

## **BAHOZE v. NATIONAL BANK OF RWANDA (B.N.R)**

[Rwanda HIGH COURT – RADA00159/2016/HC/KIG (Ndahayo, P.J.) December 23, 2016]

*Administrative law – Disciplinary sanction – Criminal liability – An employee can be given a disciplinary sanction for work related negligence despite being proved innocent by a criminal court – Law N°86/2013 of 11/09/2013 establishing the general statutes for public service, article 76, 77 and 78.*

*Administrative procedure – Admissibility of a claim – Administrative appeal – An administrative appeal is lodged by a plaintiff requesting for annulment of the administrative decision – Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 336(1).*

**Facts:** The appellant was tried and found innocent for the offence of complicity in embezzlement of the government funds by the criminal Court. National Bank of Rwanda (BNR) dismissed her due to negligence for not safeguarding the password of the computer used in the transfer of money from BNR to commercial banks.

After she was blacklisted by MIFOTRA , she requested BNR to erase her from that list and she was replied that it was not the one which blacklisted her, rather what it did was just to submit a list of employees who no longer work for it and its cause to MIFOTRA.

She filed a case against BNR in the Intermediate Court alleging that she committed no fault which would have led to her dismissal and later on be black listed. That Court found her claim without merit.

She went on and appealed at the High Court arguing that the judge voluntarily disregarded the rulings of the criminal Courts and also her dismissal was unlawful because she was dismissed without sufficient investigation and also the employer made a preconceived conviction and that is the reason why they request for the damages.

In its defence, BNR argue that it did not dismiss her because of embezzlement of its funds rather was due to negligence which led to that embezzlement, that negligence is based on exposing the password used in the transfer of money and got used by others.

It further argues that it did not commit any fault in submitting the list to MIFOTRA because that is what it was requested to do, and for remuneration of the overtime, it states that the claim should not be admitted because it was raised for the first time in the Court and regarding the damages it finds that she is requesting that BNR be ordered to pay her entitlements, therefore, an administrative appeal should have been lodged separately.

In its conclusion it prays to be awarded counsel and procedure fees in addition to what it was awarded in the previous judgment.

**Held:** 1. An employee can be given a disciplinary sanction for work related negligence despite being proved innocent by a criminal court. Therefore, the fact an employee is innocent for the crime of embezzlement does not prevent the employer to sanction her for the fault she committed of exposing the password because it is a gross negligence.

2. A public servant dismissed from work due to gross negligence is put on blacklist of MIFOTRA.

3. An administrative appeal is lodged by a plaintiff requesting for annulment of the administrative decision, therefore, there is no explicit or implicit decision which was taken by BNR regarding the remuneration of overtime which requires for an administrative appeal before filing the claim.

4. Plaintiff must prove a claim and failure to obtain proof he/she loses the case.

**Appeal lacks merit.**

**Statutes and statutory instruments referred to:**

Law N°86/2013 of 11/09/2013 establishing the general statutes for public service, article 76, 77 and 78.

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 336(1).

**Cases referred to:**

ELECTROGAZ v. Niwenshuti Nzaramba Valens, RADAA0038/09/CS rendered by the Supreme Court on 25/03/2011.

**Authors Cited:**

Georges Dupuis, Marie-Josée Guédon et Patrice Chrétien, Droit administratif, 10<sup>e</sup> édition, page 381.

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] Mrs Bahoze Sifa was an employee of National Bank of Rwanda (BNR) since 14/01/1999 till her dismissal on 24/03/2014. BNR adduce that her dismissal was due to gross negligence of exposing/revealing the password for the computer she used in the payment transfers from BNR to commercial banks according to what BNR is instructed to pay. Its exposure/disclosure abetted Mr Kwisanga Theoneste to embezzle from the Bank as he was convicted by the courts.

[2] After her dismissal, Sifa Bahoze, MIFOTRA together with the Public Service Commission requested BNR to provide them with a list of its former employees and the reason why they are longer working, as it always does with even other institutions. Consequently, BNR submitted list which included Sifa Bahoze demonstrating that she was dismissed due to gloss negligence. Basing on that list, MIFOTRA included her on the black list.

[3] Mrs Sifa Bahoze later requested BNR to remove her from the black list and BNR responded that it is not the one which blacklisted her, what it did was to submit to MIFOTRA the list of persons who are no longer its employees and the reason why they are no longer working with for it.

[4] On the part of Sifa Bahoze, she feels that she committed no fault which would have led to her dismissal and latter on be black listed. Therefore, it is on that background, that Sifa

Bahoze sued BNR at the Intermediate Court of Nyarugenge. That Court found her claim without merit, thereafter she appealed to the High Court

[5] The legal issues to be examined in this case are the following:

Whether there is a fault committed by Bahoze Sifa that had to be sanctioned by dismissal.

Whether BNR faulted in requesting Bahoze to be black listed.

Issue regarding the payment of the extra hours and the other damages requested in this case.

## **II. ANALYSIS OF THE LEGAL ISSUES**

[6] Whether there is a fault committed by Bahoze Sifa that had to be sanctioned by dismissal. The Counsel for Bahoze Sifa state that that she committed no fault which would have led to her dismissal. They argue that as indicated in her dismissal letter of Bahoze, BNR stated that she was dismissed due to the fraudulent act whereby Bahoze abetted in the embezzlement of 5,918,500Frw and later 9,789,000Frw. But it should be noted that in criminal cases RP0179/14/TGI/NYGE and RPA0049/HC/KIG, the Courts found Bahoze Sifa innocent in the embezzlement of BNR funds.

[7] They continue explaining that the judge willingly disregarded the rulings of the criminal Courts, the grounds for dismissal of Bahoze lacks merit. Therefore, they aver that BNR dismissed Bahoze Sifa without verification or carrying out sufficient inquiry and also made a preconceived conviction and that is the reason why they request for the aforementioned damages.

[8] The counsel for BNR alleges that Bahoze Sifa was not dismissed due to embezzlement of BNR funds; rather, she was dismissed due to negligence which led to the embezzlement of that fund. That negligence is because she did not do anything to protect her password, which was used in the money transfers from being used by other people.

[9] They continue arguing that even the judge in criminal case who cleared her of the offence of complicity of the embezzlement of the government fund also declared that the negligence of Mrs Sifa Bahoze was a loophole in embezzling the fund of BNR. He motivated that if Mrs Sifa Bahoze had protected her password, BNR would not have been embezzled those funds as indicated in paragraph 18 and 19 of the Judgment RPA0049/HC/KIG rendered on 25/06/2015. This is also what is contained in the dismissal letter whereby BNR demonstrated that it dismissed her due to gross negligence. Therefore BNR did not dismiss her because of the offence of embezzlement of the government funds; rather she was dismissed due to her gross negligence which led to embezzlement of the BNR funds.

[10] On this ground the High Court also finds as it is indicated in all documents that were written by Mrs Sifa Bahoze she agrees that her name was used in embezzling of the funds and admits that the password she had was the one which was used in embezzling of that money, however insist that her immediate superior deluded her and used it without her notice.

[11] Considering that Bahoze Sifa was an employee of Bank with the duty of transferring money, The court finds that in order to discharge this duty conferred to her by BNR, she had to do whatever she could to ensure the safety of that money so that it could not be accessed by those who are not authorised to have access to it. It is in that aspect that she had to protect

her computer from being accessed by another person because he could carry out some transactions in her name because it could produce grave consequences whether the loss which her employer may suffer or her personally.

[12] The fact that a person who is not Bahoze Sifa succeeded in accessing her computer by using the password of Bahoze Sifa and carried out money transfers operations. It symbolises a grave negligence on the part of Bahoze Sifa which led to that person knowing the password used and consequently embezzle the BNR funds.

[13] Therefore, the High Court finds that grave negligence to the extent that it should be qualified as gross negligence which can be a ground for Bahoze Sifa's dismissal by her employer; thus, BNR's decision to dismiss her was not contrary to the law because it is also provided for by article 77 of the Law N°86/2013 of 11/09/2013 establishing the general statutes for public service which provides that if a public servant breaches or fails to comply with the obligations assigned to him/her, this shall constitute a disciplinary fault punishable by one of sanctions provided for in article 76 of this Law in consideration of its seriousness, among those sanctions she shall be sanctioned by those which are provided under article 76 that also includes dismissal.

[14] Therefore, the Court finding Mrs Sifa Bahoze innocent of the offence of embezzlement could not bar her employer to sanction her for other work related negligence. This is based on article 74 of the internal regulation of BNR which provides that the disciplinary sanction for an employee of BNR shall not be prevented by a criminal liability and each one is independent. This implies that the fault of an employee may be a fault but not a crime or it can be both a fault and crime at the same time.

[15] It is also provided in article 78 of the Law N°86/2013 of 11/09/2013 establishing the general statutes for public service that the disciplinary sanction of a public servant shall be independent from criminal liability and punishment as provided by the criminal code to the extent that the same fault may cause both disciplinary procedure and criminal procedure.

[16] Furthermore its position was also held in the Judgment RADAA0038/09/CS, ELECTROGAZ versus Niwenshuti Nzaramba Valens rendered on 23/03/2011. In that judgment, the Supreme Court held that an employer is not bound by criminal decisions. The Supreme Court relied on the doctrines of law scholars including Georges Dupuis, Marie-Josée Guédon and Patrice Chrétien whereby they argue in their book, *Droit administratif, 10<sup>e</sup> édition, page 381* that “*De même, l'autorité disciplinaire n'est pas liée par la décision du juge pénal, sauf lorsque ce dernier s'est prononcé sur l'existence ou l'inexistence de certains faits: ses constatations matérielles s'imposent à l'autorité administrative*” which means that an employee is not bound by the decision of criminal judge, unless, when the latter ruled on whether there are acts which make up the faults which the employee is being accused of by the employer.

#### **Whether BNR faulted in requesting Bahoze to be blacklisted.**

[17] Counsel for Bahoze Sifa argues that the judge confused the facts. They explain that after being found innocent by the Courts that is when BNR wrote to MIFOTRA submitting the list of former public servants who were dismissed due to the gross negligence, on that list, it included also Bahoze Sifa and it also went far as indicating the amount she embezzled disregarding that she was found innocent by the Courts on all those offences which BNR accused her.

[18] They continue arguing that MIFOTRA compiles and publishes what it was given by various organs and public institutions like BNR. Therefore, MIFOTRA implemented what it was given for by BNR; it was not on its own initiative while Bahoze Sifa did everything possible requesting BNR to instruct MIFOTRA to rectify the list which it submitted but BNR did not comply. Therefore they pray that the appellant Court declares that the conduct of BNR is a gross negligence and awards damages worth 10,000,000Frw to Bahoze Sifa.

[19] The Counsel for BNR argue that as it was requested by the Ministry of Public Service, what BNR did was to submit the list of its employees who were dismissed due to various faults, thus those are in breach of the law.

[20] The High Court finds that putting Bahoze Sifa on the list made by MIFOTRA of employees who committed faults is not in breach of the law since she committed gross negligence at work as explained above, that negligence was the cause of embezzling the BNR funds, even if she was not found guilty of the offence of embezzling it.

#### **The issue concerning the admissibility of the claim for remuneration of overtime.**

[21] The counsel for BNR argues that the claim for remuneration of the overtime should not have been admitted because it was it was raised for the first time, because Bahoze Sifa raised it before the Court she did not raise it before her employer. Her request is not about damages, rather it is to order BNR to pay her entitlement, and thus, those should have been informally appealed separately. Therefore, the fact that the administrative appeal was not lodged on that issue renders it inadmissible.

[22] Furthermore the counsel for BNR argue that BNR has policy for regulating overtime which demonstrate the requirements to be followed in order to confirm that an employee worked overtime, however for Bahoze Sifa was not the case, therefore, she cannot claim to be remunerated for the overtime she worked.

[23] On this ground, the counsel for Bahoze Sifa realises that the claim is admissible because it cannot be separated from the principle claim of unlawful dismissal because even remuneration of the overtime are among the damages which are based on unlawful dismissal, therefore, this should not be a subject of an administrative appeal on its own.

[24] The High Court finds that there is no explicit or implicit decision which was taken by BNR regarding the compensation of overtime which it had to pay to Bahoze Sifa to the extent that it would be necessary to first lodge an administrative appeal before filing suing for it as provided by article 336 *litera* 1 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure because the party who lodge an administrative appeal is the one requesting for the annulment of the decision.

[25] However, the High Court finds the ground of BNR's defense on the remuneration of the overtime that Bahoze Sifa did not produce substantive evidence for it with merit, because Bahoze Sifa failed to demonstrate that what are contained in the *Ordre de Service N°18/2001 relatif à la prestation des heures supplémentaires* were respected in order to request for the payment of overtime.

#### **The basis of the damages requested in this judgment.**

[26] The counsel for BNR alleges that the previous judge awarded BNR just 500,000Frw in damages. It finds those damages insufficient and it had requested for 2,000,000Frw of

procedure fees and counsel fees; therefore the damages it was awarded in that judgment are insufficient. Therefore, BNR prays to this appellate Court to award it those damages it was deprived at first instance while it deserved them.

[27] Counsel for Bahoze Sifa states that she is the one who must be awarded damages because BNR dismissed her unlawful.

[28] The High Court finds that the counsel for BNR confirms that they were awarded insufficient damages but they do not produce evidence to be based on in confirming that they deserved those damages they request for. However, because this case is on appellate level, the court awards it 250,000Frw in damages in addition to those awarded in the appealed judgment for dragging BNR into unnecessary lawsuits.

### **III. DECISION OF THE COURT**

[29] Admits the appeal of Bahoze Sifa.

[30] Holds that the appeal lacks merit.

[31] Overturns the rulings of the appealed judgment RAD0114/15/TGI/NYGE rendered on 10/05/2016 by the Intermediate Court of Nyarugenge.

[32] Orders Bahoze Sifa to pay to National Bank of Rwanda (BNR) 250,000Frw in addition to 500,000Frw awarded in appealed judgment for dragging it into unnecessary lawsuits.