[2026] UKPC 12
Privy Council Appeal No 0018 of 2025 and 0019 of 2025

JUDGMENT

Chandradev Appadoo (Appellant) *v* SBM Bank (Mauritius) Ltd (Respondent) (Mauritius); Chandradev Appadoo (Respondent) *v* SBM Bank (Mauritius) Ltd (Appellant) No 2 (Mauritius)

From the Supreme Court of Mauritius

before

Lord Reed
Lord Stephens
Lady Rose
Lord Richards
Lady Simler

JUDGMENT GIVEN ON
13 April 2026

Heard on 10 February 2026

Appellant
Herve Duval SC
(Instructed by Sheridans)

Respondent
Andrew Burns KC
Hafsah Masood
Rishi Pursem SC
Arvind Hemant Sookhoo
(Instructed by RWK Goodman LLP)

LADY SIMLER:

1. Introduction

1. Mr Appadoo commenced employment with the appellant bank, SBM Bank Mauritius Ltd ("the Bank"), in June 1980 and was ultimately dismissed for gross misconduct with effect from 4 December 2017. He succeeded in his claim for unjustifiable or unfair dismissal in the Industrial Court. That meant he was entitled to a severance award. The amount due to him depended on the length of Mr Appadoo's continuous employment with the Bank. The Industrial Court upheld the Bank's claim that there was a 28-day break in his continuous employment (between 24 November and 24 December 2012) so that, pursuant to section 2 of the Employment Rights Act 2008 ("the 2008 Act"), his continuous employment ran from 24 December 2012 and not from June 1980. In turn this meant his severance award was calculated by reference to four years' continuous service (rather than 37 years). The Supreme Court of Mauritius reversed that decision.

2. The Bank appeals to the Board (with leave granted by the Supreme Court below). The only question raised is whether the Supreme Court was entitled to interfere with the Industrial Court's decision on continuous employment and hold that no sufficient break in continuous employment had been shown. Mr Appadoo cross-appeals from the Supreme Court's decision which overturned the interest award of 3% made by the Industrial Court and awarded no interest at all.

2. The facts and the proceedings below

3. The Bank is a commercial bank licensed by the Bank of Mauritius. Mr Appadoo commenced his employment on 10 June 1980. He was moved onto a fixed term contract for 10 years from 1 October 1999 to 30 September 2009. A further fixed term contract was agreed with effect from 26 May 2009. Before its expiry it was extended to August 2012, and then on 10 October 2012 the contract was extended again on the same terms and conditions as before, to terminate on 30 November 2012. The terms included a provision entitling either party to terminate the contract on six months' notice. On 12 December 2012 a further five-year fixed term contract was signed to start on 24 December 2012 and terminate on 31 December 2017.

4. By 2012, Mr Appadoo was employed as Divisional Leader Finance, and he had also become an ex-officio member of the Bank's Board of Directors.

5. In September 2017 Mr Appadoo was suspended. He was called before a disciplinary committee convened by the appellant to answer several charges alleging gross misconduct in relation to his dealings on two large property transactions and misleading the Bank's Board over land valuations and reports. The charges were found proved and his contract was terminated by the Bank without notice on 4 December 2017.

6. In his application to the Industrial Court dated 14 August 2018, Mr Appadoo claimed that his dismissal was unlawful and unjustified and, accordingly, that he was entitled to a severance allowance pursuant to section 46 of the 2008 Act. He claimed the allowance in the sum of Rs 88,194,796.90 based on 37 years' continuous employment with the Bank. His pleaded case was that, although he had signed a series of fixed term contracts since 1999, he had continued to work without any break between the various renewals or extensions so that his employment was continuous. Mr Appadoo's pleaded claim included a prayer for the severance allowance in the sum just stated, but he made no express claim for interest.

7. The appellant resisted the claim. So far as continuous employment is concerned, the Bank's pleaded case accepted that Mr Appadoo's contract of employment was "purported to be extended up to 30 November 2012" by way of a letter dated 10 October 2012, but contended that:

> "[Mr Appadoo] ceased to be in the employment of the [Bank] as from 24 November 2012 with the result that there was a break of more than 28 days until he was appointed by virtue of a new contract with effect from 24 December 2012." (Emphasis added.)

8. The Bank gave no explanation as to how Mr Appadoo's employment ceased as from 24 November 2012.

9. The trial in the Industrial Court (before HH Mrs D. Gayan, Ag. President) took place on various dates between December 2021 and June 2022 and both sides were represented by senior counsel. For the Bank, the Industrial Court heard oral evidence from Chandradev Luchmun, the Bank's Human Resources Business Partner. During his evidence reference was made to the following documents:

> (a) a letter dated 10 October 2012, addressed to Mr Appadoo extending his contract of employment to 30 November 2012 (document P4).
>
> (b) Mr Appadoo's five-year fixed term contract dated 12 December 2012 to commence on 24 December 2012. This contract was signed by the

Bank's Chief Executive and signed and dated by Mr Appadoo to signify his acceptance of the conditions contained in the contract (document P5).

(c) A notice dated 20 November 2012 (document P6) of the Annual General Meeting to be held on 13 December 2012. Para 15 of the notice advised shareholders to take note of "the re-appointment of [Mr Appadoo] as director of the Company by the Board of Directors" and of Ordinary Resolution Fifteen that Mr Appadoo "a Senior Executive of the Bank has been designated by the Board to be an ex-officio member of the Board and is thereby an ex-officio member of the Board by virtue of Article 13.1 of the Constitution of the Bank". Minutes of the AGM (document D5) were later produced to the Industrial Court. The meeting took place on 13 December 2012. Apologies were recorded for Mr Appadoo. Para 40.15 recorded that the "shareholders took note of the re-appointment of Mr Chandradev Appadoo as executive director by virtue of Article 13.1 of the Constitution of the Company".

(d) A letter dated 26 November 2012, from the Bank to the Bank of Mauritius (Document P18). The letter said "we hereby wish to inform you of the expiry of contract of employment of Mr Chandradev Appadoo, Divisional Leader, Finance, effective November 24, 2012 and is no more an employee of Bank …"

(e) A document headed "Exit Procedure Checklist" (document D1) with various tick-box entries (discussed further below).

(f) Various internal emails sent to "unflag Mr Chandradev Appadoo from staff list", to deactivate his ID, "to convert all his staff rate loans to commercial rates and waive exemptions to standing order fees/direct debits/card fees effective 24 November 2012" and to inform staff that Mr Appadoo would cease or had ceased to be an employee of the Bank (documents D2 and D3). The earliest emails on D2 were sent on 23 November by Manoj Sunnassy, an HR employee, to various other employees, and one of these, sent at 6.03pm, was copied to Mr Appadoo and informed various desks within the bank that "the below named will cease to be an employee" with Mr Appadoo's name and a "departure date" of 24 November given. Document D3 is an internal communications email dated 26 November 2012 which advised that Mr Appadoo had ceased to be an employee.

10. Mr Luchmun was not the author of any of these documents nor, it appears, was he involved in the events recorded by them. In effect, he gave hearsay evidence simply

producing the documents and reading from them. The only additional evidence he gave on the topic of continuous employment was to state that he could speak strictly from the HR perspective about Mr Appadoo's employment but not his directorship, about which he could give no evidence, and that he knew that "as from 24 November, he was no more in the employment of the bank", that there was a break of more than 28 days between Mr Appadoo's contracts of employment from 24 November 2012 to 24 December 2012 and that it was normal practice at the bank to have a break of more than 28 days between two fixed term contracts. Mr Luchmun did not say how Mr Appadoo's employment had come to an end or how he knew anything about this asserted "cessation".

11. The Bank placed significant reliance on document D1, the exit procedure checklist, with tick-box entries. The document was signed by Mr Sunnassy, who may also have completed it, but was not called to give evidence to the Industrial Court. There is nothing on the face of the document to suggest that Mr Appadoo saw it at the time it was completed or afterwards, and it was not signed by him. The document recorded Mr Appadoo's last working day as 23 November and his departure date as 24 November. Certain tasks entered in the checklist were recorded as having been performed by Mr Sunnassy. These included informing "the Bank of Mauritius of departure", issuing certain internal mail and "notification … for disabling access". Other tasks, ticked as performed (though not by Mr Sunnassy) on 23 November 2012 included "collection of … access card, … laptop, mobile phone, keys, vehicles, library books". The task of "agreement on last working day" was ticked as performed on 23 November 2012. It did not record by whom it was performed. Instead, N/A was recorded in the "performed by" column.

12. Mr Appadoo gave evidence and was cross-examined by senior counsel for the Bank, Mr Pursem SC. He maintained that he had continued working between 24 November and 24 December 2012. Various documents were put to him in cross-examination but to little effect. He was referred to P18, D2 and D3 but said he was not aware of these communications. So far as the exit procedure checklist (D1) is concerned, Mr Appadoo was asked about access cards and equipment being collected as recorded on the checklist. He said he could not recall his tower access card (or other items) being collected, or his ID being deactivated, but ultimately accepted that his laptop and mobile phone were collected. He was not asked about the entry recording "agreement on last working day". It was not suggested to him that any such agreement had been reached with him or by whom. Nor was it put to him that he had agreed that his employment should terminate early on 24 November rather than expiring (as had been agreed by letter dated 12 October, P4) on 30 November 2012. The Bank's case (that his employment had ceased on 24 November) was put to him towards the end of the questioning, and he responded, "I was still working because they keep asking, there was negotiations happening on IT contract, I was still working."

3. The judgment of the Industrial Court

13. By a judgment dated 15 May 2023, the Industrial Court held that the Bank was "justified in concluding that it could not reasonably and in all good faith take any other course than to terminate [Mr Appadoo's] contract of employment" (p 9). However, Mr Appadoo's dismissal was held to be unlawful because the termination letter dated 4 December 2017 failed to comply with the notification requirements in section 37(2) of the Employment Rights Act 2008; and, because the Bank failed to notify Mr Appadoo of the charges against him within 10 days of becoming aware of the alleged misconduct pursuant to section 38(2)(a)(iii) of the 2008 Act, the Bank was "deemed to have condoned [Mr Appadoo's alleged] misconduct" and could not dismiss him on that basis (p 14). The Bank has not challenged those findings. The Industrial Court rejected all allegations made by Mr Appadoo against the Bank of bad faith and deliberate intent to harm him.

14. On the issue of continuous employment, the Industrial Court listed documents P5, P18, D1, D2 and D3 as supporting the Bank's case that the employment was terminated on 24 November 2012. On the other hand, the Industrial Court referred to the same documents and certain others as tending to support the opposite contention: P18 in that it was dated 2 days after the date on which the Bank contended Mr Appadoo's employment ceased; the references to Mr Appadoo's apologies for not attending the AGM and his re-appointment as ex-officio member of the Board in P6 and D5 as suggesting that his employment had not come to an end. D1, D2 and D3 were also referred to for apparent inconsistency as to the date when it was said the employment terminated. The Industrial Court appears to have regarded P18 as particularly significant because it was addressed to the Bank of Mauritius as regulator, its authenticity was not in doubt and the Industrial Court held accordingly that it "prevailed" over document D5 (the minutes of the AGM).

15. The Industrial Court continued (p 20):

> "In light of all the above, and regardless of the reason/s for such break, the Court is satisfied that there was a break of more than 28 consecutive days in [Mr Appadoo's] employment with the [Bank] between 24 Nov 12 and 24 Dec 12, that the 'ties of employment' between [them] were severed after 24 Nov12, and that hence there was no 'continuity of the employment relationship' between [them] between 24 Nov 12 and 24 Dec 12, and that therefore, the [Bank] has established on the balance of probabilities, that [Mr Appadoo's] employment was terminated on 24 Nov 12."

16. So far as interest is concerned, the Industrial Court noted that there was no prayer for interest in the claim form, but that Mr Appadoo was seeking interest at a rate of 12%

per annum as provided by section 46(11) of the 2008 Act, "to run from the day of termination, that is 4 December 2017, until the date of final payment".

17. The Industrial Court noted the existence of a discretion to award interest irrespective of whether a claim for interest had been made and held (p 27):

> "In view of the specific circumstances of the present matter, the Court is of the considered view that interest at the rate of 3% per annum on the said amount of severance allowance only would be fair, and the [Bank] is therefore ordered to pay to [Mr Appadoo] 3% interest per annum on the said amount of severance allowance only, payable from the date of the present Judgment to the date of final payment".

18. Mr Appadoo appealed the judgment of the Industrial Court. Among the several grounds of appeal relied upon, he challenged the finding that there was a break in his employment between 24 November and 24 December 2012 on the ground that it was perverse (this was ground 5 in the Supreme Court below); and the decision to award interest at the rate of 3% per annum on the ground that the Industrial Court failed to give reasons for awarding interest at this rate, which was "materially low" considering "the legal rate and the maximum rate provided for under section 46(11)".

4. The judgment of the Supreme Court of Mauritius

19. By a judgment dated 11 October 2024, the Supreme Court of Mauritius (Yin Siong Yen and Mootoo JJ) allowed Mr Appadoo's appeal in part. So far as continuous employment is concerned, the Supreme Court noted that it was common ground that it could not interfere with findings of fact made by the Industrial Court unless the findings of fact were perverse. It referred to *Edoo MBT v The State* [2015] SCJ 9 as explaining the meaning of perverse in this context as follows (pp 8–9): "The word 'perverse' is not used here in its usual pejorative sense but is meant to convey the idea that the finding of the trial court is against the weight of the evidence adduced at the trial and is, thus, characterised by an abnormal or unacceptable tendency which is contrary to what is expected in the circumstances".

20. Having reviewed the evidence before the Industrial Court, the Supreme Court recorded that the Bank's case before the Industrial Court was that Mr Appadoo ceased to in the Bank's employment from 24 November 2012, but (judgment p 6),

> "It was not the case before the Industrial Court that there was an agreement between the [Bank] and [Mr Appadoo] that the

> contract of employment of [Mr Appadoo] would expire on 24 November 2012.
>
> We thus do not subscribe to the submission … that it must be inferred that the parties must have agreed that the contract would terminate on 24 November 2012".

21. The Supreme Court reviewed the findings of fact (and the absence of certain findings) made by the Industrial Court. It noted that no findings had been made about whether Mr Appadoo was in fact still working between 24 November and 24 December 2012, as he had claimed. Significantly, it noted that senior counsel for the Bank had conceded that there was no evidence to establish that Mr Appadoo was informed that his contract of employment would terminate prematurely on 24 November 2012 instead of 30 November 2012.

22. The Supreme Court concluded (p 7):

> "In the light of all the evidence adduced during the trial our conclusion is that the finding of the learned Magistrate to the effect that there was a break of more than 28 consecutive days in [Mr Appadoo's] employment with the [Bank] between 24-11-12 and 24-12-12, that the 'ties of employment' … were severed after 24-11-12, and that hence there was no 'continuity of the employment relationship' … between 24-11-12 and 24-12-12 and that therefore, the [Bank] has established on the Balance of Probabilities, that [Mr Appadoo's] employment was terminated on 24-11-12 is perverse. We feel compelled to intervene since 'the finding of the trial court is against the weight of the evidence adduced at the trial and is, thus, characterised by an abnormal or unacceptable tendency which is contrary to what is expected in the circumstances'.
>
> Indeed, the evidence adduced at trial did not reveal any expiry of the contract of employment of the [Bank] on 24 November 2012 and there was no evidence that [Mr Appadoo] was notified of any premature unilateral termination of his contract of employment 6 days before the expiry date of the contract."

23. It followed that Mr Appadoo had been in continuous employment with the Bank for 37 years and was therefore entitled to severance allowance in the sum of Rs 88,194,796.

24. So far as interest is concerned, the Supreme Court acknowledged that the Industrial Court has discretion to order the employer to pay interest on the severance allowance payable, but held that the Industrial Court in this case had failed to give any reason for granting interest at 3% from the judgment date when the prevailing legal rate was set at 4.5% and section 46(11) of the 2008 Act provided for an award of interest from the date of termination until the date of final payment.

25. The Supreme Court continued (p 8):

> "After having considered the wording of section 46(11) of the ERA, we share the view of Dr Fok Kan that the Industrial Court indeed has a discretion to order an employer to pay interest. The learned Magistrate did not give any reason for exercising her discretion to award interest at the rate of 3%.
>
> After anxious consideration we find no reason to grant interest in the present matter. We further note that in the proecipe dated 14 August 2018 before the Industrial Court the appellant did not pray for interest."

26. By leave of the Supreme Court of Mauritius the parties appeal and cross-appeal to the Board.

5. The relevant statutory provisions

27. Mr Appadoo's claim in the Industrial Court was for an award of severance pay under section 46 of the 2008 Act. If he was entitled to a severance award, it fell to be calculated by reference to his remuneration according to the formula contained in section 46. So far as material, and as it applied at the date of termination of his employment, section 46 provided as follows:

> "46. Payment of severance allowance
>
> (1) Subject to subsection (1A), an employer shall pay severance allowance to a worker as specified in subsection (5) where the worker has been in continuous employment with the employer—
>
> …

(b) for a period of more than 24 months under one or more determinate agreements in respect of a position of a permanent nature and that employer terminates the agreement of the worker...

…

(5) Where a worker has been in continuous employment for a period of not less than 12 months with an employer, the Court may, where it finds that—

(a) the termination of agreement of the worker was due to the reasons specified under section 36(3) and (4);

(b) the termination of agreement of the worker was in contravention of section 38(2), (3) and (4);

(c) the reasons related to the worker's alleged misconduct or poor performance under section (38)(2) and (3) do not constitute valid reasons for the termination of employment of the worker;

(d) the grounds for the termination of agreement of a worker for economic, technological, structural or similar nature affecting the enterprise, do not constitute valid reasons,

order that the worker be paid severance allowance as follows -

(i) for every period of 12 months continuous employment a sum equivalent to three months remuneration; and

(ii) for every period of less than 12 months, a sum equal to one twelfth of the sum calculated under subparagraph (i) multiplied by the number of months during which the worker has been in continuous employment of the employer.

> (e) notwithstanding paragraphs (a), (b), (c) and (d), the termination of agreement of the worker was unjustified,
>
> …
>
> (11) The Court may, where it thinks fit and whether or not a claim to that effect has been made, order an employer to pay interest at a rate not exceeding 12 per cent per annum on the amount of severance allowance payable from the date of the termination of the agreement to the date of payment."

28. The references in section 46(5)(b) (which is the relevant provision in this case) to section 38(1) to (4) are to prohibitions on termination for various reasons and to the circumstances in which termination for misconduct or poor performance is permitted. The relevant finding in this case was that the termination contravened section 38(2) of the 2008 Act.

29. The concept of continuous employment referred to in section 46 both governs the entitlement to a severance allowance and under section 46(5) determines the amount of such allowance. "Continuous employment" is defined for the purposes of the 2008 Act in section 2 as follows:

> "'continuous employment' means the employment of a worker under an agreement or under more than one agreement where the interval between an agreement and the next does not exceed 28 days".

6. The correct approach to an appeal from the Industrial Court

30. An appeal from a decision of the Industrial Court can only succeed if an error of law is shown: see *Smegh (Ile Maurice) Ltée v Persad Dhamerendra* [2012] UKPC 23, paras 19–20. In general, the appeal court is bound by and cannot interfere with the Industrial Court's findings of fact.

31. The question of what amounts to an error of law was discussed by the Board in *Kerzner International Mauritius Holdings Ltd v Assessment Review Committee* [2021] UKPC 18; [2023] RPC 79 (an appeal to the Supreme Court of Mauritius by way of case stated). At paras 18–19, the Board said:

> "whether a case stated is "erroneous in law" is to be considered in accordance with the guidance provided in the House of Lords case of *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14 [below] … the court should only interfere if it is apparent on the face of the case stated that the tribunal has erred in law, as, for example, by applying the wrong legal test, and that bears upon the determination. If the correct legal test or approach has been followed, then it has to be shown on the facts as found that no reasonable tribunal applying that test or approach could have come to the conclusion reached... A court will not, however, be bound by a finding of fact made if it is perverse and irrational in the sense that no reasonable person could have reached it or if there is no evidence to support it… A court may only make a finding if it was the only conclusion which a reasonable tribunal could have reached on the facts as found and it was unreasonable for the tribunal not to make any such finding."

32. Plainly, as Lord Roskill explained in *Pioneer Shipping Ltd v BTP Tioxide Ltd* [1982] AC 724, at pp 752–753, the court "ought not to interfere merely because the court thinks that upon those facts and applying that test, it would not or might not itself have reached the same conclusion, for to do that would be for the court to usurp what is the sole function of the tribunal of fact".

33. Accordingly, the correct approach in the absence of an identifiable error of law (which includes the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence) is that "an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified" (see *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; [2014] 1 WLR 2600, at para 67 per Lord Reed). This was the agreed position before the Supreme Court below.

34. As the Board has indicated above, the Supreme Court cited a passage in *Edoo MBT v The State* in which the court held that "the finding of the trial court [was] against the weight of the evidence adduced at the trial and is, thus, characterised by an abnormal or unacceptable tendency which is contrary to what is expected in the circumstances" (pp 89). But, as Mr Burns KC on behalf of the Bank submitted, that reference must be read in the context of the judgment as a whole. The Board agrees. Properly understood, the reference to "an abnormal or unacceptable tendency" must have been a reference to the well-established test for perversity and not to some lower threshold which permits the Supreme Court to evaluate the strength or weight of the evidence for itself.

7. Did the Supreme Court err in law in reversing the Industrial Court's decision in this case?

35. Thus, the test for perversity has not been seriously in issue in this appeal. Rather, the Bank's argument has focused on whether, in what the Bank submits was a finely balanced case before the Industrial Court, the Supreme Court wrongly reversed the finding that there was a break in Mr Appadoo's continuous service because it was "against the weight of the evidence" and not (as it needed to hold) because it was unsupported by any evidence and so could not be justified.

36. For the Bank, Mr Burns submitted that the Supreme Court was bound by the finding of fact made by the Industrial Court that there was a 28-day break in continuity. He submitted that this break was the result of the 12 October contract coming to an end early by mutual agreement between the parties on 24 November. He relied on the findings made by a specialist tribunal which saw and heard the witnesses. Moreover, he submitted that evidence to support the finding of a 28-day break in continuity of employment was provided by the exit procedure checklist (document D1) (which was accepted as a genuine document and reflected events that had occurred) and by the oral evidence of Mr Luchmun. Mr Burns submitted that the tick against "agreement on last working day" in D1 is consistent only with an agreed termination. Further, given the concession that this document was genuine (and that Mr Appadoo's work laptop and phone had been collected) it is highly likely that when tasks were ticked on the checklist, they duly happened as recorded. In these circumstances, the Supreme Court was not entitled to substitute its own view of the evidence. Rather, caution should have been exercised, and it should not have interfered with or usurped the Industrial Court's fact-finding role in this case.

37. Whether a contract (of employment) has been terminated is a conclusion of law that depends on necessary findings of fact being made. In a case like this one, based on termination by mutual agreement, establishing such an agreement is critical to any conclusion that the contract of employment was terminated. The underlying findings of fact should, at least, include findings about the parties to such an agreement, how the agreement was reached (in writing or orally), and whether and when the employee accepted or agreed to the termination. Here, the Bank did not plead any factual case based on termination by mutual agreement. The Bank adduced no written or oral evidence about a mutual agreement reached with Mr Appadoo. The fact of an agreement (or acceptance by him) was not put to Mr Appadoo in cross examination. Significantly, and contrary to the Bank's written case, the Industrial Court made no finding of fact that Mr Appadoo's employment was terminated on 24 November 2012, still less that it was terminated by mutual agreement (as Mr Burns conceded).

38. Moreover, there is an absence of any factual foundation that could support a legal conclusion that the 12 October contract was terminated early, by mutual agreement on 24

November 2012. The limitations of Mr Luchmun's evidence have been described above. The exit procedure checklist is not evidence of an agreement with Mr Appadoo to terminate his contract early. At best the document is consistent with a belief by Mr Sunnassy (if he was the person responsible for ticking the relevant box) that agreement had been reached internally in the Bank (which might explain the "N/A" entry) about Mr Appadoo's last working day. But the document does not evidence any communication with or involvement by Mr Appadoo in such a decision, and it says nothing about a mutual agreement to the early termination of his 12 October contract. The same is true of the other internal documents, none of which established any such agreement.

39. Nor is there any evidential basis on which such an agreement had inevitably to be inferred. Document P18 (on which the Industrial Court placed such reliance) simply informed the Bank of Mauritius "of the expiry of contract of employment of Mr Chandradev Appadoo" on 24 November. Whether the author of the letter believed that genuinely to be the case, it affords no evidence of an agreement with Mr Appadoo to this effect; in fact, rather the reverse. It gives rise to no inevitable inference that the parties must have agreed that the contract would terminate on 24 November 2012. Likewise, even if there was a standard practice at the Bank to have a 28-day break between two fixed term contracts for more senior staff (as to which no finding of fact was made by the Industrial Court, though Mr Luchmun's evidence to this effect was recorded), that too gave rise to no inference that a 28-day break was agreed by Mr Appadoo in this case.

40. The evidence about Mr Appadoo's directorship was unclear. As an ex-officio or executive director, his directorship may have been linked to his ongoing employment. However, the evidence does not make clear one way or another whether his directorship continued between 24 November and 13 December. The Industrial Court was not shown article 13.1 of the constitution of the Bank's board of directors, and the Board has not seen it either.

41. In short, there was no basis in the evidence before the Industrial Court to support a conclusion that Mr Appadoo's employment was terminated by mutual agreement on 24 November 2012.

42. Indeed, the absence of any pleaded case that there was such an agreement suggests that the Bank did not regard obtaining Mr Appadoo's agreement as important or necessary, and this might explain why this case was never put to Mr Appadoo by the Bank. The reality, in the Board's view, is that there is little or no indication that it was the Bank's case before the Industrial Court that that there was an agreement between the Bank and Mr Appadoo that his contract of employment would terminate early on 24 November 2012. Repeated references to the employment simply "ceasing" in the contemporaneous documents, and even in the Bank's written closing submissions to the Industrial Court, support this view. This may also explain why the Industrial Court simply did not grapple with how the contract was said to have been terminated on 24 November 2012, six days

before it was due to expire. The unexplained and unsupported statement by the Industrial Court that the "ties of employment" were "severed" underscores this view and cannot reasonably be justified. The Board agrees with the Supreme Court that the evidence adduced at trial did not reveal any severing or expiry of Mr Appadoo's contract of employment on 24 November 2012.

43. For these reasons the Supreme Court was right to reverse the Industrial Court's erroneous conclusion that Mr Appadoo's employment terminated on 24 November 2012. The Bank's appeal must therefore fail.

8. The question of interest

44. As well as the statutory power to award interest under section 46(11) of the 2008 Act, the courts of Mauritius have an inherent jurisdiction to award interest on damages payable as compensation due to a plaintiff. Interest on this basis is generally awarded in respect of the period between the commencement of proceedings and the date of judgment: see *Manan v Sun Insurance Co. Ltd* [2003] SCJ 83; *Kooduruth v Gorayah* [2008] SCJ 42. Interest is also payable under article 1153 of the Mauritian Civil Code, which applies to the delayed performance of monetary obligations, and provides for the payment of interest at a rate prescribed by regulations made by the Ministry of Finance (referred to as the "legal rate" which is currently set at 4.5%).

45. It is common ground that the statutory jurisdiction to award interest under section 46(11) of the 2008 Act displaces the inherent jurisdiction to award interest and article 1153 of the Mauritius Civil Code. As counsel submitted, this can only be because section 46(11) is intended to afford a more beneficial interest regime for workers who are unfairly or unjustifiably dismissed from employment.

46. The power to award interest under section 46(11) is discretionary ("may where it thinks fit"). The discretion can be exercised whether a claim to interest has or has not been made. The provision refers to a rate of 12% but it is clear that this is intended to be a maximum rate so that the rate of interest that may be ordered can vary provided it does not exceed 12% per annum. Further, although the commencement date for the running of interest is stated to be the date of the termination of the agreement, it must in the Board's view be open to a court to award interest from a later commencement date. This is because payment of severance allowance is intended to compensate the employee whose employment has been unjustifiably terminated. In a case where a claim for unjustified dismissal is resisted, it arguably becomes due and payable only at the date of the court's judgment that the termination of the employment was unjustified and that the employee ought to be compensated. The Board is confirmed in this view by decisions of the courts of Mauritius which show that this is how section 46(11) is in practice applied (for example, *Gouljhar JM v Mauriplage Investment Co Ltd* [2023] SCJ 215 and *Ramnarain*

Keerti v International Financial Services Ltd [2021] SCJ 35) and by a passage at para 26.2 of "Introduction Au Droit Du Travail Mauricien" 2nd edition (2009) by Dr D Fok Kan as follows:

> "If in the context of the Labour Act, the payment of severance allowance was considered a right and was payable following the mere termination of the employment agreement, this no longer seems to be the case under the Employment Rights Act. The employee is now entitled to severance allowance if the industrial court is willing to grant the severance allowance to him. Indeed, the Legislator provided that "*the court may…order that the worker be paid severance allowance."* Even if all the conditions for eligibility are present, the Industrial Court can refuse to order the payment of severance allowance! This solution seems to indicate that going forward, the Industrial Court will no longer automatically order the payment of interests. One of the determining factors for the payment of interests would certainly be the bad faith of the employer."

47. The Industrial Court awarded interest at a rate of 3% on the severance award from the date of judgment. The reasons given were inferential in that the Industrial Court said it had taken into account the "specific circumstances of the present matter" without spelling those circumstances out. The specific circumstances that might well have been considered include the findings about Mr Appadoo's misconduct, the rejection of his allegations of bad faith against the Bank and the Bank's procedural failings leading to the making of a severance award in this case. The Supreme Court overturned this decision on the basis of a failure to give reasons explaining why the rate of 3% was awarded. It is ironic in these circumstances that in overturning that decision and substituting a decision refusing to award interest at all, the Supreme Court itself gave no reasons for its decision. In the Board's view, reasons in this context need not be elaborate but should at least enable the parties to understand why interest has been refused (or set at a rate that neither party contends for) in their case.

48. The Board is conscious that the decisions of the courts below on interest involved an exercise of discretion, but in the Board's opinion the present circumstances were incapable of justifying either the award of 3% by the Industrial Court or the refusal of interest altogether by the Supreme Court.

49. The starting point is that interest under section 46(11) is compensation for an employer's delay in meeting a legal obligation to pay a severance allowance (once that obligation arises) to the dismissed worker following termination of the employment. The Bank has not paid any part of the severance allowance in this case, including following

the award made by the Industrial Court. The Bank has therefore had the use of the money to which Mr Appadoo was otherwise entitled. In a case where there are reasonable grounds for the employer to dispute that any severance award is due, it may be appropriate to award interest from the date of judgment rather than the termination date. But otherwise, in the Board's view, it is no part of the purpose of the discretion to award interest to enable the court to penalise a successful employee for the way he or she has conducted the litigation. If the litigation has been conducted unreasonably, the court can mark its disapproval by withholding costs (or some part of them).

50. While the inferential reasons given by the Industrial Court are capable of explaining why the commencement date for interest to be payable on the severance award was taken as the date of judgment, no explanation was given that justified fixing the interest rate at 3% in this case. The Industrial Court must implicitly have rejected Mr Appadoo's argument that a rate of 12% was justified because he had exposed the "duplicity and mala fide" of the Bank, since his case of bad faith had been rejected. However, in circumstances where the legal rate for interest on judgment sums under article 1153 of the Mauritius Civil Code was (and remains) fixed at 4.5%, it was curious to make an award of interest at a rate below that rate without any explanation for doing so. A good reason for setting the interest rate at a lower rate than the legal rate was required and should have been given. This is particularly so given that section 46(11) is intended to afford a more beneficial regime for interest awards for employees than that available under article 1153. No doubt that is why in his oral submissions before the Supreme Court, senior counsel for the Bank, Mr Pursem, said "the Court has a discretion albeit in my humble submission the discretion cannot be exercised in a manner whereby an employee is awarded less than the legal rate."

51. In these circumstances, although the Industrial Court was entitled to order interest on the severance award to run from the date of judgment, absent any justification for departing from the legal rate of 4.5% in the circumstances of this case, that is the rate that should have been ordered. It follows that although the Supreme Court was entitled to interfere with the Industrial Court's exercise of discretion, it too erred in the absence of any justifiable basis for refusing to award any interest at all. The Board therefore exercises the discretion afresh and for the reasons explained above, awards interest on the severance award to run from the date of the Industrial Court's judgment, at the current legal rate of 4.5%.

9. Conclusion

52. For all the reasons given above, the appeal is dismissed, and the cross-appeal is allowed to the extent indicated above.