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### Is Dozing Off the Same as Sleeping?

*Mohamed Luqman Nul Hakim bin Mohamed Salleh v Ciba Vision Johor Sdn Bhd* (Industrial Court Award No 2299 of 2019)

The claimant was employed as the Senior Boilerman. The claimant was responsible for the operations, maintenance and troubleshooting of the company's steam boilers and burners. He was expected to observe and perform frequent inspections on the company's burners and steam boilers.

The claimant was dismissed for his serious acts of misconduct when he was caught sleeping twice during the night shift which he was assigned to work. The claimant contended that he had merely dozed off twice, citing health reasons and travel fatigue.

The Industrial Court dismissed his claim that his dismissal was without just cause or excuse, and held that:

- (a) The claimant's contention that he had dozed off could at most draw an inference that he had not intended to sleep but it does not mean that the claimant did not sleep as alleged by the company;
- (b) The claimant failed to produce any evidence that he had been carrying out his duties during the night shift when he was caught sleeping twice;
- (c) The claimant played an important role to ensure safety at the workplace;
- (d) The claimant's misconduct was one that could have caused the company great loss as he had exposed the company to safety breaches;

(e) The claimant had acted irresponsibly as he was aware that he was the only person on duty on that day.

The company was represented by senior associate Amardeep Singh Toor and supervised by partner Lim Heng Seng of [Lee Hishammuddin Allen & Gledhill](#).

The Industrial Court award may be viewed [here](#).

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