

The onus is on the Appellant to make his case before the Tribunal.

The Appellant, a PR at the Ministry, has appealed against the decision of the Responsible Officer (RO) of the Ministry regarding the disciplinary action initiated against her. The RO acted under delegated powers from the Respondent.

Appellant's Case

The Appellant solemnly affirmed to the correctness of her Grounds of Appeal (GOA) and of her Statement of Case (SOC).

The GOA were:

1. *The Appellant avers that the disciplinary action initiated against her is unlawful as same as been instituted in accordance with Regulation 42(3)(a). Regulation 42(3)(a) only empowers the Responsible Officer from administering a warning on the ground of unsatisfactory work or conduct and after same had been established.*
2. *The Respondent failed:*
 - a. *to give any reason why it rejected the explanations provided by the Appellant; and*
 - b. *to demonstrate that it properly addressed the issues in her letter of explanation and in order to ensure a transparent decision-making process in deciding the administer the warning, the Respondent should have provided for the reasons or which charges had been proved. The letter dated ... simply stated that the reply has not been found to be satisfactory.*

3. *The Appellant was not given a fair hearing before the warning was issued to her in that she was not provided with any statement recorded from the complainants, never made aware as to whether there was an investigation and whether the complaint made was justified even in absence of an explanation from the Appellant. The Appellant avers that the Respondent based itself on allegations, which remained untested, to take disciplinary sanction against her.*

4. *The Respondent failed to bear in mind that natural justice requires that the Complainants had to make out their case and it was not for the Appellants to provide a satisfactory explanation. The absence of reasons as to why she was administered a warning coupled with the fact the complaints remained untested, is a serious flaw in the decision-making process.*

5. *The decision of the Respondent is biased, unfair, unreasonable and irrational in that:*
 - a. *The Respondent has relied merely on the words of the public officer and other staff, which is denied by the Appellant, to accept as truth the fact stated by them. The Respondent has ignored the fact that the Appellant had drawn the attention of the said Public Officer that she was not performing her work as explained in the Appellant's letter of explanation.*

 - b. *The Respondent had based itself on very subjective allegations i.e unpleasant tone, sarcastically, harassment, 'insulted the officers' and 'staff felt humiliated' to conclude that the Appellant had a hostile behavior. The Appellant avers that in absence of evidence on unpleasant tone, sarcastic, what constituted harassment, insult or how were the staff humiliated, the Respondent had erred in concluding that the Appellant had a hostile behaviour the more so taking into consideration the explanations provided by the Appellant.*

6. *The Appellant avers that the present disciplinary process and sanction was initiated in bad faith in that it is a way to demoralise and gag the Appellant from raising pertinent issues such as the manner in which the Performance Appraisal is conducted, the unfair marking, the lack of supervision by the head of the department, lack of transparency and fairness for allocation of workshops/trainings/bid evaluations amongst others that are affecting the department in which she works, the Appellant has lodged a complaint before the Commission and the hearing is still on going. The Respondent has requested the Appellant to withdraw her complaint or to reach a settlement in order not to embarrass the Respondent, which the Appellant has refused until now.*”

The Appellant averred in her SOC that, on ..., she queried an Officer of the Department in relation to discrepancies regarding the content of the hard copy file and the EDMS. She asked the officer why one minute in the file was not on the EDMS. The officer replied that she would do the needful immediately. Later she asked the Officer why the information had not yet been uploaded, to which the Officer replied that the file was with the Head, of the Department. The Appellant, therefore, gave her a copy of what was to be uploaded. When she asked her again later why this had not been done the officer said that she would have to ask the Head of the Department. Later, on that same day Appellant saw the officer and two other colleagues waiting to meet the Head of the Department.

Appellant averred that at no time she said or did anything which could amount to reprehensive behaviour. Instead she tried to show the shortcomings of the staff of the Registry.

Appellant was called to the office of the Head of Department where the Officer, another colleague, the Public Officer and the Manager were present and she was told that she had cursed the officer and her other colleague when in fact there was no first-hand knowledge of any incident. She averred that the Manager threatened her and said that he could ask the officer and her colleague to make a declaration. This was just to intimidate her.

She tried to explain the problem of discrepancies in the filing on the EDMS but the Head of Department just closed the meeting. Appellant denied that she refused to leave the office of the Head of Department but instead those present attempted to bully her and push her out of the office. She could not explain her concern which she thought was unjustified and unfair.

Appellant denied having shown any unethical behaviour or used an unpleasant tone to anyone. She viewed what happened in the office of the Head of Department seriously and considered same to be an act of harassment. She decided to make a declaration as a precautionary measure on the same day.

Appellant denied the allegations levelled against her. She had not been told what insults she allegedly uttered against the other officers. She strongly believed that she was being victimized and harassed "*as a retaliation to her superiors who have to answer about the complaint she lodged against the head of Department.*" (SIC)

She moved that the appeal be allowed as the explanation sought from her relates to "*the conduct and procedural issues regarding the manner files and records were processed by the EDMS*" and which did not reconcile with the physical or manual recorded minutes in the file.

The Appellant had produced the following:

- (i) the letter that was issued to her on...;
- (ii) a letter, dated..., where the Appellant replied to the above letter;
- (iii) the letter of ... from the Ministry to the Appellant in which the Responsible Officer intimated to Appellant that it was proposed to initiate disciplinary action against her and invited her to show cause as to why such action should not be taken against her;
- (iv) a letter from the Appellant dated ...where Appellant replied to the letter of ...; and
- (v) the letter dated ... from the Ministry to the Appellant in which the latter administered a warning for unsatisfactory conduct.

The Appellant was cross-examined. She delved on the problem encountered at the ITSU, the difficulties she faced for having a one to one meeting with the Head of Department while other staff members and other PMS could do so and she referred to other administrative problems. She denied that she was harsh to the MSO, OMA and staff of the Registry. She stated that she had a high-pitched voice and that this could have been a problem. She maintained that she only raised issues on the management of files and on the way the work was done at the Department. She finally conceded that she was not contesting the warning given to her but on the way things were done at the Department and the fact that no reasons were given at the time of the warning.

Respondent's Case

The representative of the Respondent solemnly affirmed to the correctness of the Respondent's Statement of Defence (SOD) in which two points of law were raised concerning the jurisdiction of the Tribunal and the fact that Appellant was outside delay.

The Respondent averred that Appellant was appealing against the decision of the RO for having issued a letter dated ... requesting written explanations from the Appellant and not appealing against the warning issued to her. The Respondent averred that nothing would prevent a RO, without reference to Respondent, from administering a warning to any officer on grounds of unsatisfactory work or conduct. ROs of Ministries/Departments had been delegated the power to do so under regulation 42(3)(a) of the PSC Regulations.

Respondent averred that, on..., a meeting was held in the office of the Head of Department following an incident which occurred on the same day in the Registry whereby three officers posted in the section reported that they were subject to aggressive pressure, ill-treatment and intimidation from the Appellant. The Head of Department, the Manager (HR) and the three aggrieved officers were present and the parties were given the opportunity to submit their explanations with respect to the alleged incident.

Subsequently, a letter was sent on ... by the aggrieved officers to the Head of Department, the Ministry, the Ministry of ... and to the President of the Union. The following letters followed:

- (i) in a memorandum dated ... the Head, ITSU submitted his comments to the RO of the Ministry;
- (ii) by letter dated ... the explanations of Appellant were sought on the representation of the three aggrieved officers;
- (iii) in a letter dated ... Appellant submitted her explanations which after being examined were not found satisfactory;
- (iv) by letter dated ... Appellant was informed that her explanations were not found satisfactory and it was proposed to initiate disciplinary action against her for unsatisfactory conduct in accordance with regulation 42(3)(a) of the PSC Regulations. She was to show cause in writing, through the Head, ITSU within fourteen days of receipt of the letter as to why disciplinary action should not be taken against her;
- (v) on..., Appellant informed the RO that she would reply to the letter of ... only after having a one to one discussion with the Head of Department regarding some problematic technical issues;
- (vi) on ... a letter was sent to Appellant drawing her attention to the fact that the matter referred to ill-treatment and intimidation of officers of the Registry and not to technical issues. She was given until ... to show cause why disciplinary action should not be taken against her;
- (vii) Appellant submitted her explanations on...;
- (viii) the comments of the Head of Department were then sought, which were provided to the RO on...; and
- (ix) by a letter dated..., Appellant was informed that after examining the explanations supplied by her, same was found to be unsatisfactory and that a warning was being administered to her for unsatisfactory conduct, in accordance with regulation 42(3)(a) of the PSC Regulations.

The Respondent stated that Appellant was clearly informed in the letter of ... that her explanations were not found satisfactory. There were no legal requirements upon Respondent to give any reason for its decision. There was no provision for a hearing to be provided in cases where a warning was to be issued by the RO for unsatisfactory

work or conduct. The Appellant was at all times aware of the complaints against her and she was given ample opportunity to provide her version of facts.

Respondent further averred that, on the day the incident supposedly occurred, the Appellant was requested to attend a meeting with the Manager (HR). Appellant failed to seize this opportunity to defend herself. On the contrary, Appellant showed disrespect towards the senior officers, was defiant to the advice and instructions being given to her, was aggressive and thereafter again threatened one of the aggrieved officers in front of other officers of the Registry.

The Appellant in reply to the letter of ... did not reply to the matters put in the said letter but raised issues which were not relevant and had nothing to do with the explanations sought.

At the meeting of ..., the aggrieved officers brought witnesses to sustain their grievances and their claim of harassment and were even precise about the specific words used offensively by the Appellant. The Appellant was disrespectful at the meeting and raised issues of technical work which had nothing to do with the complaints against her.

Respondent did not base itself only on the complaints of the aggrieved officers but also sought the comments of the Head of Department and other documentary evidence which were assessed before a decision was taken.

The Respondent noted that Appellant had made several complaints to the different authorities which had all been cleared and set aside. Even the labour dispute before the had been settled and Appellant had signed an agreement and closed the Performance Appraisal Form for year....

The representative of the Respondent confirmed that the warning was given by the RO under delegated power. The representative of the Ministry stated under solemn affirmation that she carried out the investigation after the incident was reported but did not have first-hand knowledge of the incident.

The Head of Department who was called as witness spoke under solemn affirmation about the incident that occurred on ... where three officers of the Registry complained

about the harsh words that were uttered by the Appellant. The three officers were upset and were in tears. He called the Manager (HR) and the Appellant to his office. The Appellant was asked to explain. She did not deny what the aggrieved officers were saying but instead Appellant was aggressive to all of them. She spoke of many issues and the Head of Department had to end the meeting. He reported the matter to the RO. Later he was asked to give his views on the reply of the Appellant to a letter from the RO. The Head, ITSU could not recall what were the exact words that Appellant used in the Registry except “*zotte zenfants pou payer*”. The Head, ITSU did not agree that he had problems with the Appellant and refused to have a one-to-one meeting with her. However, there was a letter dated 29 April 2019 where the RO had requested the Head of Department to initiate action for him to have a one-to-one meeting with the Appellant.

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

Determination

The appeal before this Tribunal concerns a letter dated ... to the Appellant by the RO giving her a warning for unsatisfactory conduct.

The points of law raised by Respondent were dropped by Respondent’s Counsel at the hearing.

The Appellant is not putting in question the issue of the warning. There is nothing in her GOA that this is so. At the Hearing before this Tribunal, she conceded that she was not questioning the warning given but her contention was that there was no reason stated as why the warning was given.

The Appellant expected the RO to state the reason in her letter of....

The question the Tribunal has to address is whether there was a need to stress the reason in this final letter. The Tribunal finds that there was no need to give the reason as the Appellant was fully aware as to why she was given a warning and the principle of natural justice has been followed as the Tribunal will elaborate.

In the first letter of ..., the RO had been very explicit as to the complaints lodged by the aggrieved officers and Appellant was given a chance to disculpate herself against these complaints. The Appellant cannot say that she has not been made aware of the complaints made against her. The RO had given the details of the incident as reported to her, the hostile behaviour of the Appellant vis a vis the colleagues of the Registry and the words that were said by the Appellant. In her letter of..., Appellant did not address the complaints levelled against her but made a long *exposé* of technical matters affecting the ITSU and she did not argue frontally the issues which were the complaints of officers of the Registry. She referred to the way files were being treated, the untraceability of a file for one month, the attitude of the Head of Department towards her and so on. She did not rebut the complaints of the aggrieved officers and to the veracity of their report of the incident. She therefore failed to defend her case when given the chance to do so.

The Appellant was again told, in a letter of..., that her explanations were not found satisfactory and that disciplinary action would be taken against her. She was asked to explain in writing why action should not be taken against her. Again, the Appellant did not seize the opportunity to refute the complaints arising out of the incident of.... She again concentrated her defence on the technical problems regarding electronic records at the Department. Again, the Appellant has not cleared her case as regards the complaints which constitute the crux of the matter and the issue of a warning to her.

Going over the documents submitted to the Tribunal, it is clear that the relations between the Appellant and the Head of Department was not what it should be. The Appellant kept referring to the discriminatory treatment she faced from the Head of Department, and in particular she had difficulty to have a one to one discussion with him, while others could do so. However, this Tribunal is not in a position to go over issues of management of the Department and the problems of human relations. These could have been a cause for frustration, but not a reason for Appellant to shout at her colleagues and behave in a hostile manner as alleged.

The Tribunal also deplores the fact that the RO has taken six months to issue a simple warning. The delay in action when the complaints have not been denied may create doubts in the mind of the parties concerned. But it also implies that there was a full

enquiry. It is noted that the Head of Department when cross-examined was not in a position to recall the actual sentences that Appellant uttered on the day of the incident. He could only remember that Appellant said “*zot zenfants pou payer*”.

All this said, the Tribunal feels that the Appellant has not addressed the complaints alleged against her when she was given ample opportunity to do so. She was more concerned with the technical issues and problems she was facing and the complaints, therefore, remained unrebutted. Appellant claimed that the complainants had to prove their case but before this Tribunal the onus is on the Appellant to make her case. She has not done so. Even at cross-examination stage, she was not focused and kept making references to technical issues.

The Tribunal is very conscious that the Appellant must know on what the RO based herself to inflict the warning on the Appellant. This is a principle of natural justice. Nothing is said that when the final decision is communicated to the Appellant the RO must again give the reason. This will mean repeating the same points that appeared in the letters from the RO to the Appellant. The important thing is that the Appellant knows why action was taken after the case dragged on for six months. This relates to the behaviour and the incident of 17 January 2020. Had the RO put again the reasons in her final letter, this would have triggered further exchanges of correspondence and made the process unending.

In the circumstances, the Tribunal finds that the Appellant has no leg to stand on.

The appeal is set aside.