REDUNDANCY BOARD

RB/RN/8/2023

ORDER

Before:	Rashid Hossen	-	President
	Christ Paddia	-	Member
	Suraj Ray	-	Member
	Y. Chooraman (Ms)	-	Member
	Saveeta Deerpaul (Ms)	-	Member

Ms. Geraldine Arielle François
and
Digital Fourteen Ltd

This is an application made by Ms. Geraldine Arielle François (Applicant) for an Order under Section 72 (8)(b) coupled with section 72 (10)(b) of the Workers' Rights Act 2019, as amended, directing her employer (Digital Fourteen Ltd.) (Respondent) to pay Applicant severance allowance at the rate specified under sections 70(1) and (2) of the Workers' Rights Act 2019, as amended.

Both Applicant and Respondent were represented by Mr. J. N. Mosaheb and Mr. Z. Rajani and Ms. J. Ackburally respectively.

In her Statement of Case Applicant avers:-

1.1. Respondent is a company having 15 or more employees at all material times.

1.2. Applicant entered into a contract of employment on a full-time basis with the Respondent on or about 14th January 2019 drawing an initial monthly salary of Rs. 40,000.

1.3. About one year later, Applicant was promoted from "*Chef de projet web et accessibilité*" to *"Responsable production & support"* on or about 6th January 2020 drawing a revised monthly salary of Rs. 65,000.

1.4. Applicant's salary was further reviewed about one year later in January 2021 to a monthly salary of Rs. 70,000. On or about June 2021, Applicant was awarded a special bonus of Rs. 10,000 for her work performance. Applicant was drawing a terminal monthly remuneration of Rs. 74,000 consisting of Rs. 70,000 (basic salary) and Rs. 4,000 (travelling allowance) as per her payslip for October 2021.

1.5. On or about 12th November 2021, Applicant was put on notice that her employment was terminated unilaterally when she was handed a letter of termination by Mr Jakir Assan Ali, her hierarchal supervisor, which stated *inter alia* that the Respondent had *"decided to terminate your Contract of Employment […] on the ground that the post you are currently occupying at the company will no more be needed."*

1.6. Throughout the day on 12th November 2021, Applicant was relentlessly pressured by the Respondent to sign the letter and was threatened with the consequences of a refusal to sign and accept the terms therein. Among the threats received, Applicant was told by Mr Assan Ali that she would be blacklisted in this field and it is to be noted that as at date Applicant has not been able to secure another job in the field of her profession.

1.7. Applicant had suffered a miscarriage recently and did not wish to lose her employment due to debts she currently has, the more so since she was employed by Respondent for nearly 3 years. Applicant therefore asked for a delay to seek legal advice before deciding whether or not to sign the letter. Respondent informed Applicant that she should apply for 2 days' paid local leave to seek such legal advice, that is for 15th and 16th November 2021. Applicant sent an email on the same day requesting same.

1.8. Upon leaving the office on the same day, 12th November 2021, Applicant restituted the company laptop at the request of Mr Jackir Assan Aly and it is only after Applicant insisted on obtaining a letter confirming that she had duly handed back the laptop that Respondent provided her with same. This letter titled *Re: Termination of Contract of employment* and dated 12th November 2021.

1.9. On of about 15th November 2021, Applicant attended the Redundancy Board where she was informed that she should file a complaint at the Labour Office of QuatreBornes. Applicant attended the Labour Office of Quatre-Bornes, where she was told that her contract of employment had already been terminated but that they could not do anything until 12th of December 2021.

1.10. On or about 17th November 2021, as soon as Applicant attended her workplace, Mr Assan Ali convened a meeting and demanded to know whether she was ready to sign and accept the terms contained in the Letter. Such terms stated *inter alia* that Applicant was renouncing to all of her rights to make any claim against the Respondent.

1.11. During the aforesaid meeting, Mr Assan Ali told Applicant he would assign duties to her that are outside her scope of competency if she did not sign the Letter. Mr Assan Ali also said that the Respondent would terminate the employment of Applicant's colleagues if the Respondent had to pay Applicant a compensation to terminate her employment. Applicant avers that Mr Assan Ali knew that Applicant was still under an emotional stress further to her miscarriage and was using all means to make her sign the letter.

1.12. During the aforesaid meeting, it is only when Applicant told Mr Assan Ali that the Respondent should abide by the procedure for redundancy as set out under the Workers' Rights Act 2019, that Mr Assan Ali then proposed to negotiate for a compensation package further to the termination of her employment. Being given that Applicant was not in a capacity to deal with such negotiations, she asked that her negotiator/representative, Mr Ivor Tan Yan, be present to discuss same with Mr Assan Ali.

1.13. On the same day, 17th November 2021, Mr Tan Yan reached the office of Respondent and participated in a meeting with Mr Assan Ali and Applicant whereby Mr Assan Ali said once again that if Applicant did not sign the letter, he would assign Applicant the duties of Developer for which she is not qualified. Applicant avers that during this meeting the Respondent did not at all explore the possibility of avoiding the termination of her employment, but was rather solely focused on having Applicant accept little to no compensation following the termination of her employment. This meeting ended without any settlement being reached.

1.14. On or abour 17th November 2021, Applicant accompanied by Mr Tan Yan, attended the Labour Office of Quatre-Bornes to report the Respondent's behavior, threats and the general bullying manner employed by Respondent to coerce Applicant to sign the letter.

1.15. A complaint was made at the said Labour Office on 17th November 2021 with Labour Officer Mr Subnauth who registered her complaint and called the Respondent and arranged a meeting at the said Labour Office on Friday 19th November 2021 at 10:30am.

1.16. On the same day, 17th November 2021, Applicant left the Quatre-Bornes Labour Office at around 15:30 and after the said Labour Officer had already set up a meeting with the Respondent, the latter through Mr Assan Ali, called her to request that she attend the office the next day, that is, 18th November 2021 for a handing over exercise.

1.17. On 18th November 2021, Applicant attended the office of Respondent as requested. She was then given instructions on that day from her former assistant Mr Jeremy Rosalie. Applicant completed a follow up sheet on Google Sheet for the whole day. The then Administrative and Human Resource of the Respondent, Mrs Jyotee Awotorsing, confirmed with Applicant that the Respondent would meet her at the Labour Office on the next day.

1.18. The next day, 19th November 2021, Applicant attended the Labour Office of QuatreBornes assisted by Mr Ivor Tan Yan for the meeting scheduled at 10:30am. The Respondent did not turn up at the said meeting.

1.19. When Mr Subnauth, Labour Officer, called the Respondent, Mr Assan Ali alleged that he had secured a settlement with Applicant and had consequently sent a mail to inform her of same. Applicant checked her email and realised that Mr Assan Ali had indeed sent her an email that day at 10:21am containing a letter dated 19th November 2021 which falsely stated *inter alia* that a settlement had been reached in the presence of Mr Tan Yan during their meeting on 17th November 2021.

1.20. Being given that this alleged settlement was completely fake and false, Applicant's negotiator Mr Tan Yan sent an email to Respondent to denounce the manipulation that Respondent was seeking to employ to pretend that an agreement had been reached.

1.21. Applicant also replied to Respondent email on 19th November 2021 refuting *inter alia* that any agreement had been reached between them.

1.22. Applicant sent an email to Respondent on 22nd November 2021, reiterating her protest against the alleged agreement reached with Respondent for her to resume duty.

1.23. Respondent sent a letter dated 24th November 2021 seeking that Applicant resumes work within 24 hours upon receipt of this letter. In view of the above averments, Applicant considered that her employment had already been terminated by then and did not attend the Respondent's office.

1.24. Respondent, without admitting any liability, made an offer of a compensation of Rs. 175,000 on or about 8th December 2021 to the Applicant, which she refused.

1.25. On 4th of April 2022 the parties had a meeting at the Conciliation and Mediation Section of the Ministry of Labour and Applicant avers that Respondent made no effort therein to obtain an agreement and both parties inevitably reached a deadlock.

1.26. Applicant avers that Respondent has been acting in utter bad faith as it did not need to terminate Applicant's employment since Respondent has since then been employing

Applicant's former assistant to fill in the post she occupied. Applicant further avers that Respondent has been interviewing and recruiting other employees.

2.1. The Applicant hereby applies to the Redundancy Board under section 72(8)(b) of the Workers' Rights Act on the basis of Respondent's unjustified termination of Applicant's employment on the ground of a reduction of workforce.

2.2. It is submitted that the Respondent acted in breach of:

2.2.1. section 72(1) of the Workers' Rights Act in that it failed to (i) notify the Applicant or her representative of its intention to reduce its workforce, and (ii) explore the possibility of avoiding such a reduction;

2.2.2. section 72(1A) of the Workers' Rights Act inasmuch as Respondent terminated the employment of Applicant during the prescribed period, being 1st June 2020 to 31st December 2022, under the Workers' Rights (Prescribed Period) Regulations 2020 as amended;

2.2.3. sections 72(5) and 72(5A) of the Workers' Rights Act insofar as Respondent failed to give written notice to the Redundancy Board at least 30 days before the intended reduction in workforce;

3.1. Applicant prays for the Board to make an order under section 72(8)(b) coupled with section 72(10)(b) of the Workers' Rights Act directing the Respondent to pay Applicant severance allowance at the rate specified under sections 70(1) and (2) of the Workers' Rights Act, with interests, based on Applicant's continuous employment from 14th January 2019 to December 2021 and drawing a terminal monthly salary of Rs. 74,000.

3.2. Applicant also prays for the Board for an order directing the Respondent to pay Applicant:

3.2.1. The unpaid part of her salary in lieu of notice for the period 19th November 2021 to 11th December 2021;

3.2.2. pro-rata End of Year Bonus for period 1st January 2021 to 11th December 2021;

3.2.3. a refund of 2 days' local leave wrongly deducted from her November 2021 salary;

3.2.4 unpaid local leaves amounting to 21.15 days.

3.3 Applicant further prays for the Board to make any such other Order as it may think fit in the circumstances.

In reply, the Respondent filed a Statement of Case, averring:

1. This is not a case of redundancy.

2. By way of a letter dated 12th November 2021, the Respondent had decided to terminate the contract of employment of the Applicant with effect from 11th December 2021 on the ground that the post of 'Responsable production & support" would no more be needed.

3. There were discussions which took place between the Applicant and the Respondent on 17th November 2021 during which it was proposed to the Applicant that she would be at liberty to continue to serve the Respondent. In such a situation, effect would not be given to the letter dated 12th November 2021.

4. On the basis of the discussions which took place between the parties on 17th November 2021, the Applicant resumed her work as normal on 18th November 2021. She came to work at 9.40 hours and worked until 17.36 hours. By the act of the Applicant coming to work on 18th November 2021, she had agreed that the letter dated 12th November 2021 was of no effect and she opted to resume work.

5. It is clear, therefore, that the Applicant voluntarily accepted to continue to work with the Respondent and attended work on the 18th November 2021 without any reservation and protest. In so doing, she had revived the working relationship between the Applicant and the Respondent. In the circumstances, the letter dated 12th November 2021 had become otiose.

6. A letter dated 19th November 2021 was thus sent to the Applicant to reflect the above.

7. By way of an email dated 19th November 2021, the Applicant, in an after-thought, attempted to portray that there was no agreement reached on the 17th November 2021.

8. It is submitted that the email of 19th November 2021 is a belated attempt of the Applicant to revive the redundancy.

9. After coming to work and having worked full day on the 18th November 2021, the Applicant has then been absent from work since 19th November 2021 without any authorization and justification.

10. By way of letter dated 24th November 2021, the Respondent required the Applicant to resume her employment within 24 hours.

11. The Applicant did not comply with the requirements of the letter dated 24th November 2021 and did not resume work.

12. The fact that the Applicant did not even reply to the letter dated 24th November 2021 is very telling.

13. The Redundancy Board does not have jurisdiction to hear the present matter.

14. Ex-facie the prayers prayed for by the Applicant at Paragraphs 3.1, 3.2, 3.21, 3.2.2, 3.2.3, 3.2.4 and 3.3 of the SOC, the Respondent avers that the present application is fundamentally flawed and the Redundancy Board does not have jurisdiction to give a remedy to the Applicant in terms of those prayers.

15. The Respondent therefore moves that the present application be set aside with costs.

16. The Respondent reiterates his averments at paragraphs 1 and 15 above.

17. The Respondent takes note of Paragraph 1.1 of the Applicant's Statement of Case dated 24th April 2023 (hereinafter referred to as the "SOC") without making any admission thereof and puts the Applicant to the proof thereof.

18. The Respondent takes note of Paragraphs 1.2, 1.3, and 1.4 of the SOC without making any admission thereof and puts the Applicant to the proof thereof.

19. averments at Paragraph 1.5 of the SOC, puts the Applicant to the proof thereof, and avers that the letter dated 12th November 2021 is of no effect for the reasons put forward at Paragraphs 1 to 13 above.

20. The Respondent denies the averments at Paragraph 1.6 of the SOC, which are mere fabrications, and puts the Applicant to the proof thereof.

21. The Respondent denies the averments at Paragraph 1.7 of the SOC, puts the Applicant to the proof thereof, and avers that the Respondent assisted the Applicant following her miscarriage despite shortcomings on the part of the Applicant.

22. Save and except that the Applicant was provided with the letter dated 12th November 2021 which is of no effect for the reasons put at Paragraphs 1 to 13 above, the Respondent denies the other averments at Paragraph 1.8 of the SOC and puts the Applicant to the proof thereof. The Respondent further avers that the Applicant was asked to leave her laptop at the office in order to protect sensitive and confidential data belonging to the company.

23. The Respondent is not aware of the averments at Paragraph 1.9 of the SOC, denies same and puts the Applicant to the proof thereof.

24. The Respondent denies the averments at Paragraphs 1.10, 1.11, 1.12, and 1.13 of the SOC, puts the Applicant to the proof thereof and avers as follows:

    (a) It is reiterated that there were discussions which took place between the Applicant and the Respondent on 17th November 2021 during which it was proposed to the Applicant that she would be at liberty to continue to serve the Respondent. In such a situation, effect would not be given to the letter dated 12th November 2021;

(b) On the basis of the discussions which took place between the parties on 17th November 2021, the Applicant resumed her work as normal on 18th November 2021. She came to work at 9.40 hours and worked until 17.36 hours. It is pointed out that the Applicant performed her substantive duties on that day and during the full day. By the act of the Applicant coming to work on 18th November 2021, she had agreed that the letter dated 12th November 2021 had become otiose and she opted to resume work; and

(c) Consequently, the Applicant voluntarily accepted to continue to work with the Respondent and attended work on the 18th November 2021 without any reservation and protest. In so doing, she had revived the working relationship between the Applicant and the Respondent. In the circumstances, the letter dated 12th November 2021 had become otiose.

25. averments at Paragraph 1.14 of the SOC, puts the Applicant to the proof thereof and avers that the Applicant came to work normally and performed her substantive work on 18th November 2021 following the discussions which were held on 17th November 2021.

26. The Respondent is not aware of the averments at Paragraph 1.15 of the SOC, therefore denies same and puts the Applicant to the proof thereof.

27. The Respondent denies the averments at Paragraph 1.16 of the SOC, puts the Applicant to the proof thereof and avers that the Applicant came to work normally for the full day on 18th November 2021. On that day, the Applicant performed her substantive work and thus had revived the working relationship between the Applicant and the Respondent. The Applicant's averments that she came to the office on 18th November 2021 allegedly at the request of Mr. Assan Aly is a mere fabrication and the result of an afterthought.

28. Save and except that the Applicant attend the office of the Respondent on the 18th November 2021, the Respondent denies the other averments at Paragraph 1.17 of the SOC and puts the Applicant to the proof thereof. The Respondent reiterates that the Applicant voluntarily attended her place of work on the 18th November 2021 following discussions which were held on 17th November 2021 with the Respondent during which the Applicant was informed that she would be liberty to come back to work if she wanted. The Respondent opted to return to work on the 18th November 2021 and thus nullifying the letter dated 12th November 2021.

29. The Respondent denies the averments at Paragraphs 1.18, 1.19, 1.20, 1.21, 1.22 and 1.23 of the SOC and reiterates Paragraphs 1 to 13 above.

30. In reply to the averments at Paragraph 1.24 of the SOC, the Respondent avers that the offer for compensation was made in good faith and a without any admission of liability basis. The Applicant is of utter bad faith by making reference to a without prejudice offer made to her solely to find an amicable solution and without any admission of liability.

31. The Respondent denies the averments at Paragraphs 1.25 and 1.26 of the SOC, puts the Applicant to the proof thereof and reiterates Paragraphs 1 to 13 above.

32. The Respondent denies the averments at Paragraphs 2.1, 2.2, 2.2.1, 2.2.2, and 2.2.3 of the SOC, puts the Applicant to the proof thereof and reiterates Paragraphs 1 to 13 above. The Respondent reiterates that this is not a case of redundancy and the Redundancy Board does not have jurisdiction to determine the present application.

33. averments at Paragraphs 3.1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.3 of the SOC, puts the Applicant to the proof thereof and avers that ex-facie the prayers prayed for by the Applicant, and by particularly taking into consideration the manner in which the prayers have been couched, the present application is fundamentally flawed and the Redundancy Board does not have jurisdiction to give a remedy to the Applicant in terms of those prayers.

34. The Respondent moves that the present application be dismissed with costs.

In a written and oral submission, Counsel for the employer emphasised that the Applicant herself restored the employment relationship by resuming work and that Applicant only went to the office on 18th November 2021 for a "*handing over*" is an afterthought to sustain her case before the Board. Stress has been laid upon the issue of Applicant applying for "local leave" for the 15th and 16th of November 2021 post the event, on the 18th November 2021. It is further submitted that the present matter is not one of redundancy.

By contrast, Counsel argued on behalf of the Applicant that following Applicant illegal dismissal by the respondent, Applicant never agreed to rescind the said unlawful termination of her employment. Applicant went to the office on Wednesday 17th November 2021, only to inform the respondent that she would not sign the last paragraph of the termination letter to renounce to her right. Counsel highlighted that Applicant never entered into an agreement to resume work and that she did not work at all on the 17th November 2021.

Oral testimonies under oath were received from Mr. Subnauth Randhir Kumar, labour industrial relations officer of the labour office and witness for the Applicant, the Applicant herself and Mr. Assan Ali, representing the Respondent.

After reproducing the parties Statement of Case above, we do not find it essential to recite *seriatim* the whole tenor of the testimony of each witness but rather refer to their relevant parts as and when necessary.

Board's Considerations

It is common ground that a letter of termination of employment was issued by the Employer to Applicant on 12th November 2021 on the ground that the post Applicant was currently occupying at the company "*will no more be needed*." Applicant last day at work was to be the 11th December 2021 and she was dispensed from attending office during the notice period and was to be paid all dues before expiry of the said notice. This dispensation is in accordance with Section 63(5) of the Workers' Rights Act 2019, as amended, which provides:-

"*Any party may, in lieu of giving notice of termination of agreement, pay to the other party the amount of remuneration the worker would have earned had he remained in employment during the period of notice*."

In Compagnie Mauricienne de Textile Ltée v/s K. Jhankar 1999 SCJ 225, the Court stated:

"……..True it is that an employer can tell an employee who has given notice to stop working immediately because the bond of trust which existed between the two may have been affected by the employee's conduct and the employer does not feel at ease to see the employee still on the premises. To quote from Traité du Droit de Travail – Camerlynck, Dalloz 1968 paragraph 188

> *"188. Selon une pratique assez courante, l'employeur pourra toutefois dispenser le salarié congédié, ou démissionaire, d'exécuter la prestation de travail pendant la durée du préavis. Lors du congé et au moment du règlement du compte, sera versé à l'intéressé, outre sa dernière paie, le montant de la rémunération qu'il eût perçue s'il était effectivement demeuré à son poste dans l'entreprise…. par décision unilatérale de l'employeur*
>
> *….Ainsi sera évité le risque d'un zèle ralenti et d'une conscience professionnelle amoindrie, sinon même d'un conflit ouvert énervant l'autorité patronale, avec la sympathie possible de tout ou partie du personnel de l'entreprise pour le camarade atteint;"*

But, in such circumstances, the employer has to pay the employee for the period during which he has given notice……

We note that at the end of the same paragraph 199 (op cit.) Camerlynck states the following –

"La jurisprudence apporte toutefois une réserve importante: l'exercice de ce droit de résiliation unilatérale par l'employeur avec effet immediate ne doit pas faire l'objet d'un usage abusive répondant à une intention malveillante (3) ou une légèreté blamable: tel le renvoi sur-le-champ avec brusquerie ou désinvolture, au milieu du travail et avec interdiction de reparaître (4), en laissant presume aux tiers l'existence d'une faute grave (5). L'indemnité spontanément verse par l'employeur répare le prejudice découlant de l'inobservation du préavis, mais non de l'abus du droit dont il s'est rendu de plus coupable."

On 18th November 2021, Applicant attended the office of Respondent, effecting tasks allocated to her during the whole day. It is also not disputed that the termination letter was issued during the prescribed period. ("*Workers' Rights (Prescribed Period) Regulations 2020 GN 183/2020 Government Gazette of Mauritius No. 103 of 14 August 2020 Regulations made by the Minister under section 124 of the Workers' Rights Act 2019*).

Consent remains the only bone of contention for the parties. In attending the place of work and effecting whatever tasks she was asked to attend to, did Applicant consent to resuming work, thereby reviving the employment contract?

At paragraph 1.16 of Applicant's Statement of Case, Applicant avers that on 17 November 2021, she left Quatre Bornes Labour Office at around 15:30hrs and that was after the Labour Officer, Mr. Subnauth had set up a meeting with Respondent as requested. Applicant was given instructions from his former assistant Mr. Jeremy Rosalie to complete a follow up on Google Sheet for the day. She attended the Labour Office of Quatre Bornes the next day, assisted by one Mr. Ivor Tan Yan for a meeting scheduled at 10.30 a.m. (paragraph 18). When the Labour Officer called the Respondent, Mr. Assan Ali alleged that a settlement had been reached and he had sent an email to Applicant to that effect (paragraph 1.19). Mr. Tan Yan sent an email to Respondent, denying any agreement (paragraph 1.20).

Applicant has throughout her whole testimony vehemently denied any agreement to resume work. (see P 8-P 11 of proceedings):-

"…….

Mrs G. A. François: En quittant le Labour Office, vers 15 heures et quelque, j'ai reçu un appel de Jakir pour me demander de revenir le lendemain au bureau du Digital Fourteen pour un handing over.

President: Pour?

Mrs G. A. François: Un handing over.

Mr J. N. Mosaheb: OK., maintenant, est ce que vous pouvez dire, brièvement, dans quel état d'esprit vous étiez, au moment où vous recevez cet appel ?

Mrs G. A. François: J'étais stressée, je n'avais pas envie de retourner là-bas vu que les derniers échanges n'étaient plutôt pas très agréables et je ne savais pas ce qu'il allait me demander dans le handing over mais par respect pour mes collègues et parce que j'avais peur qu'on coupe mes Local Leave, je suis allée le lendemain, le jeudi.

…….

Mr J. N. Mosaheb: OK., Mademoiselle François, donc, bougeons maintenant vers le 18, jeudi 18, le lendemain. Est-ce que vous pouvez décrire au Board ce que vous faites quand vous revenez le lendemain, mercredi 18 novembre, suite à l'appel de Jakir la veille ?

Mrs G. A. François: Jeudi.

Mr J. N. Mosaheb: Jeudi 18, yes, my apologies.

Mrs G. A. François: Je me suis rendue au bureau du Digital Fourteen et c'est Jérémie Rosalie, mon Assistant, Assistant de Production qui m'a demandé de mettre à jour le document de suivi. Le document de suivi c'est un document qui dit à quelle date on a reçu la demande du client, à quelle date je l'ai envoyé au prestataire, à quelle date on a livré le produit fini et quel prestataire avait été utilisé sur le projet.

Mr J. N. Mosaheb: La fois dernière, quand vous étiez en train de déposer dans ce Tribunal, vous avez fait état de votre journée normale au travail, vous vous souvenez de ça ?

Mrs G. A. François: Oui.

Mr J. N. Mosaheb: Maintenant ce que vous décrivez là, là, document de suivi, est ce que c'était un travail d'une journée de travail normale ?

Mrs G. A. François: Non. Je n'ai communiqué avec aucun client, je n'ai pas eu d'échange avec mon équipe, je n'ai fait aucun planning, j'ai juste mis à jour un document de suivi.

……

Mr J. N. Mosaheb: Et cette journée, est-ce-que vous pouvez dire à la fin de cette journée, donc, jeudi 18, comment se termine cette journée ?

Mrs G. A. François: J'ai mis à jour le document de suivi ensuite j'ai demandé à Jyotee.

Mr J. N. Mosaheb: Qui ça ?

Mrs G. A. François: Pour moi c'était la RH, enfin celle qui s'occupe de l'admin à Digital Fourteen, si ça tenait toujours pour le rendez-vous du lendemain à1030 heures au Bureau du Travail. Elle m'avait dit qu'elle allait confirmer avec Jackir..

Mr J. N. Mosaheb: Maintenant, quand vous quittez le travail ce jour-là, vous avez mentionné que vendredi vous avez eu la lettre de licenciement, on vous avait demandé de laisser votre laptop, le laptop du travail, est-ce-que c'était le cas ce jour là aussi ?

Mrs G. A. François: Non, je ne l'ai pas pris parce que j'étais venue que pour le handing over. J'ai laissé le laptop sur le bureau en partant."

At page 37 of the proceedings, Applicant was referred to an email she sent on 22.11 2021 to the effect that ".. *encore une fois après n'avoir trouvé aucun accord*…." shows her consistency in rejecting the allegations of an agreement to resume work. She continued in the same breath as evidenced by the following extracts of the proceedings:- (Pages 40-41,42)

"…….

Mr Z Rajani: Et dans cette lettre-là votre employeur vous dit premièrement « Reference is made to your employment with Digital Fourteen Ltd whereby you hold the post of 'Responsable Production et Support'."

Deuxième "We wish to place on record that you have absent from work for more than three consecutive working days as from the 19th of November, 2021 and up to date without given sufficient cause which amounted to 'comportement fautif', thus entailing prejudice to the good and smooth running of the operations of the entreprise." Et troisièmement « You are therefore hereby required to resume your employment within 24 hours upon receipt of this letter, failing which it will be considered that you have on your own free will abandon work and unilaterally put an end to your contract of employment with this Company." On vous a envoyé cette lettre là?

Ms G A François: Oui.

…….

Mr Z Rajani: La lettre du 24 novembre, 2021, vous n'avez jamais répondu ça à votre employeur?

Ms G A François: C'est faux, on m'a montré un email où l'Inspecteur du Bureau du Travail est en copie où j'ai répondu oui.

……

Mrs G. A. François: Si, je vois que je dis qu'on me demande de revenir au bureau juste pour continuer me …

Mr H. Rajani: Vous avez dit ce que vous avez dit dans la lettre, c'est pas en réponse d'un Notice to resume work.

Mrs G. A. François: Je vois que je réponds que je ne veux pas revenir pour me protéger."

The relevant part of the Labour Officer's testimony (Mr. Subnauth) is to the effect that a meeting was fixed at the Labour Office on 19 November 2021 for parties to attend. Respondent was not present. The Officer called him and the latter replied that he negotiated with Applicant for latter to resume work.

Mr. Tan Yan corroborates the version of Applicant in relation to the issue of handing over (P15). We respectfully disagree with the submission of Counsel for the Employer that there was never any issue of handing over to be effected. Nor can we conclude that the idea of handing over was an afterthought. Applicant mentioned it to Mr. Tan Yan after her meeting on the 17th November 2021 with Mr. Assan Ali that she was to effect a handing over. Mr. Tan Yan referred to it during his testimony.

We have difficulties understanding the Employer's representative when he said that he was busy doing his own work on the 18th November 2021 and he did not have any document signed by the Applicant regarding resumption of duty. This would have certainly been to his credit. No doubt recording each step of the recall process would have ensured a transparent and legally proper procedure. These records would have served as crucial evidence in case of legal inquiries, just like the present one.

"Dès l'instant où il est notifié, le licenciement ne peut être annulé unilatéralement par l'employeur, qui ne peut revenir sur sa decision qu'avec l'accord du salarié" (Cassation soc. 12 mai 1998, pourvoi no 95.44.553).

Accord qui doit être exprès, claire et non equivoque, c'est à dire ne laisse la place à aucun scepticisme quant à la volonté exprimée par le salarié. "Dès lors que l'acceptation du salarié apparaît aux juges du fond claire et non equivoque, la rétraction sera valable et le licenciement sera rétrospectivement annulé', (Cass.soc. 9 Janv. 2008, no. 06.45.976)

In Coprim Ltée V Ménagé (Mauritius) (2008) UKPC 12 (21 February 2008), the Law Lords referred to a situation where an employer wishes to recall a notice of dismissal:"……. does not require any action by the person who is dismissed, nevertheless, once notice has been given , the employer cannot withdraw it without the consent of the employee. The employee can therefore take advantage of any rights concerning to him as a result of the notice of dismissal. In particular, he is quite free to refuse any offer of re-employment made by the employer. See, for instance, GH Camerlynek, Traité de droit du travail, Vol. 1 le contrat de travail (1968), p 273:

"Enfin le salarié peut refuser la réintegration offerte par le patron responsible de la rupture et conserver ses prerogatives notamment le bénéfice du préavis."

It is noteworthy that Applicant's attendance at the Labour Office of Quatre Bornes, assisted by Mr. Tan Yan at 10.30 a.m. on 19 November 2021 reveals her continuous attempt to reach a settlement regarding compensation.

Indeed, the overall evidence purport to show that Applicant, ever since she was put in mise en demeure of the termination of her contract of employment, was more concerned with receiving an acceptance of compensation and she cannot be blamed for that. Accepting to effect the handing over cannot mean she was back to work. Her coming and going at the place of work was more in a spirit of *pourparlers* regarding compensation and there are no surrounding circumstances that would give rise to any ambiguity. We reject the contention that the present matter is not a case of redundancy.

Counsel for the Employer invoked a change of heart on the part of the Applicant for failing to return to work after resuming office on the 18th November 2021. We believe that if any change of heart has taken place, it is certainly on the part of the Employer who after dismissing the Applicant from work and dispensing her for attending the workplace on the ground that her post "*will no more be needed*," all of a sudden was at her beck and call to resume duty. It is a reprehensible attitude on the part of an employer to tell an employee to be back at the workplace and to use, if not abuse, of the provision of the law to clamour about the resignation of the employee in order to be dispensed from paying severance allowance. This is playing victim in a situation created by the employer and then flip the story to manipulate others to think that the employer is not responsible for the termination of the employment contract.

CONCLUSION

We find on a balance of probabilities that the version of the Applicant to be arguably more plausible than that of the Respondent. The latter having terminated the contract of employment during the prescribed period ("*Workers' Rights (Prescribed Period) Regulations 2020 GN 183/2020 Government Gazette of Mauritius No. 103 of 14 August 2020 Regulations made by the Minister under section 124 of the Workers' Rights Act 2019*), such termination is considered to be unjustified by virtue of Section 72(8)(b) coupled with Section 72(10)(b) of the Workers' Rights Act 2019 and the Respondent is therefore ordered to pay Applicant Severance allowance at the rate specified in Section 70(1) (Supra).

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Rashid Hossen

(President)

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Christ Paddia

(Member)

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Suraj Ray

(Member)

SD

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Yashwinee Chooraman (Ms)

(Member)

SD

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Saveeta Deerpaul (Ms)

(Member)

Date: 25th August 2023