

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO: 4/4 - 1356/21

BETWEEN

SUHANA BINTI ABDUL SAMAD

AND

AUTOMOTIVE INDUSTRIES SDN. BHD.

AWARD NO: 1524 OF 2023

BEFORE : **Y.A. TUAN AUGUSTINE ANTHONY**
Chairman

VENUE : Industrial Court of Malaysia, Kuala Lumpur.

DATE OF REFERENCE : 08.04.2021.

DATE OF RECEIPT OF REFERENCE : 03.05.2021.

DATES OF MENTION : 01.06.2021, 15.06.2021, 21.12.2021,
13.07.2022, 25.08.2022, 19.09.2022,
15.05.2023 & 12.06.2023.

DATES OF HEARING : 04.10.2022, 11.10.2022, 31.10.2022 &
23.03.2023.

REPRESENTATION : Mr. Ramesh Supramaniam of Messrs
Chambers of Ramesh - Counsel for the
Claimant

: Encik Shariffullah Majeed and Cik Arissa Ahrom of Messrs Lee Hishamuddin Allen & Gledhill – Counsel for the Company

THE REFERENCE

This is a reference dated 08.04.2021 by Honourable Minister of Human Resources pursuant to section 20(3) of the Industrial Relations Act 1967 (“The Act”) arising out of the alleged dismissal of **SUHANA BINTI ABDUL SAMAD** (“Claimant”) by **AUTOMOTIVE INDUSTRIES SDN. BHD.** (“Company”) on the 17.08.2020.

AWARD

[1] Pursuant to the directions of this Court, the parties in this matter filed their respective submissions dated 14.05.2023 (Claimant’s written submissions), 26.05.2023 (Company’s written submissions), 09.06.2023 (Company’s rebuttal submissions) and 11.06.2023 (Claimant’s written submissions in reply).

[2] This Court considered all the notes of proceedings in this matter, documents and cause papers in handing down this Award namely:

- (i) The Claimant's Statement of Case dated 06.07.2021;
- (ii) The Company's Statement in Reply dated 25.10.2021;
- (iii) The Claimant's Bundle of Documents – CLB, CL2 & CL3;
- (iv) The Company's Bundle of Documents – COB ;
- (v) The Claimant's Witness Statement - CLW – WS;
- (vi) Company's Witness Statement – COW 1- WS (Encik Ammar Affandi bin. Khalid Sham);
- (vii) Company's Witness Statement – COW 2- WS (Puan Suryati binti Sidek);
- (viii) Company's Witness Statement – COW 3- WS (Encik Razman bin Mazlan);

INTRODUCTION

[3] The dispute before this Court is the claim by Suhana Binti Abdul Samad ("Claimant") that she has been forced to resign/constructively dismissed from her employment by Automotive Industries Sdn. Bhd. ("Company") on

the 17.08.2020 and as such it amounts to a dismissal without just cause or excuse.

[4] The Company is a subsidiary of UMW Toyota Motors Sdn. Bhd. and which specialises amongst other in the production of exhaust systems and other automotive components. The Claimant commenced employment with the Company on the 27.07.2012 as a Purchasing Executive and was a confirmed employee of the Company.

[5] On or about July 2020, due to the shortage of stocks of Child Parts for the Proton X70 that resulted in the Company incurring additional cost of air freight amounting to RM186,224.59, the Company launched a preliminary investigation amongst other involving the Claimant. Due to the manner in which the investigation was conducted coupled with the conduct of the officers of the Company, the Claimant felt that she was singled out, harassed and pressured that caused her health to deteriorate. Unable to accept the manner in which she was allegedly treated, the Claimant lodged a police report on the 16.08.2020 against the Company. Immediately on the

next day being the 17.08.2020 the Claimant claimed constructive dismissal on account that she was forced to leave her employment with the Company. Before this Court the Claimant has alleged that she was coerced and/or forced to resign from her employment with the Company. The Claimant now states that she was dismissed without just cause or excuse and prays that she be reinstated to her former position in the Company without any loss of wages and other benefits.

[6] The Company denies dismissing the Claimant. The Company denies the allegation of constructive dismissal wherein the Company has even informed the Claimant that the Company at no time received any complaints or grievances from the Claimant on the purported breach of any fundamental terms of the Claimant's contract of employment. The Company also denies forcing the Claimant to resign wherein the Company states that after the Claimant's letter dated 17.08.2020, the Company had on numerous times written to the Claimant requesting her to return to work and the Claimant refused to do so. The Company now contends that the Claimant's allegations against the Company were nothing but bare and

misconceived allegations. The Company now prays that the Claimant's case be dismissed.

[7] The Claimant gave evidence under oath and remained the sole witness for her case. The Company's evidence was led by COW1 (Ammar Affandi B. Khalid Sham, a former UMW Industrial Relations Executive in the Human Capital Division who together with the Claimant and COW2 were involved in a meeting to discuss the shortage of child parts for the Proton X70 which then culminated in the Claimant now claiming forced resignation), COW2 (Suryati bt Sidek, who is the Head of the Company's Material Management & Production Control which includes Purchasing, Production Planning & Logistics and to whom the Claimant reported) and COW3 (the former manager of Industrial Relation in the Human Capital Division of UMW , the parent company of the Company who gave evidence on the circumstances leading to the Claimant claiming that she was dismissed from her employment with the Company).

THE CLAIMANT'S CASE

[8] The Claimant's case can be summarised as follows: -

- (i) The Claimant commenced employment with the Company on the 27.07.2012 as a Purchasing Executive. The Claimant was subsequently confirmed in her employment;

- (ii) The Claimant was forced to resign from her employment on the 17.08.2020 and thus the Claimant was dismissed from her employment on that date;

- (iii) At the time of the Claimant's dismissal from her employment the Claimant's last drawn salary was RM6,825.00 per month;

- (iv) On or about 07.07.2020, the Claimant was shocked to realise that the Proton X70 Child Parts encountered stock shortage;

- (v) The Claimant thereafter had discussion with one Mahasan of the Logistics Department and Mr. Tham who deals with China on this issue to resolve the shortage and was informed that the shortage will continue until late July 2020;

- (vi) The Claimant thereafter was involved in several other meetings on this part shortage issue;

- (vii) On or about the 14.07.2020, the Claimant had a meeting with Mr. Tham , COW2 and several others to further discuss the shortage of the Proto parts issue and during this meeting COW2 shouted at the Claimant accusing the Claimant on her purported failure. The relationship between the Claimant and COW2 started to deteriorate from thereon;

- (viii) The Company had then on the 17.07.2020 called for a meeting to discuss the issue of the Child Parts shortage problem wherein in this

meeting amongst other the Claimant was present together with COW1 and COW2;

- (ix) Subsequently the Claimant was asked to submit written statements on the issue of the parts shortage which was done on the 17.07.2020 and the 21.07.2020;
- (x) Thereafter the Claimant was told that the Company will hold a domestic inquiry to inquire the parts shortage issue which caused the Claimant to be anxious and caused sleep disturbance;
- (xi) The news of this domestic inquiry spread in the Company like wild fire and rumours circulated that led to her colleagues enquiring whether she will be involved in the domestic inquiry, all of which embarrassed the Claimant;

- (xii) The Claimant felt pressured and had even highlighted to Mr. Tham that she wanted to resign as working with COW2 made her work very intolerable;

- (xiii) On or about 11.08.2020, COW1 informed the Claimant that the HR department has submitted the investigation paper to the management and the investigation may show that the Company may resort to soft punishment on those involved;

- (xiv) On the 14.08.2020 the Company informed the Claimant that she had the right to resign before the Domestic Inquiry;

- (xv) The events leading to the investigation showed that the Claimant was singled out for the shortage and that there was a threat of domestic inquiry against the Claimant that will likely happen;

(xvi) The Claimant felt extremely pressured that resulted in her health deteriorating which led the Claimant to lodge a police report against the Company on the 16.08.2020 for putting her to extreme mental anguish which has caused her to suffer amongst other, high blood pressure;

(xvii) On the 17.08.2020, due to the continued pressure exerted by the Company the Claimant was forced to leave her employment with the Company for amongst other by making her continued employment in the Company intolerable;

(xviii) In the letter dated 17.08.2020, the Claimant has also claimed constructive dismissal;

(xix) The Claimant further states that she was coerced or forced to tender her resignation letter;

- (xx) The Claimant now claims that she was dismissed from her employment without just cause or excuse and prays that she be reinstated to her former position in the Company without any loss of wages and other benefits.

THE COMPANY'S CASE

[9] The Company's case can be summarised as follows: -

- (i) The Company is a subsidiary of UMW Toyota Motor Sdn. Bhd.;
- (ii) The Company does not dispute the Claimant's employment history and that she was a confirmed employee of the Company with the stated last drawn salary by the Claimant;
- (iii) The Company denies dismissing the Claimant and maintains that the Claimant has resigned and thereafter refused to report back to work despite the Company repeatedly requesting her to report back to work;

- (iv) On or about July 2020, the Company has commenced a preliminary investigation into the issue of shortage of the stocks of the Child Parts for Proton X70;

- (v) The shortage of the stocks of the Child Parts for Proton X70 has caused the Company to incur additional air freight costs of RM186,224.59;

- (vi) On the 17.07.2020 a meeting was held between one Encik Abdul Zaha Mohd Juah who is the Company's manager, COW1, COW2 and the Claimant to discuss the Child Parts shortage issue for Proton X70;

- (vii) Subsequent to the meeting, COW2, the Claimant and other employees involved were instructed to submit written statements to explain the shortage of the parts concerned;

- (viii) The Claimant had sent her written explanation on the 17.07.2020 but the Company has then requested the Claimant to clarify and include the names of various parties referred by the Claimant in her written statement which the Claimant did;

- (ix) The Company then by 10.08.2020, informed the Claimant that the investigating team will contact the Claimant for further investigation on this matter;

- (x) The Claimant then suddenly on the 17.08.2020, tendered a letter alleging forced resignation and constructive dismissal claiming that she was forced to leave her employment and that her position was untenable and her working condition in the Company intolerable;

- (xi) The Company through UMW Toyota Motor Sdn. Bhd. issued a letter dated 18.08.2020 to the Claimant which was signed by COW3 informing the Claimant that the Company is not accepting the Claimant's resignation as she is a person of interest in the ongoing

investigation and requested the Claimant to report back to work on the 19.08.2020;

- (xii) The Claimant wrote to the Company on the 19.08.2020 informing the Company amongst other, the conduct of the Company left her with no option but to leave her employment in view of the Company's breach of her contract of employment;
- (xiii) On the 19.08.2020, UMW Toyota Motor Sdn. Bhd. through COW3 again wrote to the Claimant informing her that the Company has not received any official complaint or grievances from the Claimant on her allegations of any fundamental breaches of her employment contract;
- (xiv) By the same letter dated 19.08.2020, COW3 also requested the Claimant to report back to duty on the 21.08.2020 and to discuss her grievances with the Company;

- (xv) Despite the Company's request for the Claimant to report back to work, the Claimant failed to do so and continued to be absent from work;

- (xvi) On the 21.08.2020, the Company yet again through UMW Toyota Motor Sdn. Bhd. requested the Claimant to report back to work and notified that her failure to do so may lead to disciplinary action taken against her. However the Claimant did not turn up for work at all;

- (xvii) The Company denies that it has breached any of the essential or fundamental terms of the Claimant's contract of employment with the Company;

- (xviii) The Company also denies that the Company has engaged in any act that can be construed as coercion leading to the alleged forced resignation of the Claimant;

(xix) The Company denies that it has forced the Claimant to resign from her employment with the Company;

(xxi) Therefore the Company denies dismissing the Claimant and prays that the Claimant's case be dismissed.

THE LAW

Role and function of the Industrial Court

[10] The role of the Industrial Court under section 20 of the Industrial Relations Act 1967 is succinctly explained in the case ***Milan Auto Sdn. Bhd. v. Wong Seh Yen [1995] 4 CLJ 449***. His lordship Justice Mohd Azmi bin Kamaruddin FCJ delivering the judgment of the Federal Court had the occasion to state the following:-

*“As pointed out by this Court recently in ***Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal [1995] 3 CLJ 344; [1995] 2 MLJ 753***, the function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold firstly, to determine whether the misconduct complained of by the employer has been established, and*

secondly whether the proven misconduct constitutes just cause or excuse for the dismissal. Failure to determine these issues on the merits would be a jurisdictional error ...”

[11] The above principle was further reiterated by the Court of Appeal in the case of ***K A Sanduran Nehru Ratnam v. I-Berhad [2007] 1 CLJ 347*** where his lordship Justice Mohd Ghazali Yusoff, JCA outlined the function of the Industrial Court:-

“[21] The learned judge of the High Court held that the Industrial Court had adopted and applied a wrong standard of proof in holding that the respondent has failed to prove dishonest intention and further stating that the respondent has not been able to discharge their evidential burden in failing to prove every element of the charge. He went on to say that the function of the Industrial Court is best described by the Federal Court in Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd and Another Appeal [1995] 3 CLJ 344 where in delivering the judgment of the court Mohd Azmi FCJ said (at p. 352):

On the authorities, we were of the view that the main and only function of the Industrial Court in dealing with a reference under s. 20 of the Act (unless otherwise lawfully provided by the terms of the reference), is to determine whether the misconduct or irregularities complained of by the management as the grounds of dismissal were in fact committed by the

workman, and if so, whether such grounds constitute just cause or excuse for the dismissal”

[12] It will not be complete this far if this Court fails to make reference to the decision of the Federal Court in the case of ***Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 1 LNS 30*** where His Lordship Raja Azlan Shah, CJ (Malaya) (as HRH then was) opined:

*“Where representations are made and are referred to the Industrial Court for enquiry, it is the duty of that Court to determine whether the termination or dismissal is with or without just cause or excuse. **If the employer chooses to give a reason for the action taken by him the duty of the Industrial Court will be to enquire whether that excuse or reason has or has not been made out.** If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. The proper enquiry of the Court is the reason advanced by it and that Court or the High Court cannot go into another reason not relied on by the employer or find one for it.”*

Burden Of Proof

[13] Whenever a Company has caused the dismissal of the workman, it is then incumbent on part of the Company to discharge the burden of proof

that the dismissal was with just cause or excuse. This Court will now refer to the case of ***Ireka Construction Berhad v. Chantiravathan a/ Subramaniam James [1995] 2 ILR 11*** in which case it was stated that:-

*“It is a basic principle of industrial jurisprudence that in a dismissal case the employer must produce convincing evidence that the workman committed the offence or offences the workman is alleged to have committed for which he has been dismissed. The burden of proof lies on the employer to prove that he has just cause and excuse for taking the decision to impose the disciplinary measure of dismissal upon the employee. The just cause must be, either a misconduct, negligence or **poor performance** based on the facts of the case.*

The Burden of Proof in cases of Forced Resignation/Constructive Dismissal.

[14] The case of ***Weltex Knitwear Industries Sdn. Bhd. v. Law Kar Toy & Anor [1998] 1 LNS 258; [1998] 7 MLJ 359*** is relevant on the role of this Court when the dismissal itself is disputed by the Company. In this case his lordship Abdul Kadir Bin Sulaiman J opined:-

*“Next is the burden of proof on the issue of forced resignation raised by the first Respondent. The law is clear that if the fact of dismissal is not in dispute, the burden is on the company to satisfy the court that such dismissal was done with just cause or excuse. This is because, by the 1967 Act, all dismissal is prima facie done without just cause or excuse. Therefore, if an employer asserts otherwise the burden is on him to discharge. **However, where the fact of dismissal is in dispute, it is for the workman to establish that he was dismissed by his employer. If he fails, there is no onus whatsoever on the employer to establish anything for in such a situation no dismissal has taken place and the question of it being with just cause or excuse would not at all arise”***

(emphasis is this Court's).

[15] In view of the above case and anchored on the ground of forced resignation/constructive dismissal, it is now upon the Claimant to prove her case that she was dismissed by way of a forced resignation or constructive dismissal. The burden of proof thus has now shifted to the Claimant to prove that she was dismissed by the Company from her employment before this Court can proceed to determine whether that dismissal if proven amounts to a dismissal without just cause or excuse.

Standard Of Proof

[16] In the case of ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314*** the Court of Appeal has laid down the principle that the standard of proof that is required to prove a case in the Industrial Court is one that is on the balance of probabilities wherein his lordship Justice Abdul Hamid Mohamad, JCA opined:-

*“Thus, we can see that the preponderant view is that the Industrial Court, when hearing a claim of unjust dismissal, even where the ground is one of dishonest act, including “theft”, is not required to be satisfied beyond reasonable doubt that the employee has “committed the offence”, as in a criminal prosecution. On the other hand, we see that the courts and learned authors have used such terms as “solid and sensible grounds”, “sufficient to measure up to a preponderance of the evidence,” “whether a case... has been made out”, “on the balance of probabilities” and “evidence of probative value”. **In our view the passage quoted from Administrative Law by H.W.R. Wade & C.F. Forsyth offers the clearest statement on the standard of proof required, that is the civil standard based on the balance of probabilities**, which is flexible, so that the degree of probability required is proportionate to the nature of gravity of the issue. But, again, if we may add, these are not “passwords” that the failure to use them or if some other words are used, the decision is automatically rendered bad in law.”*

Law on Forced Resignation

[17] Further in claiming forced resignation the Claimant must prove before this Court with clear and cogent evidence that she was either persuaded, driven, directed or even invited to resign from her employment with the Company failing which she will be dismissed. In the case of ***Bata (M) Bhd. v. Normadiah Abu Suood [1991] 2 ILR 1106*** the Industrial Court had the occasion to state this element that the Claimant need to prove in the following manner:-

"Now, industrial tribunals have consistently held that a "forced resignation" is a dismissal: See Scott v. Formica Ltd. [1975] IRLR 105; Spencer Jones v. Timmens Freeman [1974] IRLR 325. It has also been held that the use of persuasion by an employer to obtain an employee's resignation may be a dismissal: see Pascoe v. Hallen & Medway [1975] IRLR 116. Again that a resignation will be treated as a dismissal if the employee is invited to resign and it is made clear to him that, unless he does so, he will be dismissed: see East Sussex Country Council v. Walker [1972] 7 I.T.R. 280. This is precisely the case here. According to the claimant, COW1 had told her that if she did not resign, the company would terminate her."

[18] What amounts to a forced resignation was also clearly stated by the Industrial Court in the case of ***Harpers Trading (M) Sdn. Bhd., Butterworth v. Kesatuan Kebangsaan Pekerja-Pekerja Perdagangan*** [1988] 2 ILR 314:-

"3. It is a well-established principle of industrial law that if it is proved that an employer offered the employee the alternatives of "resign or be sacked" and, without anything more, the employee resigned, that would constitute a dismissal. The principle is said to be one of causation - the causation being the threat of the sack. It is the existence of the threat of being sacked which causes the employee to be willing to resign. But where that willingness is brought about by some other consideration, and the actual causation is not so much the sacking but other accepted considerations in the state of mind of the resigning employee, then it has to be said that he resigned voluntarily because it was beneficial to him to do so, that then there has therefore been no dismissal."

[19] This Court must also state here that there are occasions where an employee may feel that he/she has committed misconducts which he/she is fully aware to be very serious in nature upon discovery by the Company and that in the event the Company proceeded with disciplinary action, it may very likely lead to a dismissal and a subsequent bad record. In order

to avoid this disciplinary action, the employee may even choose to tender his/her resignation. As such where an employee tenders his/her resignation from employment in order to avoid any disciplinary action, that resignation of the employee cannot be taken to mean that he/she was forced to resign.

This situation was well illustrated in the case of ***Mazli Mohamed v. SAP Holdings Berhad [2012] 1 ILR 399*** where the industrial Court had the opportunity to state that: -

"In the court's view the company merely indicated to him that he will face disciplinary actions for the alleged misconducts. However, the claimant himself opted to resign. Secondly, the court is of the view that it is not unusual for an employer who is faced with an employee who had allegedly committed serious misconduct to be called in and told of the company's dissatisfaction with the said employee. Further the court is of further the view that the claimant may be told of the consequences of the show cause letter and that is why the issue of resignation may well crop up. Thirdly, the court is of the opinion that the claimant knew the effect of the show cause letter and that is why at the material time he thought it would be in his interest to resign. Fourthly, in this case, the court feels that maybe the claimant was told that if he does not leave, the company would take disciplinary action against him. In the court's view although these may amount to inducements and even threats but the court is constrained to find that they do tantamount to a "resignation or be sacked" ultimatum."

Law on Constructive Dismissal

[20] In *Wong Chee Hong v Cathay Organization Malaysia Sdn. Bhd.* [1998] 1 CLJ Rep 298/ [1988] 1 CLJ 45 his lordship Justice Salleh Abas LP delivering the judgment of the Supreme Court had this to say:-

“The common law has always recognized the right of an employee to terminate his contract of service and therefore to consider himself as discharged from further obligations if the employer is guilty of such breach as affects the foundation of the contract or if the employer has evinced or shown an intention not to be bound by it any longer. It was an attempt to enlarge the right of the employee of unilateral termination of his contract beyond the perimeter of the common law by an unreasonable conduct of his employer that the expression "constructive dismissal" was used.....

.....When the Industrial Court is dealing with a reference under s. 20, the first thing that the Court will have to do is to ask itself a question whether there was a dismissal, and if so, whether it was with or without just cause or excuse.”

[21] In a constructive dismissal case it must be shown by the employee that the employer:-

- (i) by his conduct has significantly breached the very essence or root of the contract of employment or,
- (ii) that the employer evinced an intention no longer to be bound by one or more of the essential terms of the contract,

[22] And if the employer demonstrates the above, then the employee is entitled to treat himself / herself as discharged from further performance of the contract. The termination of the contract is then for reason of the employer's conduct thereby allowing the employee to claim constructive dismissal.

[23] In the case of *Anwar Abdul Rahim v. Bayer (M) Sdn. Bhd. [1998] 2 CLJ 197*, the Court of Appeal expounded the test / requirements to prove constructive dismissal wherein his lordship Justice Mahadev Shanker JCA

delivering the judgment of the Court had the occasion to state the following:-

“It has been repeatedly held by our courts that the proper approach in deciding whether constructive dismissal has taken place is not to ask oneself whether the employer's conduct was unfair or unreasonable (the unreasonableness test) but whether “the conduct of the employer was such that the employer was guilty of a breach going to the root of the contract or whether he has evinced an intention no longer to be bound by the contract”. (See Holiday Inn Kuching v. Elizabeth Lee Chai Siok [1992] 1 CLJ 141 (cit) and Wong Chee Hong V. Cathay Organisation (m) Sdn. Bhd. [1988] 1 CLJ 298 at p. 94.”

[24] It must be further stated here that the Claimant's case being one of constructive dismissal, the Claimant must give sufficient notice to her employer of her complaints that the conduct of the employer was such that the employer was guilty of a breach going to the root of the contract or whether the employer has evinced an intention no longer to be bound by the essential terms of the contract as stated in the case of **Anwar Abdul Rahim (supra)**. The notice to the employer will be necessary in order for the employer to remedy the breach (if any) before the Claimant can

treat herself as constructively dismissed if there was failure on part of the Company to remedy the breaches complained of.

[25] In the case of **Govindasamy Munusamy v. Industrial Court Malaysia & Anor [2007] 10 CLJ 266**, his lordship Justice Hamid Sultan Abu Backer had the opportunity to state what a Claimant has to prove in order to succeed in a case of constructive dismissal:-

[5] To succeed in a case of constructive dismissal, it is sufficient for the claimant to establish that:

- (i) the company has by its conduct breached the contract of employment in respect of one or more of the essential terms of the contract;*
- (ii) the breach is a fundamental one going to the root or foundation of the contract;*
- (iii) the claimant had placed the company on sufficient notice period giving time for the company to remedy the defect;*
- (iv) if the company, despite being given sufficient notice period, does not remedy the defect then the claimant is entitled to*

terminate the contract by reason of the company's conduct and the conduct is sufficiently serious to entitle the claimant to leave at once; and

(v) the claimant, in order to assert his right to treat himself as discharged, left soon after the breach.”

[26] Having stated the law as above, this Court will now move to the facts and evidence of this case for its consideration. In doing so, this Court will now take into account the conduct of the Claimant, Company and the series of events that led to the Claimant now claiming forced resignation / constructive dismissal.

EVALUATION OF EVIDENCE AND THE FINDINGS OF THIS COURT

[27] In this dispute between the parties before this Court, the Claimant's employment history including her commencement date, her status as a confirmed employee and her last drawn salary is not in dispute.

[28] The events and dispute leading the Claimant leaving the Company on the 17.08.2020, started around the period of July 2020. It is undisputed that around this period the Company discovered that there was certain unexplained shortage of the Proton X70 Child Parts that resulted in the Company incurring additional air freight costs totalling RM186,224.59. This additional cost is certainly a cause for concern for the Company. The Company commenced preliminary investigation on this issue around the same period.

[29] COW1 gave evidence that due to the shortage of this Child Parts, the Claimant as the Purchasing Executive had on the 08.07.2020, proposed an approval from the management for a sum of RM186,224.59 to manage the shortage. This resulted in the Company's officers namely COW1, COW2, the Claimant amongst other to hold a discussion to deal with the shortage. Arising for this discussion, the officers of the Company involved in the discussion including the Claimant were ordered to offer written explanation on the shortage of this Child Parts.

[30] Before this Court the Claimant has testified that the shortage of the Proton Child parts issue has caused the relationship between the Claimant and COW2 to deteriorate to the extent COW2 has started harassing her including shouting and humiliating the Claimant. The Claimant further gave evidence that the investigation of this shortage of spare parts was likely to lead to a domestic inquiry that will be conducted and that rumours spread that the Claimant would be subjected to the domestic inquiry and a soft punishment may follow. The Claimant further testified that due to the ways adopted by the Company in its investigation process and also due to the Company's officers conduct, the Claimant felt that she was singled out, harassed and pressured that caused her health to deteriorate. The Claimant further gave evidence that due to the mental torture and the resultant high blood pressure arising from the manner in which the Company was treating her, she lodged a police report against the Company and COW2 on the 16.08.2020. On the 17.08.2020, the Claimant wrote a letter informing the Company that she is leaving the Company as she was forced to leave the Company.

[31] COW2 testified and in summary this Court can conclude that COW2 has denied all the allegations of the Claimant that COW2 has caused the Claimant to suffer harassment and mental anguish which the Claimant claimed has caused her to suffer the deterioration of health.

[32] This Court has repeated many times in the previous Awards of this Court that the evidence of the witnesses in Court must find consistency with the contemporaneous events and facts as it is not uncommon for the witnesses to come to Court to exaggerate the events of the past in order to bolster their case in Court in the hope of succeeding in their case. This Court in order to find the accurate account of the events as they unfolded at the time of its occurrence will naturally look at the contemporaneous documents to find whether the evidence in Court matches with the contemporaneous documents or whether the contemporaneous documents reveal inconsistencies with the evidence of witnesses in Court.

[33] The duty of this Court to make critical examination of all the available evidence presented and test them with the contemporaneous documents is

imperative for this Court to arrive at a just conclusion and in embarking on this duty, this Court is guided by the force of an unimpeachable precedent set by the Federal Court in the case of ***Tindok Besar Estate Sdn Bhd v Tinjar Co (1979) 1 LNS 119*** where is lordship Justice Chang Ming Tat FCJ delivering the judgment of the Court had so forcefully yet eloquently opined:-

*Nevertheless the learned trial Judge expressed himself to be completely satisfied with the veracity of the respondent's witnesses and their evidence. **He purported to come to certain findings of fact on the oral evidence but did not notice or consider that the respondent's oral evidence openly clashed with its contemporaneous documentary evidence.** For myself, I would with respect feel somewhat **safer to refer to and rely on the acts and deeds of a witness which are contemporaneous with the event and to draw the reasonable inferences from them than to believe his subsequent recollection or version of it, particularly if he is a witness with a purpose of his own to serve and if it did not account for the statements in his documents and writings.** Judicial reception of evidence requires that the oral evidence be critically tested against the whole of the other evidence and the circumstances of the case. Plausibility should never be mistaken for veracity. It may be advantageous at this stage to recall the words of Lord Greene MR in *Yuill v. Yuill* [1945] P 15 at pp. 19-20: **(emphasis is this Court's)***

[34] The Claimant's case before this Court is one where the Claimant now alleges that she was coerced and forced to resign on the 17.08.2020. Now this Court will analyse the Claimant's letter dated 17.08.2020 to determine whether the allegation of forced resignation holds any truth. A part of the Claimant's letter dated 17.08.2020 is reproduced here in verbatim for convenience and it reads as follows :-

"I am writing to confirm that I am forced to leave my employment from my post as Executive of Purchasing Division.

I now consider that my position at Automotive Industries Sdn. Bhd. (AISB) is untenable and my working conditions intolerable (the facts that you are fully aware), leaving me no option but to leave my employment in response to your breach.

As I previously indicated to you that I was working under protest (until my grievance was resolved), I do not in any way believe I have affirmed or waived your breach.

I consider myself constructively dismissed with immediate effect....."

[35] A plain reading of the Claimant's letter leads to one obvious conclusion, that the Claimant was not forced by anyone to leave the

Company based on the test laid out above to prove a forced resignation but instead the Claimant had in fact quite obviously claimed constructive dismissal as the Company has allegedly made her continued employment intolerable. In short the Claimant in her letter dated 17.08.2020 was simply stating that she was driven out of her employment in a manner described in the case of ***Quah Swee Khoon v. Sime Darby Bhd [2001] 1 CLJ 9.*** The Claimant clearly has claimed constructive dismissal in her letter when leaving the Company.

[36] Obviously the Claimant upon sending out the letter to the Company and now in preparation of her case before this Court has realised that her claim of constructive dismissal would naturally fail due to the many glaring inadequacies and inconsistency in her factual narration that will be thwarted in view of the test and requirement to prove a case of constructive dismissal hence a change of stance to one of forced resignation instead of constructive dismissal.

[37] This Court will now further examine the Claimant's letter claiming constructive dismissal on the 17.08.2020 and will opine why the contents of the letter will not be able to withstand the required test to succeed in a claim of constructive dismissal. In a constructive dismissal case wherein the test and requirement has been set out above, it is imperative for the Claimant to set out the fundamental breach of the implied or express terms of the contract of employment by the employer and give the employer an opportunity to remedy the breach and only upon the failure of the employer to remedy the breaches the employee is able to consider herself as discharged from further performing her duties and leave at once.

[38] The Claimant failed to set out the Company's fundamental breach or breaches in the letter dated 17.08.2020 other than a vague remark that the facts are known or that the Company is fully aware of it and failed to give the Company an opportunity to remedy the breaches if any. How can the Company be aware of the fundamental breaches if the Claimant is not prepared to state it in writing in order for the Company to consider and evaluate the legitimacy of the Claimant's complaints and remedy it if justified?

[39] The Claimant was also not able to produce an iota of evidence to substantiate her assertion in the letter dated 17.08.2020 wherein she has stated that ***“As I previously indicated to you that I was working under protest (until my grievance was resolved), I do not in any way believe I have affirmed or waived your breach”***. The Claimant must be made aware that the claim of constructive dismissal requires cogent proof and a mere indication devoid of specificity, clarity and consistency will prevent the Company to even consider acting upon it. And precisely what grievance was not resolved or what breach that was not affirmed or waived by the Claimant? None of these allegations contained in the Claimant’s letter dated 17.08.2020 were proven by any contemporaneous documents.

[40] The Claimant must have realised much later that her claim of constructive dismissal by her letter dated 17.08.2020 was fundamentally flawed due to the subsequent events in which the Company put on record that the Company cannot remedy any breaches if it is not known to the Company the precise nature of the breaches complained of and this is clear from the Company’s subsequent letters to the Claimant after being in receipt of the Claimant’s letter dated 17.08.2020. On the 18.08.2020,

19.08.2020 and 21.08.2020 the Company wrote to the Claimant asking her to report back to work. The Claimant wrote on the 19.08.2020 giving reason why she considered the Company's actions as breaches of her implied or express terms of the contract of employment. But to this Court's mind the reasons contained therein could hardly be considered as breaches of the Company as the Company has a right to proceed with its investigation on matter that it considers necessary to investigate. In any event the Claimant left the Company even before raising the matters as contained in her letter dated 19.08.2020 which she considers as breaches which was not the tone of her email dated 10.08.2020.

[41] Naturally the Claimant in the course of her preparation of her case must have realised that her case anchored on a claim of constructive dismissal is bound to fail and thus has now changed her stance to bring a case on the basis of forced resignation instead of constructive dismissal which was her original intention as seen from her letter dated 17.08.2020 in its most unambiguous words.

[42] The Claimant in this Court abandon the claim of constructive dismissal and instead pursued a case wherein she has now argued that she was forced to resign by the Company by the manner in which it has conducted itself towards the Claimant. This Court has stated in the preceding paragraphs what is required of the Claimant to succeed in her case of forced resignation and it will be unnecessary to repeat the same again. Suffice to say that the Claimant must prove that the Company had by its conduct has given the Claimant the ultimatum to either resign or face termination.

[43] This Court has analysed all the documentary evidence and the oral evidence of the witnesses both the Claimant and the Company's witnesses and unable to find a single shred of evidence even remotely suggesting that the Company has engaged in any acts that can be considered as coercing or forcing the Claimant to resign. In fact it was certainly not in the interest of the Company to see the Claimant leaving the Company whilst an investigation of a serious matter was ongoing and the Claimant was an interested person who will greatly assist the Company in the investigation process. The entire investigation process and the conduct of the officers

involved do not in any way suggest that they were employing any underhanded methods to force the Claimant to resign from her employment with the Company.

[44] The Company too repeatedly requested the Claimant to return back to work and even requested the Claimant to discuss her grievances with the Company and this can be seen from the Company's letters after being in receipt of the Claimant's letter claiming constructive dismissal on the 17.08.2020. The conduct of the Company and its particular of COW3 was hardly any proof or indication that the Company was coercing or forcing the Claimant to resign but far from it were conducts that can only be considered as fervently hoping for the Claimant's return to work as usual and help the Company complete the investigation process. The evidence before this Court is overwhelming in that the Company did not force the Claimant to tender her resignation at all but it was the Claimant's own decision to do so in preparation of what would become a failed claim of constructive dismissal.

[45] This Court can go further to state that the Claimant premeditated her resignation without any participation from any of the Company's officer as can be seen from her police report lodged one day before her resignation on the 17.08.2020. This Court will also further conclude here that the Claimant's allegations contained in the police report against COW2 and the Claimant's subsequent evidence in Court on these allegations all remain unproven as the Claimant was unable to substantiate her allegations with cogent evidence. This Court must add here that the Claimant felt the pressure due to the investigation process which the Company is entitled to carry out and the Claimant even intimated to one Mr. Tham that she wanted to resign from her employment as can be seen from the Claimant's own pleaded case narrating the events that transpired on the 26.07.2020. The Claimant herein is clearly unable to prove her allegation of forced resignation against the Company upon this Court evaluating all the facts and evidence before this Court.

[46] Pursuant to Section 30(5) of "The Act" and guided by the principles of equity, good conscience and substantial merits of the case without regard to technicalities and legal form and after having considered the totality of the facts of the case, all the evidence adduced in this Court and by

reasons of the established principles of industrial relations and disputes as mentioned above, this Court finds that the Claimant has failed to prove to the satisfaction of this Court on the balance of probabilities that she was dismissed from her employment with the Company. As the Claimant is unable to prove that she was dismissed by the Company from her employment with the Company, the issue of the dismissal of the Claimant without just cause or excuse is no longer an issue that this Court needs to consider and determine in the circumstances of this case.

[47] Accordingly, the Claimant's claims against the Company hereby dismissed.

HANDED DOWN AND DATED THIS 11th DAY OF JULY 2023

-Signed-

**(AUGUSTINE ANTHONY)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
KUALA LUMPUR**