



Trinity Term
[2026] UKPC 25
Privy Council Appeal No 0029 of 2025

JUDGMENT

**Luc Guilliey (Appellant) v OCAPAC Mauritius
Holding Ltd (Respondent) (Mauritius)**

From the Supreme Court of Mauritius

before

**Lord Sales
Lord Richards
Lady Simler**

**JUDGMENT GIVEN ON
11 June 2026**

Heard on 30 April 2026

Appellant

Michel Ahnee SC

(Instructed by RWK Goodman LLP)

Respondent

Adam Riley

Ashwina Pittea

(Instructed by Blake Morgan LLP)

LADY SIMLER:

1. Introduction

1. This appeal concerns the correct construction of the appellant's employment contract with the respondent, and specifically whether or not the contract was drafted in such a way as to allow the respondent to avoid its obligation to pay the appellant a statutory (one month's basic salary) gratuity under the End of the Year Gratuity Act 2001 ("the Act"). The appellant's case is that the respondent breached his contract of employment by failing to pay him the statutory gratuity to which he was entitled over and above the fixed sums he received as basic salary under the contract, and he was entitled to accept the breach by leaving his employment and treating himself as having been constructively dismissed in accordance with section 36(4) of the Employment Rights Act 2008.

2. The appellant's claim was dismissed by a decision of the Industrial Court dated 8 June 2020, because it was held to disclose no valid cause of action. The Supreme Court of Mauritius (Appellate Jurisdiction) quashed that decision and by agreement with the parties, proceeded to consider the claim on its merits. By a judgment dated 29 August 2024, the Supreme Court held that the appellant was not entitled to the payment of an additional month's basic salary as gratuity under the Act, in addition to what he had already received under his contract of employment. In other words, the Supreme Court held that his employment contract was consistent with the Act and that he had been paid what he was due under the terms of that contract and the Act. It followed that his claim for constructive unfair dismissal failed and he had no entitlement to compensation on that basis.

3. The appellant appeals as of right to the Privy Council under section 81(1)(b) of the Constitution of Mauritius. The central issue is whether the Supreme Court erred in its construction of the Act and the appellant's employment contract.

2. The essential facts

4. The essential facts can be shortly stated. The appellant, a French national, was employed by the respondent as a Territory Sales Representative under a contract dated 6 November 2014 (though it is common ground that his continuous employment was deemed to have started on 1 September 2002 because of his service with a related company).

5. The contract was made up of a document headed "Terms & Conditions of the Contract of Employment" ("the Terms"); and an "Annex to Terms & Conditions of the

Contract of Employment for Republic of Mauritius” (“the Country Annex”). There was also a document headed “Proprietary Information Agreement” but that contains nothing of relevance to the issues in dispute on this appeal. It was expressly agreed that where there was any inconsistency between the Terms and the Country Annex, the Country Annex would take priority.

6. The Terms made the following provision in relation to annual basic salary:

“Basic salary

Annual Basic Salary is your annual fixed pay, before tax and other normal deductions, excluding any allowance, commission, bonus or other fluctuating earnings.

Your Annual Basic Salary is 1,686,026 MUR per annum, payable monthly in arrears”

7. The appellant’s “Annual Basic Salary” was increased by an addendum to the Terms dated 14 April 2016 to 1,687,976 MUR per annum, effective from 1 January 2016. But apart from effecting this increase, it was an express term of the addendum that all other terms remained unchanged.

8. The Country Annex made provision as to annual basic salary as follows:

“Annual Basic Salary

Your annual basic salary expressed in the T&C’s [that is the Terms] will be paid in 13 instalments. This will consist of 12 monthly instalments of basic salary and a statutory end of year gratuity equivalent to one month’s salary in accordance with applicable laws and to be paid in December of each year”.

9. By a letter dated 24 May 2016 written by counsel on his behalf, the appellant notified the respondent that he considered that the respondent had breached his employment contract and failed to comply with its statutory obligations, entitling him to treat the contract as at an end. The letter asserted that the respondent had structured his annual remuneration as 13 equal monthly payments as a means of evading the statutory obligation to pay a separate year end gratuity under the Act. It asserted that the thirteenth

instalment was misrepresented as being the end of year gratuity when in fact it constituted one-thirteenth of the annual basic salary agreed upon.

3. The End of the Year Gratuity Act 2001

10. The Act imposes an obligation on employers to pay a statutory minimum gratuity to employees at year end. There is no dispute that, for the purposes of the Act, the appellant was an employee in the respondent's continuous employment.

11. Section 2(a) of the Act defines "basic wage or salary" as "the basic wage or salary prescribed or agreed upon". There is no suggestion that the appellant's basic salary was other than agreed between the parties in this case. Section 2(c) provides that basic salary:

"does not include any allowance, commission, or other benefit given to an employee in lieu of, or in addition to, his basic wage or salary".

12. Section 3(1) of the Act is the source of the obligation on the respondent to pay a gratuity. It provides:

"(1) Subject to the other provisions of this section, every employer shall, on or before 21 December in every year, pay a gratuity to every employee who is or has been in his continuous employment during that year."

13. Section 3(2) of the Act then makes provision for how the gratuity is calculated. It provides:

"the gratuity payable to an employee who reckons continuous employment with his employer –

(a) for the whole or part of the year and who is in his employment on 31 December, shall be equivalent to not less than one twelfth of the monthly basic wage or salary of the employee payable in respect of the month of December, multiplied by the number of months during which he has worked in that year;

(b) for only part of the year and –

(i) whose employment has been terminated by reason of redundancy; or

(ii) who retired in the course of the year in compliance with the provisions of any agreement or enactment,

shall be equivalent to not less than one twelfth of the monthly basic wage or salary of the employee payable for the last month of his employment multiplied by the number of months during which he has worked.”

14. The effect of section 3(2)(a) is to specify the minimum amount payable by way of gratuity. This is clear from the use of the words “not less than”, which indicate that the gratuity payable must not be less than the prescribed formula, thereby fixing a statutory minimum.

15. Section 3(3)(c) of the Act provides:

“Where an employee is eligible and qualifies for an end of the year bonus, by whatever name called, under any other enactment or agreement, he shall be paid either the bonus or the gratuity, whichever is the higher”.

16. In other words, as Mr Ahnee SC accepted on behalf of the appellant, the Act permits the parties to an employment contract to agree that the employee shall be paid a gratuity or bonus at the end of the year and provided that the contractually agreed amount is higher than the gratuity to which the employee is entitled under section 3(2)(a) of the Act, the employee is paid that higher sum. Otherwise, the employee receives a statutory gratuity in accordance with the minimum statutory formula. Payment in either event discharges the obligation to pay an end of the year gratuity for the purposes of the Act.

4. The applicable legal principles

17. The contract of employment is expressly subject to the law of Mauritius. There is no dispute that the following are the relevant principles of Mauritian law in relation to contractual interpretation, and they derive from the Mauritian Civil Code (with agreed informal translations in parentheses):

Article 1156: “On doit dans les conventions rechercher quelle a été la commune intention des parties contractantes, plutôt que de s’arrêter au sens littéral des termes.”

(“One must ascertain the contracting parties’ common intention, rather than merely the literal meaning of the terms.”)

Article 1157: “Lorsqu’une clause est susceptible de deux sens, on doit plutôt l’entendre dans celui avec lequel elle peut avoir quelque effet, que dans le sens avec lequel elle n’en pourrait produire aucun.”

(“When a clause can bear two meanings, it must be understood as having that which gives it some effect, rather than that which produces none.”)

Article 1161: “Toutes les clauses des conventions s’interprètent les unes par les autres, en donnant à chacune le sens qui résulte de l’acte entier.”

(“Each clause in the contract must be interpreted in light of the others, giving each the meaning which arises from the instrument as a whole.”)

Article 1162: “Dans le doute, la convention s’interprète contre celui qui a stipulé, et en faveur de celui qui a contracté l’obligation.”

(“In case of doubt, the contract is interpreted against the party who has stipulated and in favour of the party who contracted the obligation.”)

5. The appeal

18. The appellant’s case can be summarised as follows. First, he submits that the contract is ambiguous and contains contradictory terms: the definition of “annual basic salary” purports to include the statutory gratuity while simultaneously excluding a bonus. It follows that the Supreme Court was bound to apply article 1156 of the Mauritian Civil Code and consider the common intention of the parties. It failed to do so or even to seek

to ascertain the common intention of the parties. In this regard, the appellant's evidence as to intention was clear and not rebutted: he made clear his understanding of his entitlement to a statutory gratuity calculated in accordance with the Act. In any event, on a proper construction, the contract is a type of *contrat d'adhésion*, which requires any ambiguity in its construction to be resolved against the respondent who drafted the contract. Moreover, the Supreme Court erred in its construction of section 3(3)(c) of the Act: a "basic salary" cannot include anything that constitutes a *complément de salaire* and, therefore, the appellant's "basic salary" cannot include the statutory gratuity. Finally, the appellant did not admit he had received everything due to him under his contract, and his case remains that he is owed payment of a statutory gratuity over and above what he has been paid, meaning he was entitled to consider himself constructively dismissed.

6. The Board's analysis

19. The starting point in addressing the appellant's case is to consider the meaning of the relevant clauses in the Terms and the Country Annex to decide the overarching question, namely whether those clauses are ambiguous or inconsistent and whether they can be interpreted consistently with the Act. If there is no ambiguity or inconsistency, there can be no warrant for the application of article 1156 (or the other articles relied on by the appellant) in interpreting the relevant clauses, and the remaining grounds fall away. If the Terms and the Country Annex are clear, the court cannot, under the pretext of interpretation, modify them on the basis of what might be perceived to be the common intention of the parties.

20. To recap, the statutory obligation on employers under the Act is to pay a gratuity to employees every year on or before 21 December (section 3(1)) calculated as "not less than one twelfth of the monthly basic wage or salary of the employee payable in respect of the month of December, multiplied by the number of months during which he has worked in that year" (section 3(2)(a)).

21. The Terms define "basic salary" as "your annual fixed pay, before tax and other normal deductions, excluding any allowance, commission, bonus or other fluctuating earnings". This provision appears to draw a distinction between fixed sums on the one hand (annual fixed pay) and additional sums that the appellant is entitled to receive as part of his remuneration package that might vary or fluctuate (allowances, bonus, commission, etc) on the other. As the Supreme Court observed, the latter category of payments is provided for under the appellant's contract under the headings "Commission and Bonus/Incentive" and "All Incentive Plans" and are also subject to "Deductions" for "any negative compensation balances under Commission Plans, Bonus Plans or any incentive scheme plan" etc. The term "bonus" is properly understood as one of these types of "fluctuating" payments which the appellant is or may be eligible to receive as part of his remuneration package. This clause makes no express reference to the statutory year

end gratuity; nor is such a reference to be implied since the gratuity is a fixed payment under the Country Annex.

22. In this regard, the appellant's reliance on sections 3 and 5(5) of the Interpretation and General Clauses Act 1974 is misplaced. He submits that the word "or" in the phrase "excluding any allowance, commission, bonus or other fluctuating earnings" is required to be read disjunctively because of what is said in section 5(5) of the Interpretation and General Clauses Act 1974, so that no distinction is to be drawn between fixed and variable sums, and he contends accordingly that the word "bonus" in the Terms includes the gratuity referred to in the Country Annex for these purposes. It is true that section 5(5) provides as a general rule of interpretation that "or", "other" and "otherwise" "shall be construed disjunctively, and not as implying similarity unless the word 'similar' or other word of like meaning is added". However, this provision expressly applies to the interpretation of enactments (see too, section 3(2) which provides that the Interpretation and General Clauses Act 1974 applies to all enactments in force at its commencement unless the context otherwise requires). It does not govern the interpretation of contracts.

23. The Country Annex provides that "annual basic salary" "will consist of 12 monthly instalments of basic salary and a statutory end of year gratuity equivalent to one month's salary in accordance with applicable laws and to be paid in December of each year". There is no irreconcilable inconsistency on the face of the Terms and the Country Annex. The Terms identify an amount that is the annual basic salary (excluding bonus and other fluctuating sums). That amount is payable in 13 fixed instalments. 12 of the instalments are basic salary and the thirteenth fixed instalment, which is equivalent to one month's salary, is the statutory year end gratuity paid in December each year.

24. But even if there is some ambiguity as between the two clauses in question, the Country Annex expressly takes priority over the Terms and is clear and unambiguous.

25. As stated, the Country Annex expressly defines what is payable by way of annual basic salary. Annual basic salary is a fixed total sum payable in 13 instalments of which there are 12 monthly instalments making up basic salary and a thirteenth instalment of statutory gratuity. The thirteenth instalment is equivalent to one month's salary and payable in December. It could not be clearer.

26. The appellant contends that the Act makes it arithmetically impossible to include the gratuity within the annual basic salary itself. Mr Ahnee submits that because the statutory gratuity must be calculated strictly on the basis of the "monthly basic wage or salary" of the employee, the legal and mathematical consequence is that the gratuity must necessarily be a sum paid *over and above* the basic wage, not carved out of it. As a result, the "annual basic salary" that is paid in 13 instalments as stipulated under the contract

violates the Act in that it cannot constitute the basis for the computation of the statutory gratuity in accordance with section 3(2)(a) of the Act.

27. The Board does not accept this argument. “Annual basic salary” is a contractual term whereas the statutory concept for the purposes of the Act (see sections 2 and 3(2)) is “basic wage or salary”. The two are separate and should not be confused. As just indicated, the contractual entitlement is to a contractually agreed amount by way of “annual basic salary” and the contractual formula provided for divides that agreed figure into 13 equal sums. 12 of those equal sums are paid as “basic wage or salary” each month, including in December. The thirteenth (equivalent in amount to what is payable as the twelfth instalment for the month of December) is paid in December as statutory gratuity. That is a clear application of the formula in section 3(2) of the Act. It does not violate the Act but accords with it.

28. Although the Act requires employers to pay their employees a statutory gratuity, in the Board’s view, there is nothing to stop an employer from contracting to pay a sum that is required to be paid by a statute that applies in the same circumstances. Put another way, there is nothing wrong in a contract providing a contractual basis for payment of the statutory end of year gratuity. Section 3(3)(c) of the Act plainly envisages this possibility. That is precisely what happened here.

29. Nor is there anything “colourable” about the definition of “annual basic salary” in the Country Annex. On a proper construction of the Act, it is legitimate for an employer, acting in conformity with the Act, to fix the statutory gratuity which is payable to employees, provided that, in doing so, the formula adopted is in conformity with the Act. The respondent expressly fixed the amount of gratuity payable under the contract in the Country Annex in a sum equivalent to one month’s basic salary in accordance with the Act. This is not less than the statutory gratuity payable under the Act.

30. As the respondent contends, the respondent’s obligation to pay the statutory gratuity under section 3 of the Act is discharged by fixing an additional amount payable at the end of the year that is “not less than” the statutory minimum payable. It follows that since the appellant was paid according to the Country Annex, that discharged the respondent’s obligation to pay him his statutory gratuity. It follows that there was no breach of contract entitling the appellant to regard himself as unfairly constructively dismissed.

31. For the avoidance of doubt, the Board’s conclusion that the contractual terms are clear and unambiguous also means that there can be no recourse to extrinsic evidence about the common intention of the parties, and article 1156 cannot be invoked in the appellant’s favour because to do so would involve re-writing the contract. Likewise, there is no basis for engaging the rules said to apply where a contract is a type of *contrat*

d'adhésion (leaving aside the fact that this is a new point not raised below). In any event, as the Supreme Court held:

“the respondent cannot be said to have misled the appellant or concealed anything from him ... It was clearly conveyed to the appellant that his annual basic salary contained a component of gratuity which had to be paid according to the law in force in Mauritius. Hence, at the time of the agreement, the appellant was fully made aware of the statutory obligation which lies on the employer, and he agreed that his annual basic salary would be payable in 13 instalments that is 12 months as salary and one additional month as the end of year gratuity payable in December every year”.

32. The appellant is critical of the Supreme Court’s observation that the clause in the Country Annex concerned with payment of an end of the year gratuity could arguably survive the repeal of the Act or operate outside the Act. However, this observation simply reflects what the Board has said above: there is nothing wrong in the contract providing a contractual basis for the statutory end of year gratuity and section 3(3)(c) of the Act plainly contemplates this possibility, as Mr Ahnee accepted.

33. Finally, while it is true that a “basic salary” cannot incorporate a *complément de salaire*, the terms governing the appellant’s remuneration under his contract of employment expressly did not do so. The Terms and the Country Annex expressly separated out those parts of his remuneration that formed his “basic salary” from the additional (complementary) payments to which he was entitled to be paid, whether by way of “fluctuating” earnings or as the thirteenth instalment payable as an end of the year gratuity compatibly with the Act.

34. For all these reasons, the appeal fails and is dismissed.