IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO: 4/4-668/20

BETWEEN

PANNIRSELVAM A/L VADIVELU PATHAR

AND

EXXONMOBIL EXPLORATION AND PRODUCTION MALAYSIA INC.

AWARD NO: 855 OF 2022

BEFORE	:	**Y.A. TUAN AUGUSTINE ANTHONY CHAIRMAN**
VENUE	:	Industrial Court of Malaysia, Kuala Lumpur.
DATE OF REFERENCE	:	10.03.2020.
DATE OF RECEIPT OF ORDER OF REFERENCE	:	30.06.2020.
DATES OF MENTION	:	10.07.2020, 24.08.2020, 30.09.2020, 18.03.2021, 08.02.2022.
DATES OF HEARING	:	14.12.2021, 15.12.2021
REPRESENTATION	:	Ms Sumita Ghanarajah & Ms. Hirashini Mahandran of Messrs. Rusmah Yahya Anne & Associates Counsel for the Claimant. Mr. Gan Khong Aik & Ms. Kang Mei Yee of Messrs. Gan Partnership Counsel for the Company.

THE REFERENCE

This is a reference dated 27.03.2018 by the Honourable Minister of Human Resources pursuant to section 20 (3) of the Industrial Relations Act 1967 ("The Act") arising out of the alleged dismissal from employment of **PANNIRSELVAM A/L VADIVELU PATHAR** ("Claimant") by **EXXONMOBIL EXPLORATION AND PRODUCTION MALAYSIA INC.** ("Company") on the 15.09.2017

AWARD

[1] The parties in this matter filed their respective written submissions dated 28.01.2022 (Claimant's Written Submissions), 28.01.2022 (Company's Written Submission), 11.02.2022 (Claimant's Submissions in Reply) and 15.02.2022 (Company's Submissions in Reply).

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

(i) The Claimant's Statement of Case dated 23.07.2020;

(ii) The Company's Statement in Reply dated 10.08.2020;

(iii) The Claimant's Rejoinder dated 21.08.2020;

(iv) The Claimant's Bundle of Documents – CLB1 and CLB2 ;

(v) The Company's Bundle of Documents – COB1, COB2 and COB3;

(vi) Claimant's Witness Statement – CLW-WS (Paneerselvam a/l Vadivelu Pathar);

(vii) Company's Witness Statement – COW1-WS (Anoop Kumar a/l Chranji Lal Amarnath);

(viii) Company's Witness Statement – COW2-WS (Ungku Hishamuddin Bin Ungku Mohd Tahir);

INTRODUCTION

[3] The dispute before this Court is the claim by Pannirselvam a/l Vadivelu Pathar ("Claimant") that he had been dismissed from his employment without just cause or excuse by Exxonmobil Exploration and Production Malaysia Inc.("Company") on the 15.09.2017. In this dispute the Claimant alleges that he had been forced to resign from his services by the Company and as such the said resignation was involuntary leading to a dismissal without just cause or excuse.

[4] The Company is involved amongst other in the oil and gas industry and needs no further introduction. The Claimant commenced employment as a Scheduling Assistant in the Company (and/or Mobil Oil Malaysia Sdn. Bhd., the Company's predecessor) on the 13.04.1993. The Claimant's employment commencement date is not in dispute. The Claimant's last held position in the Company was as Maintenance Planning Clerk. It is the Company's contention that due to the Claimant's poor health, the Claimant had taken excessive no pay leave since 2012 and the Claimant had also shown poor performance at work since 2015. Owing to the Claimant's poor performance, the Company had intended to put the Claimant on a Performance Improvement Plan (PIP) and this was indicated by way of a letter/document dated 28.02.2017. By the same document, the Claimant was also given a further option to resign with outplacement services in lieu of PIP which if the Claimant chooses to accept would result in amongst other the Company continuing to pay the Claimant his base salary and benefits for 6 months. The Claimant was given 14 days to respond to the

document dated 28.02.2017 and when the Claimant failed to respond, the time was extended until 14.03.2017. When the Claimant did not respond by the working time on the 14.03.2017, one Anoop Kumar a/l Chranji Amarnath (Anoop Kumar) of the Company who was the Claimant's direct supervisor, had called the Claimant at night, requesting the Claimant to respond to the options stated in the document dated 28.02.2017. On the same night, the Claimant upon the request of Anoop Kumar, responded by way of a text message which was sent by the Claimant to one Ungku Hishamuddin Bin Ungku Mohd Tahir (Ungku) who was at that material time the Company's Maintenance Support Superintendant and the superior of Anoop Kumar, informing Ungku that he had chosen the option to resign with outplacement services in lieu of PIP with all the benefits stated in the said option. The Company by way of a letter dated 15.03.2017 accepted the Claimant's resignation and a copy of the Company's letter dated 15.03.2017 was acknowledged receipt by the Claimant on the 20.03.2017 with no protest at all. The Claimant thereafter continued to receive the

benefits of the option to resign which included his base salary for 6 months. The Claimant also no longer reported to work after signifying his selected option. Sometime after the Company's letter of acceptance of the Claimant's resignation, the Claimant had requested for a medical board out in view of his health. However the Medical Board upon its review rejected the Claimant's application for a medical board out. Subsequent to the rejection for the medical board out being notified to the Claimant, the Claimant then lodged a complaint that he had been dismissed without just cause or excuse by the Company which took effect on the 15.09.2017 for an alleged forced resignation that had taken place on the 14.03.2017. The Claimant now prays for reinstatement to his former position in the Company without any loss of seniority and other benefits. The Company however contends that the Claimant opted to resign voluntarily by way of his text message on the 14.03.2017 which voluntary resignation the Company accepted on the 15.03.2017 and therefore denies that the Claimant was dismissed by the Company.

[5] The Claimant gave evidence under oath and remained the sole witness for his case. The Company's evidence was led by COW1 (Anoop Kumar a/l Chranji Amarnath, who was the Claimant's direct supervisor from the period of 01.08.2016) and COW2 (Ungku Hishamuddin Bin Ungku Mohd Tahir, who was at the material time the Maintenance Support Superintendant and the superior of COW1).

THE COMPANY'S CASE

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

(i) The Company does not dispute that the Claimant had been employed by the Company and/or Mobil Oil Malaysia Sdn. Bhd. since 13.04.1993.

(ii) During the Claimant's employment with the Company, from the period of 2012 to 2017, the Claimant had medical issues and had taken substantial medical leave and no pay leaves.

(iii) On the 25.11.2015 , the Company issued a letter to the Claimant informing him that his performance for the period between 01.08.2014 to 31.07.2015 was below normal requirement and that the Claimant had further continued to perform in that same manner from 01.08.2015 to 25.11.2015.

(iv) Thereafter the Company issued a letter dated 28.02.2017 (now referred to as the said document) informing the Claimant that his performance from 01.08.2015 to 31.07.2016 was below the expectation/requirements of the Company.

(v) By the said document the Claimant was informed that he is given two options i.e. an option to be placed in a Performance Improvement Plan (PIP) or an option to resign with outplacement services in lieu of PIP with benefits attached to it.

(vi) The Claimant was required to respond to the said document by the 10.03.2017 and later extended to 14.03.2017.

(vii) As the Claimant failed to respond by the 14.03.2017, the Company issued a letter to the Claimant on the morning of 14.03.2017 and when there was no response from the Claimant, COW1 proceeded to call the Claimant at night reminding the Claimant to respond to the said document.

(viii) Soon after the call from COW1, the Claimant sent a text message to COW2 informing COW2 that he will take the option to resign and accept any benefits that came with that option.

(ix) The Company then issued a letter dated 15.03.2017 accepting the Claimant's resignation. The Company's letter dated 15.03.2017 was received and acknowledged by the Claimant on the 20.03.2017 with no protest at all.

(x) Thereafter the Claimant stopped reporting to work and continued receiving his salary until September 2017 and other the benefits that came with the option to resign.

(xi) Company states that the Claimant's representation pursuant to Section 20 of the Industrial Relations Act 1967 is an

afterthought and tainted with mala fide for the following reasons:-

(a) The alleged forced resignation occurred on the 14.03.2017.

(b) The Claimant made no protest thereafter particularly in writing even after having acknowledged receipt of the Company's acceptance letter dated 15.03.2017.

(c) After his resignation on the 14.03.2017, the Claimant then requested to be considered for medical board out. However the Medical Board determined that the Claimant was not medically unfit for further service with the Company.

(d) The Company then informed the Claimant by a letter dated 31.07.2017 that the Claimant was not eligible for the medical board out and that his resignation remained effective.

(e) It was only upon the Claimant being informed of the outcome of the medical board review that the Claimant then made this representation for reinstatement.

(f) The Claimant had clear intention to leave his employment with the Company in light of his medical condition and consistent absenteeism.

(g) The Claimant's resignation was a mutual settlement between him and the Company and that the Claimant was not forced to tender his resignation.

(h) The Company denies terminating the Claimant from his employment with the Company and the Claimant's resignation was a voluntary exercise of the Claimant.

(i) The Claimant case be dismissed.

THE CLAIMANT'S CASE

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

(i) The Claimant's years of service with the Company commenced when the Claimant joined Mobil Oil Malaysia Sdn. Bhd. on the 13.04.1993 which entity was later known through a merger exercise as ExxonMobil Exploration & Production Malaysia INC.

(ii) The Claimant was forced to tender his resignation on the 14.03.2017 and this forced resignation took effect on the 15.09.2017.

(iii) The circumstances leading to the forced resignation are as follows:-

(a) The Claimant was served a document bearing no letter head by the Company on the 28.02.2017 ("the said document") notifying the Claimant that his performance had been assessed and that he did not meet the requirement of his job and thus would be subjected to a Performance Improvement Plan (PIP);

(b) The said document gave the Claimant 2 options namely to elect to be on the PIP for 3 months or to resign with Outplacement Services in Lieu of PIP;

(c) By the same document, the Claimant was given 14 days to make his selection of the options granted to him by the Company,

(d) The Claimant however did not reply the said document.

(e) By another letter dated 14.03.2017, which was handed to the Claimant in the morning of the same day, the Company informed the Claimant that the Company is willing to extend the time period to enable the Claimant to reply the said document by midnight of 14.03.2017.

(f) On the same date of 14.03.2017 at about 11 pm, the Claimant received a call from COW1 putting pressure on him to reply the said document. The Claimant was unwell at that time.

(g) In view of the pressure placed upon the Claimant, the Claimant indicated that he would resign from his services with the Company.

(iv) The Claimant now states that the pressure placed upon him to resign amounted to a forced resignation.

(v) The Claimant further states that the conduct of the Company that led to the forced resignation was done in bad faith, perverse, arbitrary and among others an act of victimisation which constitutes unfair labour practice.

(vi) The Claimant contends that the forced resignation brought about by the Company amounts to a dismissal and a dismissal without just cause or excuse.

(vii) The Claimant now prays that he be reinstated to his former position without any loss of seniority and other benefits.

THE LAW

Role and function of the Industrial Court

[8] 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 ..."*

[9] 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 Bhdand Another Appeal [1995] 3 CLJ 344 where in delivering the judgment of the court Mohd Azmi FCJ said (at p. 352):*
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> > *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"*

[10] 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

[11] Whenever a Company had 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/l 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.

[12] 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 Dato' Haji 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).*

[13] In view of the above case and anchored on the ground of forced resignation, it is now incumbent upon the Claimant to prove his case that he had been dismissed albeit by way of a forced resignation. The burden of proof thus had now shifted to the Claimant to prove that he had been dismissed by the Company from his 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

[14] In the case of ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314*** the Court of Appeal had 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."*

[15] Further in alleging forced resignation the Claimant must prove before this Court with clear and cogent evidence that he was either persuaded, driven, directed or even invited to resign from his employment with the Company failing which he 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."

[16] 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."

[17] In the case of ***Mazli Mohamedv SAP Holdings Berhad (2012) 1 ILR 399***, 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."

[18] This Court had also considered the various decisions of the courts as to what constitute a forced resignation and in all of these cases the common element that becomes essential for a forced resignation is one where there is an ultimatum given to the employee where in the event the employee refuses to resign, he would face a termination or sack by the Company. The prospect of a termination or sack must exist if the employee does not or refuses to resign before an employee can rely on forced resignation as a dismissal of the employee.

[19] In the case of ***Abdul Liel Hawa Hj Abd Hamid v Philip Moris (Malaysia) Sdn. Bhd. & Anor [2009] 1 LNS 330*** his Lordship Justice Abdul Rahman Sebli JC (as he then was) had the occasion to opine as follows:-

> *"To make out a case of forced resignation the workman has to establish that he was not allowed time to think over the matter, not allowed to go out of the office but was physically restrained and had signed the letter of resignation under protest: see Tata Robinson Fraser Co. Ltd. v. Labour Court 1989-II-LLJ 443 cited by the learned authors of Cases and Materials on Resignation, Transfer and Suspension and referred to in Weltex Knitwear. Nothing of that sort happened to the applicant in the present case."*

[20] In the case of ***The British School of Kuala Lumpur Sdn. Bhd. v Menteri Sumber Manusia Malaysia & Ors [2015] 9 CLJ*** 77 her ladyship Azimah Omar JC (as she then was) opined :-

> ***"[6]*** *Entailing her poor performance and absenteeism, a meeting was held late in 15 February 2013, the same day the employee was absent from work for the third time that week. One David Kirkham ("witness") was appointed to oversee and witness the meeting without a single iota of protest by either of the parties. During the meeting, the employee was informed of the concerns, complaints and emails from parents who were concerned with their children's education due to the employee's absenteeism and tardiness. Thereafter, the employee was given a tri-faceted option with three options to choose from ("option").*
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> ***[7]*** *At this juncture, this court must highlight that the option is not a simple two choices ultimatum. A simple appreciation of the full extent of the factual matrix would reveal that the option was tri-faceted. The option at any material time is NOT an ultimatum of either resign or be terminated/dismissed. Distinctively, the tri-faceted option instead offers the following options, WITHOUT any of the options drawing an inevitable conclusion of termination/dismissal:*
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> *(i) shape up and continue with the employment; or*

(ii) risk disciplinary actions if the same poor performance during employment is continued after the meeting; or

(iii) voluntarily resign with added benefits should the employee could not promise appropriate performance of her obligations under the employment contract."

EVALUATION OF EVIDENCE AND THE FINDINGS OF THIS COURT

[21] This is a case that involves an allegation by the Claimant that he had been forced to tender his resignation by the Company. The allegation of forced resignation according to the Claimant constitutes a dismissal of the Claimant from his employment with the Company. It is therefore incumbent upon the Claimant to prove the alleged forced resignation amounting to a dismissal before this Court can consider whether the said alleged dismissal (if any) constitutes a dismissal without just cause or excuse.

[22] The Claimant had given evidence in Court that he had been forced to tender his resignation which the Claimant did by way of a text message on the 14.03.2017. The Claimant had further given evidence in Court that he had been unfairly dismissed by the Company vide a letter dated 15.03.2017 which dismissal took effect on the 16.03.2017. It is undisputed that the purported dismissal of the Claimant vide letter dated 15.03.2017

emanated from the conduct of the Claimant in sending a text message to COW2 on the 14.03.2017 upon the request of COW1, in which text message the Claimant informed COW2 that the Claimant had opted to take the 6 months salary plus benefits indicative of the option to resign from the Company. The Claimant alleges that the text message that he had sent to COW2 on the 14.03.2017 was due to the Company forcing and pressuring the Claimant to resign from the Company and this constituted a forced resignation which amounts to a dismissal.

[23] If this Court is to take the evidence of the Claimant and rely totally on what the Claimant had said in that the Claimant was forced to resign on the 14.03.2017, then it will naturally follow that the forced resignation which amounted to a dismissal occurred on the 14.03.2017 or at least on the 15.03.2017 when the Company accepted the purported forced resignation and stated that the Claimant no longer need to report for work effective 16.03.2017. For all intent and purposes the forced resignation/dismissal must follow the event on the 14.03.2017.

[24] However from the evidence and the undisputed facts of this case it is manifestly clear that the Claimant had alleged that he was dismissed from his employment on the 15.09.2017, some 6 months after the alleged forced resignation. Why did the Claimant wait until 15.09.2017 to allege his forced resignation and why the purported dismissal was dated 15.09.2017, will be dealt by this Court later in this Award.

[25] It is undisputed that the Claimant's health had been poor leading to the Claimant taking excessive leave and this poor health of the Claimant was only getting worse progressively prior to 14.03.2017. The Claimant himself confirmed this in his evidence. As a consequence of the Claimant's poor health, he had requested that he be placed in flexi work hours in the Company which the Company acceded. The Claimant's condition is clearly an indication that the Claimant's work performance was not to the expectation of the Company and this is supported by the evidence led in this Court. COW2 gave convincing evidence that the Claimant had taken excessive no pay leave since 01.09.2012 and the succeeding years saw the Claimant's performance as the Company's employee rated very poorly. COW2 further in his evidence had stated that the Claimant's performance from the assessment for the period between 01.08.2015 to 31.07.2016 did

not meet his job requirements hence the Company's decision to place the Claimant on Performance Improvement Plan (PIP). This Court having considered all the evidence in Court must come to a conclusion that the performance of the Claimant must be such that the Claimant was not able to perform his duties according to the expectation of the Company and it is only natural for the Company to decide to take action to improve the Claimant's performance by placing him in a PIP.

[26] The Company had made a decision to place the Claimant on a PIP but according to the evidence of COW2, the Company had also given the Claimant an option to resign with outplacement services in lieu of the PIP. The contents of the options given by the Company to the Claimant is reflected in a document/letter dated 28.02.2017 which states that the Claimant may opt to be placed in the PIP which is option No:1 or accept the option to resign with Outplacement Services in Lieu of PIP which is option No:2. The Claimant admits in his evidence that the Claimant upon being given the letter/document dated 28.02.2017 was also given a period of 14 days to make a selection any one of the option No: 1 or No: 2.

[27] This Court having perused the document dated 28.02.2017, finds nothing in the said document which can be understood as giving the Claimant an ultimatum that unless he resigns, he will be terminated or sacked by the Company. This Court further finds that the conduct of the Company in giving the Claimant a good 14 days period to think over the options that he may choose is corroborative evidence that no force was applied on the Claimant neither was the Claimant put under any pressure to agree to the option to resign.

[28] When the Company had given the Claimant a good 14 days period to respond to the contents of the document dated 28.02.2017, it is natural for the Company to expect the Claimant to obey such instruction. It is not an overly burdensome expectation placed on the Claimant by the Company for a response within the 14 days period which the Claimant did not do. After a further extension period, COW1 had then called the Claimant on the 14.03.2017 between 10.00 pm to 11.00 pm to ask the Claimant to respond to the options given. This Court finds nothing wrong in the conduct of COW1 giving the Claimant a call reminding him to respond to the document dated 28.02.2017 regardless of what time the call was made. The Claimant did not find the call intrusive as the Claimant had responded to the call. The

conversation between the Claimant and COW1 during the call was cordial. COW1 in the said conversation did not give the Claimant any ultimatum of resign or face termination or sack. It was amply clear from the evidence of the Claimant and COW1 that even after some 14 days had passed for the Claimant respond and even during the call on the 14.03.2017, there was no ultimatum given to the Claimant that if he refuses to resign or select the options given, he will then be terminated or sacked by the Company.

[29] It is pertinent to state here that the Claimant was comfortably away from the Company's premises and that COW1 had only called the Claimant to ask him to respond to the options. The Claimant was in no way under any circumstances that would give rise to a situation where he may or had been forced to make the choices that he is able to make at that time. He could have simply said to COW1 during the call that he will not respond to the document dated 28.02.2017 and could have asked COW1 to proceed to place the Claimant in the PIP which he did not do. The Claimant must be made aware that an option to place the Claimant in the PIP does not necessarily mean that it can be construed as an ultimatum of termination or a sack. A careful reading of the document dated 28.02.2017 clearly states that if the Claimant ought to undergo the PIP, that PIP would not

necessarily lead to the Claimant's termination. During the PIP, the Claimant may still be able to improve his performance and retain his employment in the Company. The outcome of the PIP will only be known upon the completion of the PIP and no one can be sure of that outcome unless the Claimant himself brings upon himself an unfavourable end result by not improving his performance. If the Claimant had invited the thought that the PIP will conclusively lead to his termination upon completion, then no one can be faulted other than the Claimant himself for veering his state of mind to that unproductive contemplation.

[30] Further it is also important to state here that during the call with COW1, the Claimant could have also said that he wanted to consult a lawyer or even the Union or any other person that he chose and insist upon it which the Claimant did not do. The Company or any of its officers did not confine the Claimant in any specific place or premises and insist on an immediate answer failing which he will be restrained from his freedom of movement. The text message sent by the Claimant with such clarity of words itself is clear evidence that the Claimant was lucid and in full control of his mental faculty despite his evidence that he was not well at that time. This Court concludes that the Claimant was fully aware of his action in a

voluntary manner when he sent the text message to COW2 of the choice that he had made to resign with outplacement services in lieu of PIP.

[31] The voluntariness of the Claimant in choosing to resign with outplacement services in lieu of PIP was further fortified by the subsequent conduct of the Claimant. It is clear from the evidence adduced in Court that upon the Claimant sending the text message to COW2 stating the choice that he had made to resign with outplacement services in lieu of PIP, the Company had then prepared a letter accepting his resignation on the very next day of 15.03.2017. The said letter dated 15.03.2017 was handed to the Claimant not immediately but some 5 days later on the 20.03.2017 by COW2 personally in the office. The Claimant acknowledged receipt of the said letter dated 15.03.2017 by placing his signature therein. There is no indication or evidence that between the 15.03.2017 to the 20.03.2017, the Claimant had taken any step to demonstrate that he was in effect forced to tender his resignation by the said text message on the 14.03.2017. Quite contrary to the allegation of forced resignation, the subsequent conduct of the Claimant after sending the text message on the 14.03.2017 only points to the voluntary resignation of the Claimant from his employment with the Company, a decision made by the Claimant as a result of a settlement

reached as stated in the option No:2 wherein the Claimant did enjoy certain benefits attached to the chosen option.

[32] It is undisputed evidence that the Claimant after acknowledging receipt of the letter dated 15.03.2017 without any protest, pursuant the settlement as stated in the option No:2 continued to receive the salary, prorated bonus and resignation benefits until 15.09.2017 despite subsequently alleging that he was forced to resign on the 14.03.2017. The Claimant also stopped reporting for work from the 16.03.2017 and proceeded to enjoy the benefits that came along with the chosen option No:2. The Claimant lodged a complaint that he was dismissed from employment on the 15.09.2017 despite agreeing and enjoying 6 months base pay and benefits until 15.09.2017. The Claimant's conduct of stating that he was dismissed without just cause or excuse was only made after it became apparent to the Claimant that his attempt for a medical board out failed wherein the outcome of the Medical Board Review was informed by the Company to the Claimant by way of a letter dated 31.07.2017. This further explains why the Claimant had made no protest at all at all material times and had taken the date of dismissal from employment with the Company as 15.09.2017 when in fact the alleged forced resignation took

place on the 14.03.2017 and which formed the basis of the Claimant's allegation of forced resignation.

[33] This Court now makes a finding and conclude that pursuant to Section 30(5) of the Industrial Relations Act 1967 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, that the Claimant had failed to prove to the satisfaction of this Court on the balance of probabilities the claim of forced resignation. This Court further concludes that the Claimant had tendered his resignation voluntarily. As the Claimant is unable to prove that there was a forced resignation, the issue of the Company dismissing the Claimant without just cause or excuse does not arise and need not be determined herein as the dismissal of the Claimant from his employment with the Company itself remains unproven by the Claimant.

[34] Claimant's claims hereby dismissed.

HANDED DOWN AND DATED THIS 10th DAY OF MAY 2022

-Signed-

AUGUSTINE ANTHONY
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
KUALA LUMPUR