Michaelmas Term
[2023] UKPC 38
Privy Council Appeal No 0023 of 2022

JUDGMENT

Michel Lafresière (Respondent) v New Mauritius Hotels Ltd (Appellant) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Reed
Lord Kitchin
Lord Sales
Lord Leggatt
Lady Rose

JUDGMENT GIVEN ON
26 October 2023

Heard on 5 July 2023

Appellant
P Maxime Sauzier SC
Shrivan Dabee
(Instructed by ENSafrica (Mauritius))

Respondent
Hervé Duval
Nicolas Henry
(Instructed by Sheridans (London))

LADY ROSE:

1. On 5 July 2013, the appellant, New Mauritius Hotels Limited ("Hotels"), wrote to the Respondent, Mr Lafresière, telling him that it had decided to terminate his employment in the hotel where he worked with immediate effect. The letter ("the Dismissal Letter") said that Mr Lafresière had been "duly convened to appear" before a Disciplinary Committee the previous day, 4 July 2013, and "regretfully noted" that he had failed to attend or to provide any reason to the management for not attending. The letter said that the disciplinary hearing had been held in his absence. Management had received a report from the Disciplinary Committee who had concluded, in the light of the evidence adduced at the hearing, that "all the charges" which Mr Lafresière had to answer had been proved. Management had accepted that report and considered that Mr Lafresière's "acts and doings" amounted to gross misconduct. The Dismissal Letter stated that Management:

> "takes the view that it cannot, having regard to the above and in all good faith, take any other course but to dispense with your services."

2. On 13 September 2013 Mr Lafresière brought a claim for wrongful dismissal before the Industrial Court. He stated in the Proecipe that he had been employed by Hotels since the beginning of June 2004 as a maintenance manager at a monthly salary, as at the date his employment was terminated, of Rs 231,788. He claimed severance pay in the amount of Rs 6,258,291.66, that being three times his monthly remuneration multiplied by the nine years he had worked for Hotels.

3. A hearing before the Industrial Court took place before His Honour P Kam Sing, Magistrate ("the Magistrate"). The Magistrate handed down his judgment on 20 July 2018, dismissing Mr Lafresière's claim. Mr Lafresière appealed against that decision to the Supreme Court, raising eight grounds of appeal. That Court allowed the appeal on the two principal grounds and awarded him the severance allowance in the amount that the parties had by that time agreed was the correctly calculated amount, Rs 6,001,899.66: see judgment handed down on 22 July 2021, [2021] SCJ 244. Hotels now appeals to the Board arguing that the Supreme Court erred in its criticism of the Magistrate's conclusions.

The law

4. The wording of the Dismissal Letter reflected the wording of section 38(2) of the Employment Rights Act 2008 (Act No 33 of 2008) ("ERA 2008"). That provides:

"**38 Protection against termination of agreement**

…

(2) No employer shall terminate a worker's agreement –

(a) for reasons related to the worker's misconduct, unless –

(i) he cannot in good faith take any other course of action;

(ii) the worker has been afforded an opportunity to answer any charge made against him in relation to his misconduct;

(iii) he has within, 10 days of the day on which he becomes aware of the misconduct, notified the worker of the charge made against the worker;

(iv) the worker has been given at least 7 days' notice to answer any charge made against him; and

(v) the termination is effected not later than 7 days after the worker has answered the charge made against him, or where the charge is subject of an oral hearing, after the completion of such hearing; …"

5. The obligation on the employer to pay a severance allowance is imposed by section 46 of the ERA 2008. Section 46(5)(b) provides that where the court finds that the termination was in contravention of section 38(2), it may order that the worker be paid severance allowance of a sum equivalent to three months' pay for every year of continuous employment.

6. The following principles as to the application of section 38(2) are common ground in this appeal. First, when a worker brings a claim for severance pay before the Industrial Court, that Court is required and entitled to investigate afresh the truth behind the allegations on which the employer relies to justify the dismissal of the employee. This was confirmed in the case of *Smegh (Ile Maurice) Ltée v Persad* [2012] UKPC 23 ("*Smegh*"). In that case the Board cited a passage from the earlier case of *G. Planteau De Maroussem v Dupou* [2009] SCJ 287 which stated that a disciplinary committee is no substitute for a court of law. The Board went on in *Smegh* (para 20) to say that it

"would be remarkable if the exclusive jurisdiction to decide whether a worker has been unjustifiably dismissed in a particular case were to be vested in the employer."

7. It is also common ground that the only reasons on which the employer can rely before the Industrial Court to justify the dismissal are the reasons which it gave to the employee at the time of the dismissal. Further, the Industrial Court is not entitled to consider evidence that may have emerged since the dismissal took place, whether that evidence supports or undermines the original decision to dismiss. The Board said in *Smegh*:

> "23 … The question whether an employer justifiably dismisses a worker must be judged on the basis of the material of which the employer is or ought reasonably to be aware at the time of the dismissal. If the dismissal is justified on that material, it is not open to the worker to complain on the basis that there was other material of which the employer was not, and could not reasonably have been, aware which, if taken into account, would have rendered the dismissal unjustified."

The allegations against Mr Lafresière and the wrongful dismissal proceedings

8. The charges referred to in the Dismissal Letter as having been proved at the disciplinary hearing were the allegations set out in Hotels' two previous letters to Mr Lafresière. One letter dated 30 May 2013 informed him of six matters that had been reported by the Internal Audit Department. The letter invited Mr Lafresière to give his written explanations for each and to state why "the bond of trust" between him and Hotels should be maintained and why disciplinary measures should not be taken against him. Mr Lafresière responded that all the matters raised in that letter had been fully canvassed during the internal audit exercise in January 2013.

9. A second letter dated 6 June 2013 ("the Charges Letter") recorded that Mr Lafresière had not provided explanations in response to the Internal Audit report and charged him with five matters. These involved the sale of a large number of plants to a rival hotel resort; taking wooden flooring belonging to the hotel where he worked; allowing club cars to be removed from the hotel without proper records being kept; and diverting workers at the hotel to carry out work at his own flat or at the rival tourist resort during normal working hours, or giving them extra days off from the hotel in order to cover the days they worked elsewhere on his instruction.

10. One of the flaws which the Supreme Court identified in the Magistrate's judgment was that he did not address the problem that was created by the pleadings before him. It is important therefore to consider Mr Lafresière's pleaded case and

Hotels' defence in order to understand the findings that the Magistrate made or failed to make.

11. In the Proecipe, Mr Lafresière's primary case was, broadly, that he had already been dismissed from his job in mid-March 2013. This had come about, he alleged, because following an internal audit exercise carried out within Hotels in January 2013, he was "made to understand" by Mr Mathieu Rivet, a senior manager at Hotels, that "the top management of the group considered that he had no future within [Hotels'] organisation." This was then confirmed to him by the Group HR Consultant, M. Montocchio, who was known to be a trusted adviser of the Chief Executive Officer. Mr Lafresière averred that his attendance at work after that date was in the nature of a handover period following that dismissal. He said that he had answered all the issues that had been raised by the internal audit in January 2013 and thereafter. The Charges Letter amounted, he averred, to Hotels choosing "to continue to pretend that it had not taken any decision" as to his employment. He alleged further that if Hotels purported to rely on the matters set out in the Charges Letter as a reason to dismiss him, the dismissal was in breach of section 38(2)(a)(iii) of the ERA 2008 because Hotels had known about the alleged misconduct for more than 10 days before notifying him.

12. At paragraph 19 of the Proecipe, Mr Lafresière averred that Hotels had wrongfully and unjustifiably terminated his employment and was therefore bound in law to pay severance. At para 20, he set out the amount he alleged was owed to him.

13. Hotels lodged its defence to the claim on 8 May 2014. The defence described the internal audit process. It denied the "facts and innuendos" by which Mr Lafresière asserted that Mr Rivet or Mr Montocchio had dismissed him. Various points were taken on the content of the correspondence between the parties. The defence concluded by stating:

> "16 The Defendant denies paragraphs 19 and 20 of the Proecipe - more specifically that it has 'wrongfully and unjustifiably' terminated the Plaintiffs employment - and further avers that -
>
> 16.1 The Plaintiff failed to attend the disciplinary hearing and, accordingly, to submit himself to disciplinary proceedings.
>
> 16.2 it could not, in all good faith, have taken any other course but to dispense with Plaintiffs services.

> 16.3 it is not indebted to the Plaintiff in the sums claimed or in any sum whatsoever."

14. Nowhere in the defence did Hotels actually set out the allegations of misconduct on which it relied to justify Mr Lafresière's dismissal and nowhere did it unequivocally or clearly refer to the Charges Letter or to the Dismissal Letter in a way which incorporated those documents as its reasons for dismissing Mr Lafresière. The defence did not refer to the explanations that Mr Lafresière had given for his conduct or address anything that he might have said in refutation of the points put to him as a result of the audit. The only misconduct which is in fact described in the defence and the only pleaded explanation as to why Hotels had dismissed him was that he had failed to attend the disciplinary hearing.

15. Mr Lafresière gave evidence at the hearing before the Magistrate on 3 December 2014 and for part of the day some months later, on 4 September 2015. Hotels' witnesses gave evidence also on 4 September 2015 and then on two days a year later, 14 and 19 September 2016. The parties' closing submissions were made in writing almost a year after that, on 30 August 2017. Mr Duval's closing submissions on behalf of Mr Lafresière summarised the evidence concerning the internal audit process and his conversations with Mr Rivet and Mr Montocchio. In those closing submissions, Mr Duval made the point forcefully that there was no averment in the defence that Mr Lafresière's employment was terminated for misconduct. It was trite law, he submitted, that a party is bound by its pleadings. He submitted that it was not open to the Magistrate to find that the reasons in the Dismissal Letter were valid reasons for dismissal. As to the substance of the allegations against Mr Lafresière, the submissions addressed these only in the context of alleging that another employee who had faced exactly the same allegations had not been dismissed but a settlement had been reached with him and he had been transferred to work in another hotel. Hotels had not, therefore, discharged the burden of proving that it had no option in good faith but to dismiss Mr Lafresière. The submissions did not address at all the alleged sale of the plants or the taking of the wooden boards or the extra days holiday allegedly allowed to employees who had worked at a different resort at Mr Lafresière's request.

16. Hotels' final submissions to the Magistrate also addressed at length the process of the audit and the conversations with Mr Rivet and Mr Montocchio. There was a brief mention of flooring where the submissions said:

> "Without going into all the minute details of the Plaintiff's cross-examination, the latter had to admit that there had been 'manquements' (p 19 – Proceedings 04/09/15). His demeanour before the Court cannot be said to have been credit worthy in view of his constant refusal to answer to specific questions. On the other hand, when questioned as to DOC. G

> (minutes of the meeting of 10th May 2013) (pp 40 to 45 - Proceedings 04/09/15) the Plaintiff even admitted that he was prepared to pay for some items (flooring) but that he had not yet done so!"

17. In contrast to that brief reference, Hotels' submissions did set out lengthy passages of Mr Lafresière's cross-examination about his supposed "handover" period and process of the audit report having been put to him for signature.

18. The Magistrate's decision was handed down on 20 July 2018. The Magistrate set out the parties' cases and described the evidence that Mr Lafresière had given both in his deposition and when he was cross-examined. This included, the Magistrate recorded:

> "He is not aware whether explanations were sought from other employees and he had nothing to do with sale of plants. As concerning the issue of wooden flooring, he agreed that he would pay for the wood but has not yet done so. He further agreed having a bill for 287 plants amounting to RS 25,000 but some plants were for General Construction."

19. The Magistrate further recorded that Mr Lafresière's evidence in re-examination had been:

> "The wooden flooring was obtained when the defendant had to get rid of items in containers. He received them as a gift following a clearing out. He offered to pay for the gift at the time of the audit to show his good faith. He did not pay for them in the end because he felt that his conduct would not change anything."

20. The Magistrate also recorded the evidence of Mr Piat, the Group HR adviser. As to the allegations against Mr Lafresière, Mr Piat's evidence appears only to have been that other employees had been asked to explain their conduct and all had replied except Mr Lafresière. In cross-examination Mr Piat is recorded as having said:

> "The reasons for dismissal are at [the Dismissal Letter] and the charges are in [the Charges Letter] dated 06 June. He added that as the plaintiff gave no explanation he was summarily dismissed for misconduct."

21. Mr Taujoo also gave evidence for Hotels. He had carried out the audit in January 2013. He said that at meetings with Mr Lafresière:

> "Certain matters were confirmed by plaintiff such as taking of plants and wood. On 10 May 2015, a meeting was held to clear certain matters and every person who took away plants and wood was presented with a bill for payment."

22. In cross-examination, the Magistrate stated, Mr Taujoo "explained that the plaintiff was responsible for plants at Les Salines" and that "There are certain matters which plaintiff confirmed". The Magistrate then turned to his analysis. First he rejected Mr Lafresière's contention that he had been dismissed on or about 15 March 2013 as a result of the conversations with Mr Rivet or Mr Montocchio. He then noted that it was not Hotels' case that Mr Lafresière had resigned:

> "It has maintained that the plaintiff was dismissed as he failed to attend the disciplinary hearing and that he could not in good faith take any other course than to dispense with plaintiff's services."

23. The Magistrate then set out the relevant statutory provisions and the relevant case law. He noted, correctly, that in order to justify dismissal, the misconduct proved must be "tantamount to faute grave or faute lourde". He then dealt with the question when precisely Hotels had become aware of the acts and doings constituting the alleged misconduct in order to determine whether the 10 day time limit under section 38(2)(a)(iii) for informing an employee of the charge had been exceeded. He held that Hotels had only become aware of facts amounting to the misconduct on 29 May 2013 when it had "une connaissance exacte et complète" and therefore there had been no breach of that provision.

24. The Magistrate then concluded his judgment with the following paragraph:

> "The plaintiff was also given opportunity to give his explanations before a disciplinary committee which he chose not to attend. The defendant was therefore entitled to find that the charges laid against him in [the Charges Letter] dated 06 June 2013 have been established and that such acts do constitute acts of gross misconduct. I find that the defendant has established the termination of the plaintiff's employment was justified in the circumstances and that it could not in good faith take any other course of action than to terminate the

> Plaintiff's employment for the reasons given in [the Dismissal Letter]."

25. On Mr Lafresière's appeal, the Supreme Court held that the judgment was too flawed to stand and set it aside. They addressed two of the eight grounds of appeal raised by Mr Lafresière. The first, Ground 2, was the point that Mr Duval had made in his closing submissions after the trial, namely that it was not open to the Magistrate on the state of the pleadings to find that the reasons put forward in the Dismissal Letter justified dismissal. The Magistrate had been bound to find that the dismissal was unjustified. The second, Ground 4, was that the Magistrate had relied solely on the fact that Mr Lafresière had not attended the disciplinary hearing as the basis for finding that the charges in the Charges Letter had been established "without addressing his mind" to whether Mr Lafresière had been justified in not attending, or to the reasons set out in the Dismissal Letter or to the evidence which was adduced before the disciplinary committee in his absence.

26. The Supreme Court juxtaposed the Dismissal Letter with para 16 of the defence and the final paragraph of the Magistrate's judgment. The Supreme Court said:

> "To be noted that in the plea of the respondent, then defendant, there is no mention of the charges having been proved and that because of this, he was dismissed. Learned Counsel for the respondent confirmed that no evidence was produced before the learned Magistrate to substantiate the charges. However, he did put the charges to the appellant who accepted them."

27. The Court noted that the Magistrate had not addressed the discrepancy between the Dismissal Letter and Hotels' pleaded defence. He had not made any findings on whether the charges against Mr Lafresière had been proved and whether they justified dismissal. It was not clear therefore whether the Magistrate concluded that Hotels had no option in good faith but to dismiss Mr Lafresière because of Mr Lafresière's non-attendance at the disciplinary hearing or because the charges against him were proved to the Magistrate's satisfaction. The Supreme Court therefore upheld Grounds 2 and 4, quashed the Magistrate's decision and substituted judgment in favour of Mr Lafresière for the agreed quantum of the claim.

Hotels' appeal

(a) The adequacy of Hotels' pleaded defence

28. The first submission made by Mr Sauzier SC, appearing for Hotels, was that the Supreme Court was wrong to decide that the pleaded defence did not incorporate the allegations in the Dismissal Letter. He argued that the plea in para 16.2 of the defence that Hotels "could not, in all good faith, have taken any other course but to dispense with Plaintiff's services" was a direct reference to the test in section 38(2)(a)(i) ("the no option test") and so was a shorthand way of pleading that the whole of section 38(2) was relied on. By pleading that the no option test was satisfied, Hotels was in effect alleging that there had been sufficiently serious misconduct to justify dismissal without severance pay. Mr Sauzier relied on the Board's decision in *Total Mauritius Ltd v Abdurrahman* [2015] UKPC 45 in which the Board discussed the distinction between faute sérieuse (which might justify dismissal but still entitle the employee to severance pay) and faute grave (which would justify dismissal under section 38(2) with no entitlement to severance pay).

29. The Board does not accept that argument. First, as Mr Duval pointed out, the no option test is not unique to the misconduct justification for dismissal. Section 38(3) provides that no employer shall terminate a worker's agreement for reasons related to the worker's poor performance unless he cannot in good faith take any other course of action.

30. Secondly, the purpose of pleadings is to circumscribe the issues in the case. Mr Duval referred to *Loveridge and Loveridge v Healey* [2004] EWCA Civ 173 where Lord Phillips MR said, at para 23:

> "It is on the basis of the pleadings that the parties decide what evidence they will need to place before the court and what preparations are necessary before the trial. Where one party advances a case that is inconsistent with his pleadings, it often happens that the other party takes no point on this. Where the departure from the pleadings causes no prejudice, or where for some other reason it is obvious that the court, if asked, will give permission to amend the pleading, the other party may be sensible to take no pleading point. Where, however, departure from a pleading will cause prejudice, it is in the interests of justice that the other party should be entitled to insist that this is not permitted unless the pleading is appropriately amended. That then introduces, in its proper context, the issue of whether or not the party in question should be permitted to advance a case which has not hitherto been pleaded."

31. It is clear from the decisions of the Supreme Court that particular emphasis is placed on the pleadings in a wrongful dismissal claim. This was recently affirmed by that Court in *Lateral Holdings Ltd v Murdamootoo* [2021] SCJ 19. In that case the letter

of dismissal sent to the claimant had given "breach of trust and confidence at work" as the reason for dismissal but, before the magistrate, the employer asserted that he had been dismissed for misconduct. The Supreme Court said, at p 4:

> "We therefore agree with learned Senior Counsel for the respondent that it was not open to the appellant to aver in its plea and seek to establish at the trial that the termination of the respondent's appointment was justified on the ground of 'misconduct and a breach of his responsibilities as a senior employee of the company', none of which had been invoked in the letter of termination. The appellant's averment in its plea with regard to termination of the respondent's employment being justified on ground of misconduct is not supported by the evidence on record, namely, the letter of termination. This in itself would have been enough for the learned Magistrate to find that the appellant had failed to discharge before the Industrial Court its burden of establishing that the termination was justified."

32. In its judgment in the present case, the Supreme Court did not regard Hotels' pleaded defence as adequate to raise a plea of dismissal for misconduct. If it had been the practice in wrongful dismissal claims before the Industrial Court for such shorthand to be used, the Supreme Court would have placed less emphasis on the pleading point. Instead, they set aside the judgment on the grounds that the pleading was inadequate. This conclusion was, in the Board's view, intended to make clear to employers that they must properly plead the reasons for the dismissal and that those reasons must be the same as the reasons given at the time of the dismissal and, further, to make clear to those presiding in Industrial Courts that they must focus their fact finding exercise on those reasons. There was no error of law in the Supreme Court reaching that conclusion and, in doing so, reaffirming the importance of those protections conferred on employees.

(b) The findings made by the Magistrate

33. Mr Sauzier's second criticism of the Supreme Court's judgment was that the Court was wrong to conclude that there had been confusion before the Magistrate as to the reasons for Mr Lafresière's dismissal. Despite the ambiguity in the pleaded defence, no one was in any doubt before and during the Industrial Court hearing that Hotels was relying on the allegations of misconduct set out in the Charges Letters to which the Dismissal Letter had cross-referred. Mr Sauzier said that everyone knew that the issues for the Magistrate were whether those allegations were proven, whether they met the test for faute grave and whether the no option test was satisfied. Mr Lafresière had

himself confused things by raising the issue whether he had in fact been dismissed in March 2015 but the Magistrate had rejected that case on the facts.

34. Mr Sauzier also criticised the Supreme Court for having misunderstood what happened before the Magistrate. The passage where they record that Mr Sauzier "confirmed that no evidence was produced before the learned Magistrate to substantiate the charges" was mistaken. What had happened was that Mr Sauzier had cross-examined Mr Lafrasière who had accepted the allegations. What Mr Sauzier had told the Supreme Court during the hearing of the appeal was that in light of Mr Lafresière's answers in cross-examination at the trial, he had not needed to adduce Hotels' evidence before the Magistrate to prove the allegations.

35. The Board does not accept that criticism. The confusion as to the issues before the Magistrate was caused, in large part, by Hotels' pleaded case. That confusion was compounded by Hotels' failure to set out in their written closing submissions the matters which the Magistrate needed to decide and the evidence on which it relied to support factual findings in its favour. Hotels did not need to set that out in "minute detail", but the failure to set out any of the evidence on which it relied, coupled with lengthy extracts from the transcripts of evidence relating to other matters, no doubt contributed to the Magistrate's failure to focus on a proper analysis of the facts. That was particularly unhelpful given that the proceedings were spread out over such a long period of time and written closings submitted sometime after that. In their written submissions to the Board in this appeal, Hotels does belatedly set out its analysis of the evidence given by the witnesses about the plants, wooden boards, extra holidays etc and (at para 28) about the treatment of other employees similarly implicated in the internal audit. It is impossible to say whether or not that analysis would have been accepted by the Magistrate because the case was not presented to him in that way.

36. The Magistrate did refer to some of the rival contentions when he set out the evidence that was given. He did not subject those conflicts of evidence to any critical analysis or resolve any factual disputes. For example, he records that Mr Lafresière said "he had nothing to do with sale of plants" and refers to contrary evidence from Mr Taujoo who "explained that the plaintiff was responsible for plants at Les Salines". The Magistrate does not, however, say what his finding is on that point or give reasons for preferring one version of events over the other. Another key issue before the Magistrate should have been whether the no option test was really satisfied or whether, as Mr Lafresière asserted, other employees found to have engaged in conduct similar to that alleged against him had been dealt with much more leniently.

37. Mr Sauzier argued before the Board that Mr Lafresière's defence was nothing more than a complaint that "everyone was doing the same". That may well not be a good excuse if "everyone" else is also dismissed. But given the express statutory no option test and the allegation that others facing serious allegations were not dismissed,

the Magistrate should have engaged with that issue. Further, the Magistrate failed to address the question whether the "manquements" which Mr Lafresière accepted in cross-examination had occurred were sufficient to amount to "faute grave" for the purposes of section 38(2). For example, Mr Lafresière's case on the wooden boards was that he had been told by someone senior that he could take these home as they were being thrown away by the hotel following a refurbishment. The Magistrate should have considered whether that explanation cast the allegations in a different light.

38. If Hotels was inviting the Magistrate to infer from Mr Lafresière's failure to attend the disciplinary hearing that he had no real answer to the allegations, then the Magistrate should have considered Mr Lafresière's reasons for deciding not to attend. His rejection of Mr Lafresière's contention that he had been dismissed in March 2013 was not a complete answer to this point. As the Supreme Court said in their judgment, Hotels did not dispute that Mr Rivet had told Mr Lafresière in March 2013 that he should start looking for a job elsewhere. The Magistrate was entitled to find that that did not legally amount to a dismissal. But Mr Lafresière's belief that he had been dismissed – or his belief that the disciplinary hearing would not be a genuine opportunity for him to put forward his explanations because Hotels' mind was made up – might still have explained his failure to attend.

39. Mr Sauzier argued that the Supreme Court took too strict an approach in scrutinising the Magistrate's judgment. Bearing in mind the history of the matter and what happened at the hearing, a more benevolent reading would support a conclusion that the experienced Magistrate had performed the task that was allotted to him. Mr Sauzier referred to the recent passage in the English Court of Appeal's decision in *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48 where Lewison LJ said: (para 2(vi))

> "Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

40. Mr Duval countered by relying on *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605; [2002] 1 WLR 2409 where the Court of Appeal explained (para 15) that judges are required to give reasons for their decisions because justice must not only be done but be seen to be done: "Reasons are required if decisions are to be acceptable to the parties and to members of the public". The Court went on:

> "16. We would put the matter at its simplest by saying that justice will not be done if it is not apparent to the parties why one has won and the other has lost."

41. The Board agrees with the Supreme Court that it is not apparent from the Magistrate's decision why he dismissed Mr Lafresière's claim. The Supreme Court is the appellate body best suited to assessing whether the Magistrate's reasons met the standard to be expected. Given the seriousness of the allegations made against Mr Lafresière and the consequences for him if they were indeed found to be proved, the Supreme Court did not err in deciding that the judgment was not adequate and was entitled to set it aside.

42. The Board therefore dismisses the appeal.