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Duty of Care to Safeguard Employer's Property

Krishnarau Kanterau v Tesco Stores (Malaysia) Sdn Bhd
(Industrial Court Award No 3096 of 2019)

The claimant commenced employment as a container truck driver with the company on 14 March 2016. Less than two years into his employment, he was involved in an accident. According to the police report made by the claimant, at about 5.30am, the driver of the car in front of him suddenly lost control. In his attempt to avoid the car, the claimant skidded and collided into the road divider. The investigation carried out by the Royal Malaysia Police (Polis Diraja Malaysia) resulted in the claimant being charged for losing control of his vehicle, and he was summoned to appear before the magistrate in Shah Alam.

The claimant was suspended vide a show cause letter to which he reiterated his averment as per his police report. Unsatisfied with the explanation, the company issued a notice of domestic inquiry, levelling an allegation of negligent driving against the claimant. Noting the position of trust the claimant held in the company, the gravity of the misconduct that the claimant was found guilty of by an independent panel and his disciplinary record, the management could no longer repose the necessary trust and confidence in the claimant to continue in employment. The decision taken by the company to terminate the claimant was based on the loss of RM230,000 due to the substantive repairs caused by the accident and that he had been given warnings in the past regarding his negligent driving.

In his defence, the claimant averred that he attempted to avoid the car in front of him and that the company had not conducted any investigation of its own into the accident. He further averred that the company had merely assumed negligence of the claimant based upon the summons issued by the police.

In dismissing the claimant's complaint of wrongful dismissal under section 20(3) of the Industrial Relations Act 1967, the Industrial Court held, among other things, that:

- (a) This was not a criminal prosecution of the claimant for negligent driving, but an employment dispute. As such, the company only had to establish that there were reasonable grounds to believe that the claimant was guilty of negligent driving. Hence, there was no basis for the claimant to contend that the company should have conducted its own

investigation;

- (b) The claimant had been trained by the company in defensive driving. He admitted during cross-examination that had he followed the three-step procedure outlined in the training, he could have avoided the accident. The extensive damage to the truck showed that the claimant was probably driving at an excessive speed; and
- (c) Coupled with the probability that the claimant did not keep a safe distance from the car in front of him, resulted in the claimant colliding into the road divider. It is trite law that an employee has a duty to take reasonable care of the employer's property entrusted to him. As such, any breach of this duty would amount to misconduct.

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

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

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