

**GUNESH V THE NATIONAL TRANSPORT CORPORATION & ANOR**  
**[The Judicial Committee of the Privy Council]**  
**2019 UKPC 17**  
**SUMMARY**

**Facts:** This is an appeal against the dismissal of the appellant’s claim against the respondent for damages for wrongful termination of his long-standing employment as head of stores. This followed a hearing by a disciplinary committee. The Supreme Court dismissed the appellant’s claim and the Court of Civil Appeal dismissed the appellant’s appeal. The appellant then appealed to the Judicial Committee of the Privy Council. The respondent ran a fleet of Nissan SP 215 buses for public transport from several depots, including one at Souillac. The appellant’s duties included management of the stores of the respondent and ensuring the maintenance of proper internal control with regard to stock. The charge against the appellant was that he had not been entitled to follow the respondent’s Immediate Quotation procedure (“IQ procedure”) when making a purchase of nine main shafts at a price of Rs 45,000 per unit which was over 100% more (Rs 19,500 per unit) than the respondent had previously approved for this item. The appellant’s case was that the relevant purchase by the IQ procedure was properly authorised. However, there was no written instruction to that effect. Moreover, the appellant became aware that an order had already been placed with another supplier before he placed the order. The main issues which the Board considered are as follows:

**1<sup>st</sup> Issue:** Was there a reversal of the burden of proof?

**2<sup>nd</sup> Issue:** Was the judge wrong to refuse to admit in evidence transcripts of the disciplinary hearing and Document H?

**3<sup>rd</sup> Issue:** Did the trial judge make perverse findings of fact?

**Held:**

As regards the first issue, the Board is of the view that the ultimate issue was whether the appellant’s dismissal was wrongful. When the Court of Civil Appeal referred to the evidential burden on the employer, they were using that term as referring to the burden which the law places on the defendant to prove a particular fact in the case (justification), on the footing that, as a matter of law there is only one issue to be proved. The burden of proving that issue is the legal burden of proof and the burden of proving any other matter is termed evidential. It is inaccurate to speak of a burden of proof as “shifting”. The Board saw no basis for concluding that the Court of Civil Appeal or the judge merely imposed on the respondent the burden of raising the issue of justification. As regards the second issue, the Board agreed with counsel for the respondent that the transcripts of the committee hearing were only admissible in evidence if the employer had changed his case from that relied on before the committee. Moreover, when the respondent called two new witnesses at trial, on proper analysis this step did not alter the nature of the respondent’s case. The Judge was therefore correct not to admit the transcripts of the committee in evidence. Finally, as regards the third issue, as counsel for the appellant accepted, it is well established that there must in general be a “violation of some principle of law or procedure [such that] if that proposition be corrected, the finding cannot stand. In the Board’s judgment, this proposition must apply to an assessment of primary facts and the drawing of inferences, such as findings as to whether a person had authority or was wrongly dismissed. The Board found that the appellant’s principal challenge to the judge’s findings of fact does not meet the test for challenging concurrent factual findings on an appeal to it. The Board therefore dismissed the appeal.

**This summary is provided to assist in understanding the Court’s decision. The full judgment of the Court is the only authoritative document.**

## **Short Summary**

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In the present matter, the Board held that there are two possible burdens - one on the employer to prove particular facts said to establish justification; the other on the employee to discharge the ultimate burden. They are separate burdens arising in different contexts. It is not a case of a single burden moving from one party to the other. Where, as here, the employer raises a particular defence, it must adduce evidence in support of that defence; hence the use of the term, “evidential burden”. The appeal was dismissed.