 but, he did not submit any explanation;*
- (k) *On..., the Responsible Officer recommended that Appellant be retired in the public interest on grounds of unsatisfactory service in accordance with regulation 39 of the LGSC Regulations 1984;*

- (l) *On..., the Respondent decided to set aside the recommendation of the Responsible Officer as hearing provided had not been properly conducted;*
- (m) *On..., the Responsible Officer informed Appellant of his frequent absences from work without authorization and that his attendance at work will be closely monitored for a period of three months, and in case of no improvement, action will be initiated against him under regulation 39 of the LGSC Regulations 1984 with a view to retiring him on grounds of public interest;*
- (n) *On..., the attention of Appellant was drawn of his unauthorized absences from work since He was also requested to resume duty forthwith, failing which action will be initiated in accordance with Regulation 43 of the Local Government Service Commission Regulations 1984, with a view to declaring vacant the post of REC held by him;*
- (o) *On..., the Responsible Officer informed the Respondent that Appellant failed to resume duty up to date and he did not reply to the letter dated The Responsible Officer recommended that the post of REC held by Appellant be declared vacant with effect from ... in accordance with regulation 43 of the LGSC Regulations 1984;*
- (p) *On..., the Respondent agreed to the recommendation of the Responsible Officer to declare vacant the post of REC held by Appellant for being absent from work without authorisation since...;*
- (q) *On..., the Responsible Officer informed the Respondent that Appellant had submitted two medical certificates dated ... and..., requesting for one week's rest and two weeks rest respectively;*
- (r) *The Respondent decided to stay action on its decision of ... and through letter dated ...-*
- a. *requested the Responsible Officer to inform Appellant in writing;*

(v) On ..., the Responsible Officer again informed the Respondent that Appellant was still absent from work without authorization since ... and maintained his recommendation to declare vacant the post of REC held by Appellant with effect from Subsequently, the Respondent decided to declare vacant the post of REC held by Appellant with effect from... in accordance with regulation 43 of the LGSC Regulations 1984. The decision of the Respondent was conveyed to the Responsible Officer on ... and Appellant was informed accordingly on...

(w) Appellant has been absent without authorisation from the year ... to ... for a total amount of 617 days and he was not paid for the period he was absent;

(x) Appellant has been afforded reasonable opportunities to improve his attendance but he has failed to do so on every occasion;

(y) All procedures have been complied with in order to declare vacant the post of REC held by Appellant.

3. *For the reasons set out above Respondent moves that the appeal be set aside."*

Determination

The Appellant claims that his dismissal is unfair. He stated that he was punctual and always delivered the goods to the satisfaction of his supervisor. He was never given warning for gross misconduct or for being absent from work "*carelessly*".

The Tribunal has reproduced above the Statement of Defence of the Respondent *in toto* as it is self-explanatory. The averments of the Respondent have not been contested by the Appellant on cross-examination although he tried to convince the Tribunal that he had not read the said statement as he was illiterate. It is abundantly clear that the Appellant has been continuously flouting the authority of the Respondent and his Responsible Officer (RO). Not only was the Appellant absent from work for some 617 days over the period ... to ... but he did so without informing his RO. When he was asked to give explanations by letters he just ignored these requests. And when he was

summoned to attend a Disciplinary Committee he did not care to attend or even inform the Local Authority why he could not attend. This showed his defiance of the authority of his supervisors, contrary to his ground of appeal that he gave satisfaction at work or did not get any warning. In fact from the averments of the Respondent one may wonder why action was not taken against the Appellant much earlier.

The Appellant cannot argue that he has been unfairly treated by the Respondent in declaring his post vacant.

It must be made clear to the Appellant that the role of the Tribunal is not to substitute itself for the Respondent in its decision. The role of the Tribunal is to ensure that the decision making process has been fair and the Appellant was given the opportunity to defend himself. In his case he was given all the opportunities and his attention drawn every time to his dereliction of duties but he just did not care.

The Appellant pleaded before the Tribunal that his dismissal is causing him hardship as he is the sole bread-winner with two children, that he has to repay his loan and so on. These are in fact not grounds of appeal but only mitigating factors which he could have been explained to his employer when he was asked for explanations by letters or called before a Disciplinary Committee.

The Tribunal, therefore, finds that the Appellant has no case. The Respondent has been fair to the Appellant and has respected all the procedures for dismissal.

The appeal is set aside.