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## CA Restates the Law on Theft

*Perusahaan Otomobil Nasional Sdn Bhd v Mahkamah Perusahaan Malaysia & Hamizan bin Sahat*  
(Court of Appeal Civil Appeal No W-01(A)-193-03/2020)



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The Court of Appeal recently held that the dismissal of an employee, who was caught red-handed smuggling out a grinder from his employer's premises, was indeed proportionate. In arriving at this decision, the Court of Appeal had restated the law that even a temporary deprivation of property amounts to theft and thereby warrants dismissal.

Prior to his dismissal, the employee had admitted that he had taken the grinder out from the company's premises after working hours to conduct his own home improvement works and had done so at least 20 times before getting caught. In his defence, he argued that he had brought back the grinder to the workplace the next day and therefore did not intend to steal it.

The Industrial Court initially found that the employee's misconduct was merely tantamount to an unauthorised removal of property and not theft as he had returned the grinder to his workstation every day. The chairman ultimately held that the employer's decision to dismiss the employee was harsh and disproportionate, given that the latter had served the company for 25 years with a clean disciplinary record. This decision was subsequently affirmed by the High Court.

On appeal, the Court of Appeal agreed with submissions by the company's counsel and held that:

- (a) The employee's argument that there was no temporary deprivation of property as the employer was not deprived of the rights of utilisation of the grinder was flawed. This is because temporary deprivation in the context of theft refers to deprivation of possession, which was exactly the case here when the grinder was not in the possession of the employer outside of working hours;



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- (b) Although the Industrial Court found that the employee was guilty only of removing his employer's property without authorisation, the facts of the case clearly showed that the employee's misconduct amounted to theft; and
- (c) No employer could be expected to continue trusting an employee who commits such misconduct, and this was compounded by the fact that the employee had shown no remorse about taking home the grinder 20 times before getting caught.

The Industrial Court award was accordingly quashed and the subsequent High Court order which affirmed the decision of the Industrial Court was set aside. The Court of Appeal's decision is a timely reminder for employees that such an act which ultimately breaches a relationship of trust and confidence warrants dismissal, regardless of one's length of service.

The company was represented by partner Shariffullah Majeed, and associate Nurul Aisyah Hassan, of [Lee Hishammuddin Allen & Gledhill](#).

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