

IN THE INDUSTRIAL COURT OF MALAYSIA  
CASE NO. 18(16)/4-2477/19

BETWEEN

MUHAMMAD NURFIKRI ONG BIN ABDULLAH  
AND  
SME BANK (M) BERHAD

**AWARD NO. 1237 OF 2022**

**Before** : Y.A. TUAN AMRIK SINGH  
Chairman

**Venue** : Industrial Court of Malaysia, Johor

**Date of Reference** : 09.12.2019

**Dates of Mention** : 29.01.2020, 14.09.2020, 09.11.2020, 11.04.2022,  
25.04.2022, 10.05.2022

**Date of Hearing** : 02.03.2022,

**Representation** : Claimant in person

Mr. Sharifullah Majeed and Miss Nurul Aisyah  
Hassan, learned Counsels from Messrs Lee  
Hishammuddin Allen & Gledhill for the Company

**Reference:**

This is a Ministerial reference made on 09.12.2019 under section 20(3) of the Industrial Relation Act 1967 ("the Act") arising out of the dismissal of **Muhammad Nurfikri Ong bin Abdullah** (the "Claimant") by **SME Bank (M) Berhad** ("the Company") on 30.09.2019.

## AWARD

[1] This is a reference by the Honourable Minister of Human Resources under s20(3) of the Industrial Relations Act 1967 ('the Act') over the dismissal of MUHAMMAD NURFIKRI ONG BIN ABDULLAH ('the Claimant') by SME BANK (M) BERHAD ('the Company') on 30.09.2019.

[2] The Hearing of this case commenced and completed on 02.03.2022. The Claimant represented himself and called two other witnesses who were his parents. The Company, represented by Messrs Lee Hishammuddin Allen & Gledhill, gave its evidence through two of its employees and the Company's panel doctor. Having filed their respective submission and the submissions in reply, I now hand down this Award after having evaluated all the evidence available before the Court, the documents filed and the parties' submissions with the supporting authorities.

### **Brief Facts**

[3] The Claimant was employed as an Associates on 23.01.2017 with a monthly basic salary of RM3,500.00 by the Company, SME BANK (M) BHD, a financial institution providing among others business loan and financial assistance to small and medium set ups. Approximately 2 years and 5 months into his employment, when the Claimant was already promoted to the position of Executive, the Claimant was placed on a Performance Improvement Plan (PIP) from 17.06.2019 to

16.09.2019 due to the Claimant's unsatisfactory job performance.

**[4]** On 10.07.2019, the Claimant was asked to go for a medical check up after he was found sleeping in the Company's gym room. The Claimant's medical result tested negative of any prohibited drugs.

**[5]** On 27.09.2019, a police report was lodge by the Claimant's colleague, the Company's third witness in the trial (COW 3). against the Claimant for attempting to ram his car into his colleague by which the Company suspended the Claimant from his duties and again asked the Claimant to undergo another medical check up at Al-Islam Specialist Hospital in Kuala Lumpur to assist in the investigation. The result came out positive on two prohibited drugs, Amphetamine and Methamphetamines. Pursuant to this fresh discovery, the Claimant was summarily dismissed by the Company vide letter dated 30.09.2019. Before this Court, the Claimant pleaded that his dismissal by the Company was unlawful, against all principles of natural and social justice and unfair labour practice. The Claimant's last drawn salary was RM3,697.00 and prays to this Court to be reinstated to his former post without loss of seniority, salary, benefits together with compensation for hardship caused on him by the Company.

## **The Company's policy**

**[6]** The Company's policy statements are found in the Company's Bundle of Documents pg. 2-3 which reads:

"Policy Statements"

1. The Group shall maintain a good image through efficient, productive and discipline employees.
2. This policy and guidelines is aimed to help and encourage all employees to achieve and maintain the desired standards of conduct and performance to ensure consistency and fairness in the treatment for all employees.
3. The Group will take appropriate disciplinary action in the event of non-conformance of policies and guidelines/ circulars / memorandum / Development Financial Institution Act 2002 (Amended 2015) and other relevant legislation, inefficiency, misconduct or indiscipline of any employees.
4. The principles of natural justice shall be observed in all disciplinary proceedings."

**[7]** A glance of the Company's Guidelines and Procedures reveals that the expectation of the Company on its employees has been emphasized with clarity in section B of the Company's Operational Guidelines and Procedures as seen in the Company's bundle of documents at page 29 which states :

" B.1.1.1 Operational Guidelines

1. The Bank expects a high quality of discipline and conduct of the **highest order** from each employee. Behaviour that

reflects unfavourably on the employee or the Bank is not **condoned.**

**[8]** The particular section B then provides a list of minor and major misconduct as shown on page 19 to 23 of the handbook code of conduct in the same bundle. The drug related issues is stated at section B.2.1.2.12 and is categorised as a major misconduct.

**[9]** The content of section B.2.1.2.12 is repeated in the same Company's Bundle at page 44 of which item no. 12 states that reporting for work under the influence of alcohol or dangerous drugs or drinking alcohol or using dangerous drugs (except for medical purposes as prescribed by registered medical practitioners) in the Bank's premises is punishable by either one of the following:

- a. Dismiss with or without notice the employee;
- b. Downgrade the employee;
- c. No increment or no Bonus;
- d. Letter of warning/stern warning; or
- e. Impose any other lesser punishment as deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed 2 weeks.

**[10]** Through the above policies and guidelines, the Company had clearly outlined in its code of conduct, its strong policy against its employees who are under the influence of or using

drug substance in the Bank's premises which would be manifestly inconsistent with fulfilling the contractual obligations of the employees to the Company.

### **The Claimant's case**

[11] Claimant commenced his employment with the Company on 23.01.2017 as an Associates. At the time of his dismissal, his last held position was Executive in the Company's Employee Relations & Engagement Section, Group Human Capital Management Division and his last drawn salary was RM3,697.00.

[12] In the Claimant's Statement of Case (SOC), the Claimant made several allegations on the Company and its employees namely at paragraph 6 in which the Claimant claimed that the Company did not make any background check on the new Human Relations Department Head, En. Mohd Azri Mohd Nawi; at paragraph 7 the PIP that the Claimant was placed on was not being carried out properly; at paragraph 14 the Claimant's contention was that he had reported a wrongdoing by his colleague, Puan Engku Aznita through email to his immediate supervisor which was not attended to; at paragraph 12, the Claimant contended that he was only informed verbally that his response dated 19.07.2019 to the first show cause letter had been accepted but was not informed in writing. It was the same situation with the second show cause letter and at paragraph 15 that the suspension letter issued to him claimed that he is not mentally stable and required him to

go for another medical check up before 12.00 noon. The Claimant was then escorted to his car and headed straight to Al Islam Specialist Hospital. As the Claimant arrived at the hospital, the Claimant gave En. Muhammad Razif a call only to be told that the Specialist Hospital will only conduct a urine test on him instead.

[13] The Claimant in paragraph 16 and 17 claimed that on 30.09.2019 En. Muhammad Razif, the Head of IR section, called the Claimant to seek further clarification on the incident that took place on 27.07.2019 at basement two and to further assist in the investigation, Claimant was asked to meet him on that day itself. In that meeting, the Claimant was then served with a termination letter and during that time, the Claimant had the conversation recorded. The Claimant's dismissal letter is reproduced below:

**The Remaining Space of this Page is intentionally Left Blank**



Small Medium Enterprise Development  
Bank Malaysia Berhad .9972-H  
Menara SME Bank, Jalan Sultan Ismail,  
PO Box 12352, 50774 Kuala Lumpur,  
Malaysia.  
Tel : +603 2615 2020, +603 2615 2828  
Fax: +603 2692 8520, +603 2698 1748  
www.smebank.com.my

PRIVATE & CONFIDENTIAL

Our Ref: HCR(S):154/2-1 (ID003352)

30<sup>th</sup> September 2019

MUHAMMAD NURFIKRI ONG BIN ABDULLAH  
EXECUTIVE  
EMPLOYEE RELATIONS & ENGAGEMENT  
PEOPLE & CULTURE  
GROUP HUMAN CAPITAL MANAGEMENT DIVISION  
SMALL MEDIUM ENTERPRISE DEVELOPMENT BANK MALAYSIA BERHAD

*Dear Encik Muhammad Nurfikri Ong,*

**DISMISSAL OF EMPLOYMENT**

Reference is made to the above.

Based on the information reported against you and the result of the urine test conducted, it has come to the attention of the Bank that you had, on 27<sup>th</sup> September 2019, intentionally reported for work under the influence of drugs. Therefore, you had failed to comply with the Bank's Employee Code of Conduct which states:

**B.2.1.2 Major Misconduct**

**B.2.1.2.12**

*Reporting for work under the influence of alcohol or dangerous drugs or drinking alcohol or using dangerous drugs (except for medical purposes as prescribed by registered medical practitioner) in the Group's premises.*

It is with extreme regret that we have to inform you that you had been tested positive for drugs pursuant to the urine test conducted on 27<sup>th</sup> September 2019 at around 12.00 pm at Al-Islam Specialist Hospital 85 Jln Raja Abdullah Kampong Baru 50300 Kuala Lumpur.

Hence, based on the terms of your letter of appointment and the Bank's policy, please be informed that you are hereby summarily **DISMISSED** from your duties **WITH IMMEDIATE EFFECT**. All property belonging to the Bank which you have under your control or in your personal possession, must be returned and delivered to the Head of Industrial Relations immediately, or at a specified date and time.

The Bank views the nature of your Misconduct with serious concern. It demonstrates your willful disregard of the Bank's interest and the standard of conduct as reasonably expected. We believe that your misconduct had jeopardized the orderly function of the Bank and the safety of all employees, thus warranting your dismissal.

1



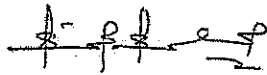
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Kindly acknowledge receipt of this letter by signing below and returning the duplicate copy of this letter to the undersigned.

Yours faithfully

SMALL MEDIUM ENTERPRISE DEVELOPMENT BANK MALAYSIA BERHAD



SAINURSALWA BINTI SANI  
GROUP CHIEF HUMAN CAPITAL OFFICER

cc Head, People & Culture  
Personal File  
IR File

**[14]** The Claimant, in his Rejoinder, amongst others, avers as follows: that the Company had used the PIP to dismiss him. There was no reason for ordering him to go for full medical test on 11.07.2019 because he had already consulted a certified medical officer on 09.07.2019 and was issued with a genuine medical certificate for sick leave. He further avers that on the 10.09.2019, when he felt asleep in the gym area, he had obtained the approval of his supervisor, to take a short rest. The Claimant avers that there was fear among the department heads, namely En. Mohd Shazwan and Puan Engku Aznita that he would whistle blow their irregular activities and was the reason why no disciplinary action was taken on the alleged misconducts of the Claimant. It was also averred that the Company's decision to instruct him to undergo a second urine test was the Company's desperate intention to dismiss the Claimant from its organisation for fear of exposing all the irregularities.

**[15]** It was contended by the Claimant in his Statement of Case, that the result of the urine test performed on his urine sample on 27.07.2019 did not bear the signature of the doctor who conducted the test. However, the Claimant in his pleadings did not dispute the validity or accuracy of test result.

### **The Company's case**

**[16]** It is the Company's case that on 09.07.2019, the Claimant was on a medical leave and returned to work on 10.07.2019. While on duty on that day, the Company's new Industrial

Relations Manager found the Claimant sleeping in the Company's gym and woke the Claimant up from his sleep. Based on the Claimant's conduct of sleeping during his working hours, the Claimant was asked to go for a medical examination and as part of the medical check up conducted on the Claimant, the result of his urine sample tested negative for any prohibited drugs. Based on another incident that took place on 21.06.2019 and the alleged misconduct of sleeping while on duty, the Company issued a show cause letter dated 17.07.2019 to the Claimant. The show cause letter contained two allegations of misconduct. The first allegation of misconduct was pertaining to the Claimant raising his voice equivalent to shouting at a senior colleague, Puan Engku Aznita Binti Engku Hamzah on 21.06.2019 and the second allegation was that he was found to be sleeping on 10.07.2019 whilst on duty. Three days after the Claimant replied to the show cause letter, the Claimant was slapped with another allegation of misconduct in a second show cause letter dated 22.07.2019 whereby the third misconduct was that the Claimant had committed an indiscipline act when the Claimant did not attend the Group Human Capital Management Capability Building Programme held at Holiday Inn, Shah Alam.

**[17]** The Claimant admitted to the third allegation of misconduct raised in the first show cause letter and gave the excuse in his reply that the sleepiness was caused by the effect of the medication he took earlier in the morning. The Company however, considered that all three misconduct

allegations raised in the show cause letters were taken to have been committed by the Claimant.

[18] Premised on the reply to the second show cause letter, the Company decided to issue a reminder letter dated 24.09.2019 to the Claimant.

[19] However, before the reminder letter could be served on the Claimant on 27.09.2019, another incident took place involving the Claimant and his colleague (COW 3) at the basement two of the Company's building which resulted in a police report being lodge against the Claimant. In consequent thereof, the Company issued a suspension letter to the Claimant suspending the Claimant with immediate effect to facilitate an investigation into the police report lodged by the COW 3 against the Claimant. In the suspension letter, the Claimant was ordered by the Company to go for another urine test, this time at Al-Islam Specialist Hospital in Kuala Lumpur to assist the investigation.

### **The Law On Dismissal**

[20] It is a trite law that an employer does not have the right to terminate the services of an employee for no valid reason.

[21] Based on the factual matrix of the case, the contemporaneous documents and the evidence of witnesses adduced in the trial, the Court is to determine whether the termination or dismissal of the Claimant which took place on

the 30.09.2019 on the ground of reporting to work under the influence of prohibited drugs is with or without just cause or excuse. The Court's duty is to enquire whether the excuse or reason advanced by the Company has been made out on a balance of probabilities.

[22] In the book "Industrial Disputes Law In Malaysia" 2<sup>nd</sup> edn. 1984 at p.78 the Learned Author C.P. Mills stated that :

*"Unless there is clear evidence to support the charge of misconduct, the employer's decision against the workman will not be upheld by the Court. Even where there were reasonable grounds before the employer for concluding that the workman was guilty of the misconduct alleged against him, but in the proceedings before the Court the evidence does not permit any firm conclusion that the workman did commit the acts in question, the dismissal will not be sustained."*

[23] In the Company's written submission, the Learned Counsel for the Company had correctly referred to the seminal case in relation to the function of the Industrial Court in dealing with a reference under s. 20 of the Act which is the Federal Court case of **Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal [1995] 3 CLJ 344** where it held inter alia that:

*"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 ... 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.”*

[24] The function of the Industrial Court is succinctly stated in the case of **Goon Kwee Phoy v J & P Coats (M) Bhd [1981] 1LNS 0; 1 MLJ 129** at p.136 where Federal Court decided inter alia as follows:

*“The Court has now to determine whether the Claimant’s dismissal was with just cause or excuse. For this the Court’s duty is to enquire from the facts and evidence made available, whether the excuse or reason advanced for the dismissal has been made out.*

*Unless a clear evidence has been presented by the employer before the Court in support of the allegation of misconduct against the Claimant, the Court’s findings will not be in favour of the employer simply because of the burden of proof that rests on the employer and the inevitable conclusion must be that the dismissal of the Claimant based on the alleged misconduct was without just cause or excuse”.*

[25] In regard to the burden of proof that is required of the Company to prove the misconduct alleged, the case of **Telekom Malaysia Kawasan Utara v Krishnan Kutty Sanguni Nair & Anor [2002]** was cited by the learned counsel for the

Company. It was held by the Court of Appeal in Telekom Malaysia (supra) that it is the civil standard i.e. the balance of probabilities and stated as follows:

*“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 clearest statement on the standard of proof required that is civil standard based on the balance of probabilities, which is flexible, so that the degree of probabilities 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.”*

**[26]** Therefore, from the above authorities as has been cited in the Company’s submission and is further reiterated in this Award, it is a principal of industrial relations jurisprudence

that in a dismissal case, the employer must produce convincing and cogent evidence that the workman committed the alleged misconduct which necessitates the workman's dismissal. This burden of proof lies on the employer. He is obliged to prove his case on a balance of probabilities by him adducing that the workman was dismissed for just cause or excuse.

### **EVALUATION AND FINDING**

**[27]** The Company's witnesses called to testify in this case were :

- COW 1 : Sainursalwa bt. Sani - The Company's Group Chief Human Capital Officer
- COW 2 : Dr. Suhaimi b. Abdul Halim - a medical Doctor and the panel Hospital's Medical Director.
- COW 3 : Shazwan Syafiq b. Zainal - the Company's General Clerk.

**[28]** As to the Claimant's prior disciplinary record to the incident that occurred on 27.09.2019 at basement two, COW 1 stated that there had been a show cause letter issued to the Claimant for shouting at his superior and sleeping on duty. COW 1 said that based on the justification given in his reply letter dated 19.07.2019, the Company issued a second show cause letter to answer to a further alleged misconduct of insubordination. Based on the reply to the second show cause, the Company had decided to issue a reminder letter dated 24.09.2019 but before the reminder letter could be served on the Claimant, the incident on 27.09.2019 had taken



place which ultimately led to the Claimant's suspension and his dismissal which was purely on the basis that the Claimant was tested positive for Amphetamine and Methamphetamines after a urine (drug) test.

**[29]** COW 1 also gave evidence on the Claimant's first urine test as part of the full medical check up which the Claimant was asked to undergo on 11.07.2019 out of concern of the Claimant's well being after he was found sleeping while being on duty. The result of the first urine test was negative for "Cannabinoids" and "Opiate".

**[30]** According to COW 1, it was discovered later that the Claimant had exchanged his urine sample with that of COW 3. A warning letter dated 08.10.2019 was issued to COW 3 for aiding and abetting the Claimant to 'circumvent' any other plausible result that may appear from the urine test. The Company believed that the conduct of COW 3 had impeded the plausible outcome of the test taken by the Claimant on 11.07.2019.

**[31]** COW 1 stated that the Company's management had in view that it would be absolutely unsafe to retain the Claimant with the Company and decided that the only punishment which could be imposed was a dismissal. The Claimant submitted that the intention and involvement of COW 1 is questionable since COW 1 was not the Claimant's immediate supervisor. There is no merit in the Claimant's argument as

COW 1 had knowledge of the show cause letters and the incidents that took place prior to obtaining the drug test result. COW 2, a certified medical Doctor and the panel's Hospital Medical Director, said that the Claimant's urine sample was taken at the panel hospital on 27.09.2019 and the lab test result showed that the Claimant's urine tested was positive for two prohibited drugs which are "Amphetamine" and "Methamphetamines". COW 2 said that the Claimant's lab test result was released to the Company pursuant to the confirmation of consent given by the Claimant dated 27.09.2022.

**[32]** According to COW 2, the result of the urine test was handled by the laboratory and was reported by the Head of the laboratory while the Doctor named in the test result, Dr. Mohammad Hairiezal Bin Shari no longer works at the Hospital. The Claimant's argument in his submission that COW 2 was unable to provide answers does not hold water.

**[33]** Company's third witness, COW 3 gave evidence of the freight he experienced in the morning of 27.09.2019 when the Claimant intended to ram his car into him at basement two of the Company's building. When COW 3 confronted the Claimant at his work station to ask him why he drove towards him, the Claimant told him that he was angry with COW 3.

**[34]** COW 3 lodged a police report in regard to the Claimant's 'threat action' at basement two. COW 3 in his evidence also admitted that a warning letter was given to him by the Company for abetting the Claiming by giving his urine sample to the Claimant on 11.07.2019 when the Claimant requested for his help. In regard to the evidence of COW 3, the Claimant argued that COW 3 had failed to detailed out where the exchange of urine sample took place and the reason for COW 3 to do the exchange.

**[35]** To this Court, the evidence given by COW 3 is clear in that he admitted to have exchange his urine sample with that of the Claimant's and there was no evidence to suggest otherwise. Having said that, it was not the claim or rather the allegation of exchange of the urine samples that has led to the Claimant's dismissal.

**[36]** In fact, the focal ground relied on by the Company in its statement in reply and in the trial as to Company's action to dismiss the Claimant was the breach of the implied and express terms of the Claimant's terms and conditions in the letter of appointment and the Company's code of conduct for being under the influence of drug substance whilst on duty.

**[37]** This can be seen at paragraph 6.1 of the Company's statement in Reply where it was averred that:

*“6.1 The Claimant was dismissed on the ground of misconduct of drug abuse and not poor performance; as outlined in his Dismissal Letter dated 30.09.2019:”*

**[38]** The Company relied on the test result from the Specialist Hospital taken in the afternoon on the day the Claimant was working that shows that the Claimant tested positive for the two prohibited drugs “Amphetamine” and “Methamphetamines”. In that, the Claimant was under the influence of drugs.

**[39]** No show cause letter was issued to the Claimant to provide explanation on the test result that found the presence of two prohibited drug substance in the Claimant’s urine sample.

**[40]** The Claimant who initially avoided admitting that his work station was not at the gym when giving his evidence under cross examination then admitted that his permanent workstation was not in the gym. He further admitted that the IR Manager had to wake him up when he was found asleep in the gym area. The Claimant then admitted as follows:

*COC : Therefore, since medical leave given to you was for 9<sup>th</sup> July 2019, I am sure the Bank was not sure why you were sleeping during working hours as you didn’t obtain medical leave on 10<sup>th</sup> July 2019. Correct ?*

CLW 3 : *Yes, I did not obtain.*

COC : *So, naturally, logically, En. Fikri, by virtue of you sleeping during working hours, you are unable to carry out your duties to the Bank, correct ?*

CLW 3 : *Correct.*

COC : *Therefore, naturally, logically, En. Nurfikri, in the absence of any justification of a doctor to justify you sleeping during working hours, I'm sure you would agree with me, that the Bank, as an employer, has the right to instruct a medical health screening on you to ascertain your medical health condition, correct ?*

CLW 3 : *Correct.*

**[41]** The Claimant admitted that by him falling asleep in the gym area during his working hours, had caused him to be unable to discharge his duties to the Bank.

**[42]** The next crucial part of the evidence elicited from the Claimant is as follows:

COC : *Let's look at page 83 & 84 COB 1. Agree En. Fikri that on 27<sup>th</sup> September 2019, you have been suspended from the Bank, correct ?*

CLW 3 : *Yes*

COC : *And as stated in this letter, you had been suspended for acting in a manner that threatened your colleague En. Shazwan Syafiq correct ? First paragraph.*

CLW 3 : *Yes.*

COC : ..... En. Nurfikri, agree nowhere in your suspension letter the Bank state that you were mentally not stable, correct?

CLW 3: Okay, alright.

[43] On the issue of consenting to the release of the lab test result, the following was the evidence from CLW 3:

COC: You authorised the Hospital to release your lab report to the Bank, correct?

CLW 3: Yes.

[44] On the issue of disputing the termination and the validity of the test result due to no signature by the CLW 3, the relevant evidence from the Claimant is as follows:

COC : But anyway since this is what you are pleading – that you have been defamed and all that. Do you have at least, before this Honourable Court, any other urine test report to show otherwise, i.e. negative? Challenging it to show I'm negative for amphetamines and methamphetamines? Do you have, do you not?

CLW 3: At this point, no.

COC: So, any point? Before this? You don't create a document, you are under oath. If you had that document, surely that's a very crucial document. If you are negative, you could have tendered that in this Court for these proceedings. I am reminding you, you are under oath. Okay? Do you have such a report to show that you are negative for these drugs? Do you have, do you not?

CLW 3 : *For these two types of drugs ? I do not have.*

CLW 3 : *You mean whether I have disputed the result?  
I did.*

COC : *Where is your record of dispute ?*

CLW 3 : *It was made verbally.*

COC : *Do you have any record of that?*

CLW 3 : *On that paper, no.*

**[45]** In response to the claim that the doctor's signature was not on the test result pleaded by the Claimant in the SOC, the following was the Claimant's response when he was told to read the line at the bottom the test result document :

CLW 3 : *"This is a computer-generated report – no signature required." I am just merely following your orders.*

COC : *So, it's clearly stated there -- no signature required, Correct ?*

CLW 3 : *It's stated there, yes.*

COC : *So, the validity is not disputed. Correct ?*

CLW 3 : *No.*

**[46]** Based on the Claimant's evidence, (as reproduced above during his cross examination) this Court concludes that the Claimant admitted to having been under the influence of two prohibited drugs, "amphetamines" and "methamphetamines" which is evident in the lab test result of which there is no dispute concerning the validity or accuracy of the result and the absence of a doctor's signature on the test result is plainly

justified by the last line of the test result that states that no signature is required on the computer generated report.

[47] The Claimant's witness CLW 1, the Claimant's mother, was oblivious to the fact that there was a positive tested urine drug result of the Claimant. She denied that CLW 3 was tested positive and was evasive in giving her answers to questions asked. CLW 2, the Claimant's stepfather was also called to testify and admitted that he was not familiar with the events surrounding the Claimant's claim and was only occasionally told to him by CLW 3.

[48] The Court also finds that the issues raised in the Claimant's pleadings directed at other department heads of the Company and the issue on the PIP plan placed on him, have no bearing on the action of dismissing him summarily by the Company. Essentially, in the trial itself, the very ground upon which the Claimant was dismissed from his employment with the Company was not contested. Equally, there was no issue of poor performance raised by the Company in its ground for the Claimant's dismissal.

### **Was The Dismissal With Just Cause Or Excuse ?**

[49] The Claimant admitted in his cross examination that in item 12 of his letter of appointment, exhibited in his bundle of documents attached with the Statement of Case refers to summary dismissal which states that "*The Bank reserves the right to dismiss you for serious misconduct, dishonesty,*



*insubordination, gross negligence, criminal conviction and bankruptcy order against you prior or during the employment or for any other serious breach of conduct or breach of other implied or express terms and conditions of service”.*

[50] For completion of this Award, this Court is in agreement with the case cited by the Learned counsel for the Company in their submission stated at page 20 of the Company's submission. It is the case of *Jamilah Hj Ali & Anor v Bank Simpanan Nasional & Anor* [2019] 1 LNS 1905 where the High Court held that :

*“It is trite law that admissions are strongest evidence possible. In **Esso Malaysia Bhd v Hild Agency (M) Sdn Bhd & Ors** [1993] 1 LNS 103; [1994] 1 MLJ 740 at page 752- Admission are strongest evidence possible and even a wrong construction of document will be assumed to be correct in view of the admission.”*

[51] There are numerous drugs related cases that involved employees of companies and business organisations that made the issue of their dismissal to the Industrial Court for adjudication. As have been shown numerous by the decided cases that being under the influence of alcohol or dangerous or prohibited drugs while on duty tantamount to committing wrongdoings inconsistent with the employer–employee relationship.

[52] Drug abuse has been held in numerous cases to be a serious misconduct, which justified the Company's decision to dismiss the employee. Cases that had conclude as such amongst others are **Malaysian Airline System Bhd v Samson Anuar Haron [2003] 3 ILR 1407 (Award No. 80 of 2003)** and **Suatman Laso v TM Cellular Sdn Bhd [2007] 1 ILR 145 (Award No. 2118 of 2006.**

[53] The Company in its submission cited the case of **PETRONAS CARIGALI SDN BHD V SYAMDUM TAHIR [2014] 1 LNS 835** which is a case on point where the High Court overturned the Industrial Court decision and upheld the dismissal of the employee who had been tested positive with Amphetamine and Methamphetamine (the same prohibited drugs in the instant case) by stating that :

*"With the urine test result showing Amphetamine and Methamphetamine which are drugs within the Dangerous Drugs Act 1952, the charge of misusing or consuming drug is thus proved. Pursuant to sections 102 and 103 of the Evidence Act 1950, the evidential burden or onus of proof then shifts to the Respondent to rebut such evidence."*

[54] In the more recent cases, the Industrial Courts held the same views when it comes to employees who are dismissed on grounds of drug abuse. One such case is **Zulhilmi Fauzi**

**v MISC Berhad [2014] 1 ILR 240 (Award No. 3 of 2014)**, where the Industrial Court held as follows:

*“The Company submits that the Claimant’s misconduct was proven having regard to the fact that the Claimant did not dispute the results of the drugs testing. The results of the Claimant’s urine sample are sufficient cause for termination. In the Claimant’s letter of appeal against his dismissal dated 16 February 2011 (annexed to the Statement of Case), the Claimant merely denied consuming alcohol and drugs but did not dispute the results of the drugs testing.... The misconduct of the Claimant’s being tested positive for morphine is not a minor misconduct”.*

**[55]** Guided by the above decision of the Learned Chairman in Zulhilmi Fauzi’s case (supra), it is justifiable for the Company in this instant case to dismiss the Claimant outright to maintain, uphold and preserve its established identity as a one-stop financing and business development centre, to consider the reputation of the company, the graveness of the misconduct and the safety of its employees.

**[56]** The Claimant job function as an Executive would require the Claimant at all times to be responsive and must maintain diligent focus on his job in order to perform it effectively. The test result runs contrary to the trust and confidence reposed

in him on the basis of the nature of the employer-employee relationship.

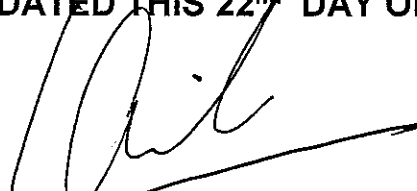
[57] Upon considering the factual matrix of the case, the nature of the misconduct committed by the Claimant and the Company's policy on drug abuse, it is the considered view of this Court that it is unreasonable to expect the Company to have continued his employment.

### **Decision**

[58] Based on the totality of evidence, written submissions of both parties and bearing in mind s.30(5) of the Industrial Relations Act 1967 to act according to equity and good conscience and the substantial merits of this case, this Court finds that the Claimant's dismissal was with just cause or excuse.

[59] Accordingly, the Claimant's claim is dismissed.

**HANDED DOWN AND DATED THIS 22<sup>ND</sup> DAY OF JUNE 2022**



**( AMRIK SINGH )  
CHAIRMAN**

**INDUSTRIAL COURT OF MALAYSIA  
PENANG BRANCH**