

Det 02 of 2019

Continued unauthorized absence from work without any explanation constitutes a serious breach of employment which entitles the employer to terminate such employment.

The Appellant is challenging the decision of the Respondent to terminate his employment as GBA at the Municipal Council of ...

Appellant's Case

The Appellant swore to the correctness of his grounds of appeal. No statement of case was filed and Counsel for Appellant informed the Tribunal that his services were retained after the case was already in shape and fixed for hearing.

The grounds of Appeal were as follows:

"I was not heard by any disciplinary committee nor was I given the chance to explain myself to a committee/board.

- Each time I was absent, it was because of my suffering of my lower back.

- I did not understand what was meant in the letters nor was I explained what was written

- I have not received all the letters sent by the Municipality Council. We had no letter box for a while and also my mum being depressive, she may have omitted of handing me some of the letters. (SIC)"

Under cross examination, he explained that he did not know how to read and write and that someone else had written the letter of explanation dated ... requested by the Municipality. He also stated that his frequent absence was due to back pain and that all his workmates used to make abuse of him by asking him to do most of the job. He admitted that he could not make complaints to his superior as the latter was most of the time not on site. However, he stated that he went to see the Inspector to complain but the latter did nothing.

Appellant was re-examined by Counsel and produced a letter dated ... informing him to submit explanation on his absence of the ... by the....

At a later stage, following a question from the Tribunal, he admitted having called upon the representative of the Municipal Council on the ... to complain about his inability to continue to work as GBA due to frequent nightmares. He even requested to have another job but same was refused as he could not be posted anywhere else.

Respondent's Case

The representative of the Respondent solemnly affirmed as to the correctness of the Statement of Defence in which Respondent confirmed that the Appellant was employed as GBA (Roster) in a temporary capacity for a period of six months as from ... and was subsequently offered employment in the same post on a casual basis with effect from....

Respondent averred that Appellant left his site of work at ... a.m. on the ... without the authorization of his superior in rank and that he failed to attend ... his site of work as requested. A letter dated ... was sent to him seeking his explanation by the ... at latest.

Respondent received a letter of explanation dated ... from Appellant, copy of which was produced to the Tribunal by Respondent. He explained that he left the site because he was feeling unwell and that he did not attend the site of work due to transport problem. Respondent found the explanation provided by Appellant unsatisfactory and Appellant was warned that severe disciplinary action would be initiated against him in the event he recidivated.

Respondent further averred that Appellant once again left his site of work at ... on the ... without prior authorization from his superior in rank. Furthermore, it was averred that Appellant absented from work on several occasions without any authorization. Appellant was therefore sent a letter dated ..., calling him to explain in writing about these unauthorized absences as well as for having left his site of work

at.... on He was also called upon to show cause as to why his employment should not be terminated without notice or compensation in lieu of notice.

The Appellant failed to submit any explanation by the due date which was the As a result of this failure, the Respondent initiated action to dismiss Appellant and same was done on the

The representative of the Respondent was cross examined and was shown the letter dated ... emanating from the Municipal Council of.... He stated that he was not aware of the said letter. In fact, he was questioned as to whether the Respondent was right to dismiss the Appellant with effect from the ... when he was given up to the ... to give an explanation. He maintained that he was not aware of the letter and that the Respondent had already initiated procedures to dismiss the Appellant well before the letter was issued.

He added that the Respondent took the decision to dismiss the Appellant on the....

The representative of the Municipal Council of ... was called as witness for the Respondent. He explained that the letter dated ... was issued following the submission of a medical certificate on the ... by Appellant to cover his absence for period ... to.... However, it was discovered that the medical certificate covered a day when the Appellant signed his arrival time as well as his departure time. At the time of issuing the letter, the Municipal Council was not aware of the decision of the Respondent. He produced the letter dated ... wherein a note was inserted by him, stating that the Appellant called upon him on ... to explain that he could not perform the duties of GBA as he was having frequent nightmares and that his place of work was haunted. The Appellant was explained the contents of the letter of warning dated ... and the letter dated

Determination

This case is one where the Appellant has lost his job due to certain circumstances attributable to himself. The issue of the letter dated ... raised by Counsel of Appellant is irrelevant in the present matter as the said letter was meant to have the explanation of Appellant for having produced a medical certificate which covered a day when the attendance of the Appellant was recorded. It is true that the delay to provide the explanation was after the effective date of the dismissal. But Respondent explained that procedures had already been initiated to dismiss the Appellant well before issuing the letter and at that time, the Municipal Council of ... had not yet been informed of the decision of the Respondent.

The Tribunal noted that the Respondent completely omitted to address Ground 1 of the appeal in its SOD. This issue was not even canvassed by Counsel of Appellant. It has however been amply proved that he was given the chance to give his explanations both verbally and in writing.

As regards ground 2 of the Appeal, the reason provided by Appellant to justify his unauthorized absence was not supported by any evidence. It is not enough for an employee to say that he is suffering but he should inform his employer about his absence and produce a medical certificate for long absence. This is the most basic legal principle that an employee should know. Hence this ground of appeal too failed.

Ground 3 referred to the intellectual capacity of the Appellant. It is true that one should not expect a high level of education from an employee of a very low level in the employment structure. But in this case, when the Appellant called on the representative of the Municipal Council of ... on the..., he was clearly explained about the content of the letter of warning dated ... and that he should reply to the letter of the Therefore, the averment of the appellant cannot be relied upon.

The Tribunal considered the fourth ground as frivolous as he was fully aware that he had to provide an explanation for his unauthorized absence as mentioned above.

To conclude, the Tribunal finds that the Appellant has committed a serious breach of his employment by not submitting any explanation for his absence by the due date. The more so, he was still employed on a casual basis. He had continued to be

absent from work despite being warned. The frequent unauthorized absence as well as leaving his site of work earlier is a matter of serious concern for the smooth running of the service and no responsible employer will tolerate such type of attitude from any employee.

The Tribunal therefore finds no merit in this Appeal which is set aside.