

**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO. : 5(22)/4-1111/15**

**BETWEEN**

**NG TECK FAY**

**AND**

**SYARIKAT TAKAFUL MALAYSIA BERHAD**

**AWARD NO: 1958 OF 2022**

**Before** : **Y.A. TUAN AHMAD ZAKHI BIN MOHD DAUD**  
**Chairman**

**Venue** : Industrial Court Malaysia, Kuala Lumpur

**Date of Reference** : 08.10.2015

**Dates of Mention** : 08.12.2015; 27.01.2016; 16.02.2016;  
27.07.2016; 03.11.2016; 20.06.2017;  
16.04.2018; 07.02.2022

**Dates of Hearing** : 22.01.2018; 08.02.2018; 17.05.2022

**Representation** : V. Jeevaretnam & N. Kunaseelan  
From Messrs Jeeva Partnership  
Counsels for the Claimant

Shariffullah bin Majeed & Arissa Ahrom  
From Messrs Lee Hishammuddin Allen &  
Gledhill  
Counsels for the Company

**Reference:**

This is a reference made under section 20 (3) of the Industrial Relations Act 1967 ( hereinafter referred to as “ the Act ” ) arising out of the dismissal of Ng Teck Fay ( hereinafter referred to as “ the Claimant ” ) by Syarikat Takaful Malaysia Berhad (hereinafter referred to as “ the Company ”) on 30.05.2014.

## **AWARD**

**[1]** This Court considered the oral submissions, notes of proceedings, documents and cause papers in handing down this Award namely:-

- (i) The Claimant's Written Submission for Remedy dated 13.05.2022;
- (ii) The Company's Written Submission dated 13.05.2022;
- (iii) The Claimant's Written Submission for Remedy II dated 03.06.2022;
- (iv) The Company's Written Rebuttal dated 03.06.2022

## **INTRODUCTION**

**[2]** On 21.04.2021, the Court of Appeal (COA) vide Civil Appeal No: W-01(A)-690-12/2019 has held that the Claimant was constructively dismissed by the Company from his employment. The COA issued an Order of Mandamus to the Industrial Court to hear the Claimant's case and to award the appropriate remedies.

**[3]** The Claimant has been working with the Company as an Assistant General Manager since 11.02.2008. The Claimant's last drawn salary was RM18,150.00 per month.

## **DECISION**

**[4]** Pursuant to the decision of the COA, the Claimant's dismissal was without just cause or excuse.

## Remedy

[5] This Court will now consider the appropriate remedy for the Claimant. The Claimant had served the Company for a period of 6 years and 3 months. (11.02.2008-30.05.2014) The Claimant prays to this Court for reinstatement to his former position without any loss of benefits of any kind and/or any other alternative relief.

[6] Under *Section 30(6A) of the Act*, the Claimant is entitled for back wages in line with and the factors specified in the *Second Schedule* therein which states:-

*“ 1. In the event that backwages are to be given, such backwages shall not exceed twenty-four months' backwages from the date of dismissal based on the last-drawn salary of the person who has been dismissed without just cause or excuse; ”*

[7] The Federal Court in *Dr. A Dutt v Assunta Hospital* [1981] 1 MLJ 304, held that the Industrial Court is authorized to award monetary compensation if it is of the view that reinstatement is not appropriate. The compensation constitutes two (2) elements namely that of (a) backwages and (b) compensation in lieu of reinstatement.

**[8]** In this case, it is not disputed that reinstatement is not the appropriate remedy. Thus the Claimant is entitled to compensation in lieu of reinstatement for the loss of his employment. The Claimant is also entitled to back wages under *Section 30(6A) of the Act* to compensate him for the period that he had been unemployed because of his dismissal.

**[9]** The Claimant was gainfully employed on the 15.07.2014 with a salary of RM15,000. The *Second Schedule of the Act* states:-

*“ 3. Where there is post-dismissal earnings, a percentage of such earnings, to be decided by the Court, shall be deducted from the backwages given; ”*

The Claimant has been gainfully employed after one and a half months after being dismissed. Having considered all facts of the case the Court hereby orders that the Claimant be allowed the relief of payment of backwages equivalent to 2 months (the period that he was unemployed approximately 2 months i.e from 30.05.2014-15.07.2014) of his last drawn salary of RM18,150. The Federal Court in *Dr James Alfred v Koperasi Serbaguna Sanya Bhd, Sabah [2001] 3 CLJ 541*, ruled that the Industrial Court in assessing quantum of backwages should take into account the fact that a workman has been gainfully employed elsewhere after his dismissal and taking into account does not necessarily mean that the Industrial Court has to conduct a mathematical exercise in deduction.

**[10]** In the book of *Industrial Relations In Malaysia*, 1998 Edition at page 135, Dunston Ayadurai observes: “ with regard to compensation in lieu of reinstatement, the amount usually awarded to the employee is one month’s wages for each completed years of service. ” In the Claimant’s case, he has completed 6 years of service.

**[11]** The Claimant is not entitled to 16% Employee Provident Fund contributions of the backwages amount since it is not wages by itself. In respect of encashment of annual leave, stock incentive plan and reimbursement of chartered insurance institute membership fee, those claims were not substantiated.

**[12]** The final award shall be :

1.Back wages of 2 months:	
RM18,150 x 2 months	= RM 36,300.00
less 20% (period the Claimant was gainfully employed on 15.07.2014)	= RM 7,260.00
	= RM 29,040.00
2.Compensation in lieu of reinstatement of one month’s pay for each year of completed service:	
RM18,150 x 6 months salary	= RM108,900
<b>Total</b>	<b>= <u>RM137,940.00</u></b>

**[13]** The award amount after deducting the necessary statutory deductions is to be paid by the Company directly to the Claimant through his solicitors on record, not later than 30 days from the date of this Award.

**[14]** This decision is arrived at according to equity and good conscience and substantial merits of the case without regard to technicalities and legal form.

**HANDED DOWN AND DATED THIS 1 SEPTEMBER 2022**

*-signed-*

**(AHMAD ZAKHI BIN MOHD DAUD)  
CHAIRMAN  
INDUSTRIAL COURT MALAYSIA  
KUALA LUMPUR**