

**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO. : 9/4-1622/21**

***BETWEEN***

**AHMAD KHUSHAIRI BIN MOHAMED NASSER**

***AND***

**BANK KERJASAMA RAKYAT MALAYSIA BERHAD**

**AWARD NO. : 1810 OF 2023**

**BEFORE** : **Y.A. PUAN RUSITA BINTI MD LAZIM**  
**Chairman (Sitting Alone)**

**VENUE** : Industrial Court of Malaysia  
Penang

**DATE OF REFERENCE** : 15.04.2021

**DATES OF MENTION** : 10.06.2021, 16.07.2021, 18.08.2021, 07.09.2021,  
29.09.2021, 13.10.2021, 06.01.2022, 07.02.2022,  
14.03.2022, 10.11.2022, 17.11.2022, 09.03.2023,  
15.03.2023, 18.05.2023, 26.05.2023

**DATES OF HEARING** : 30.03.2022, 20.09.2022, 21.09.2022, 08.02.2023,  
09.02.2023, 28.03.2023

**REPRESENTATION** : Mr. Mohamed Reza bin Abdul Rahim  
learned counsel from  
Messrs Reza Rahim & Rajivan  
for the Claimant

Miss Nurul Aisyah Hassan  
learned counsel from Messrs Lee  
Hishammuddin Allen & Gledhill  
for the Respondent

## A W A R D

[1] This is a reference dated 15.04.2021 by the Honourable Minister of Human Resources to the Industrial Court of Malaysia pursuant to Section 20(3) of the Industrial Relations Act 1967 (hereinafter referred to as “the IRA”). This reference is in respect of the dismissal of **Ahmad Khushairi bin Mohamed Nasser** (hereinafter referred to as “the Claimant”) by her employer, **Bank Kerjasama Rakyat Malaysia Berhad** (hereinafter referred to as “the Bank”) effective on 05.11.2020.

[2] The case previously tried and concluded by the former Chairman, Yang Arif Puan Suraiya binti Mustafa Kamal who had left the Industrial Court on transfer to other agency. Even though this case is heard by another Chairman, I have to prepare and deliver the Award for this matter according to Section 23(6) of the Industrial Relation Act 1967 provides that the Yang Di Pertuan Agong may appoint another person to carry out the duties of the Chairman due to the absence of a Chairman or inability to carry out the duties due to illness or other reason. This principle has also been decided by the Kuala Lumpur High Court in the case of **Sukdev Singh Pritam Sing v. Bax Global (Malaysia) Sdn Bhd [2009] 2 ILR 129** (Award No. 348 of 2009).

**[3]** Therefore, the Award written base on my reading, perusal and evaluation of the facts and evidence contained in the notes of proceedings prepared by the former Chairman, Yang Arif Puan Suraiya binti Mustafa Kamal and from the documents made available to me.

**[4]** This Court has considered the following cause papers and documents in handing down this Award, namely:

- (a) the Claimant's Statement of Case dated 16 July 2021;
- (b) the Bank's Statement in Reply dated 6 September 2021;
- (c) the Claimant's Rejoinder dated 8 October 2021;
- (d) the Claimant's Witness Statement (**Ahmad Khushairi bin Mohamed Nasser**) marked as "CLWS-1";
- (e) the Bank's Witness Statement (**Fauzi Pin**) marked as "COWS-1";
- (f) the Bank's Witness Statement (**Ahmad Shukri Abdul Rahman**) marked as "COWS-2";
- (g) the Bank's Witness Statement (**Nurul Shafiqah Zulkifli**) marked as "COWS-3";
- (h) the Bank's Witness Statement (**Shamsul Amril Ahmad Tajuddin Bukhari**) marked as "COWS-4";
- (i) the Bank's Witness Statement (**Syafawati Sanasi**) marked as "COWS-5";
- (j) the Bank's Witness Statement (**Mohd Aizat Shafiq Md Bakhari**) marked as "COWS-6";

- (k) the 1<sup>st</sup> Claimant's Bundle of Documents marked as "CLB-1";
- (l) the 2<sup>nd</sup> Claimant's Bundle of Documents marked as "CLB-2";
- (m) the 3<sup>rd</sup> Claimant's Bundle of Documents marked as "CLB-3";
- (n) the 4<sup>th</sup> Claimant's Bundle of Documents marked as "CLB-4";
- (o) the 5<sup>th</sup> Claimant's Bundle of Documents marked as "CLB-5";
- (p) the 6<sup>th</sup> Claimant's Bundle of Documents marked as "CLB-6";
- (q) the 7<sup>th</sup> Claimant's Bundle of Documents marked as "CLB-7";
- (r) the 8<sup>th</sup> Claimant's Bundle of Documents marked as "CLB-8";
- (s) the Claimant's Additional Bundle of Document marked as "CLB-9";
- (t) the Bank's Bundle of Document marked as "COB-1";
- (u) the 2<sup>nd</sup> Bank's Bundle of Document marked as "COB-2";
- (v) the 3<sup>rd</sup> Bank's Bundle of Document marked as "COB-3";
- (w) the 4<sup>th</sup> Bank's Bundle of Document marked as "COB-4";

### **Brief Facts of the Case**

**[5]** The Claimant joined Bank Kerjasama Rakyat Malaysia Berhad ("Bank") as an executive on 4 October 2010 at the Jelutong Branch in Penang on contractual basis.

**[6]** On 5 November 2011, the Claimant was confirmed as a permanent executive and was stationed in Jelutong Branch.

[7] The Claimant was promoted as the Head of Credit of Bayan Baru Branch on 1 November 2016 and then promoted to an Assistant Manager on 18 May 2018 also at Bayan Baru Branch.

[8] Vide letter dated 17 June 2019, the Claimant was appointed as the Head of the Bank's Auto Finance Centre in Seberang Jaya ("AFCSJ") effective from 1 July 2019.

[9] On 9 January 2020, the Branch Surveillance Management and Branch Operations Management released the report "Special Review on Auto Finance Centre (AFC) Seberang Jaya" on alleged non-compliances by the Claimant.

[10] On 7 February 2020, the Head of Industrial Relations emailed the FRIV pertaining a grievance letter dated 5 February 2020 from PEBARA on behalf of staff at AFCSJ who lodged complaints against the Claimant.

[11] On 9 February 2020, the FRIV visited the AFCSJ to conduct its investigation into the allegations raised against the Claimant.

[12] They had then prepared a draft report called the Branch Review and Compliance Report ("**Draft BOM Report**") listing down alleged shortcomings that were present in the branch's operations.

[13] The Bank issued the First Show Cause Letter (**1<sup>st</sup> SCL**) on 11 March 2020 to the Claimant on the alleged misconduct (**COB-1 pp. 16-18**). The Claimant was found guilty for the alleged misconduct and was denied a salary increment for the year 2020.

[14] The Bank's Branch Operation Management Department Review had triggered also an investigation by the Bank's Fraud Department. After conducting its investigation, the Bank's Fraud Department had prepared a report called the Fraud Investigation Report dated 9 September 2020 (**see COB-2 pp.97-118**).

[15] After considering other misconduct alleged to have been committed by the Claimant, the Bank had issued Show Cause Letter dated 26 August 2020 that was duly replied by the Claimant (**COB 1 pp. 50-101**).

[16] Subsequently pursuant to a Domestic Inquiry (DI) held on 24 September 2020, the Claimant's services were terminated vide a Letter of Termination dated 4 November 2020 (**COB-1 pp.110-112**).

[17] The Claimant's last drawn salary was RM8,616.00.

## **The Claimant's Case**

**[18]** In his Statement of Case, the Claimant avers the following:

- (i) The Claimant's dismissal from the service of the Bank was without just cause or excuse; and
  
- (ii) The Claimant's dismissal was unlawful and/or was tainted by unfair labour practices and with mala fide intent and/or capricious and arbitrary and/or not in accordance with established principles on industrial jurisprudence and were acts of victimization.

## **The Bank's Case**

**[19]** In its Statement in Reply, the Bank states the following:

- (a) the Claimant was given sufficient time to prepare his written submissions following the conclusions of the Domestic Inquiry;
  
- (b) there were non-compliances by the Claimant as Head of the Seberang Jaya Auto Finance Centre through the Branch

Surveillance Management & Branch operations Management's report, Special Review on Auto Finance Centre (AFC) Seberang Jaya dated 9.1.2020;

- (c) The Claimant was given sufficient time to study the amended charge;
- (d) The company had handled the disciplinary actions against the Claimant in line with the principles of natural justice and were not intended to demean the Claimant;
- (e) The routine internal audits on the Seberang Jaya Auto Finance Centre were based on random sampling which did not include the scope of the impugned fraudulent transactions in question;
- (f) The Claimant's subordinates Encik Syamsul Amri Ahmad Tajuddin Bukhari, Encik Azirulzaimi and Encik Mohd Aizat Shafiq Md Bakhari were also investigated accordingly to determine the commission of misconducts and the officers involved in the impugned fraudulent transactions;
- (g) The management had considered all governing facts, material evidence and explanations offered by the Claimant before reaching the decision to terminate the Claimant;
- (h) The Claimant had failed to discharge his duties and responsibilities expected of an employee at his level and position.



## The Law

### *Role and Function of the Industrial Court*

[20] Reference is made to the decision of the Federal Court in **Goon Kwee Phoy v. J & P Coats (M) Bhd** [1981] 2 MLJ 129 at page 136 where His Lordship Raja Azlan Shah, CJ (Malaya) (as His Royal Highness 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 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.*

(emphasis is this Court's)

[21] In ***Milan Auto Sdn Bhd v. Wong She Yen*** [1995] 4 CLJ 449, His Lordship Mohd Azmi bin Kamaruddin, FCJ explained the role of the Industrial Court under section 20 of the IRA as follows—

*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 is 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.*

(emphasis is this Court's)

### *Burden of Proof*

[22] It has been settled that in cases where the dismissal was caused by the employer, it is the employer that must discharge the burden of proof that the dismissal is with just cause and excuse. This long-settled principle was demonstrated in the case of ***Ireka Construction Berhad v. Chantiravathan Subramaniam James*** [1995] 2ILR 11 (Award No. 245 of 1995), wherein the Learned Chairman opined 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”.*

### *Standard of Proof*

[23] The onus or burden of proof is based on a standard of proof on the balance of probabilities as laid down by the Court of Appeal in ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor*** [2002] 3 CLJ 314 wherein His Lordship 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 *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*.

*(emphasis is this Court’s)*

## **Issues**

[24] The issues before this Court to determine are as follows:

- (a) Whether the misconduct complained of by the Bank had been established; and
- (b) Whether the proven misconduct constitutes just cause or excuse for the dismissal.

## **Evaluation of Evidence and Findings of the Court**

*Whether he misconduct complained of by the Bank had been established*

[25] The Claimant joined the Bank as an Executive on 4 October 2010. It is among, other the terms of the Claimant's appointment contract dated 1 September 2010 (**COB-1 pp 1-5**) were as follows:

**“Tuan hendaklah membaca, memahami serta patuh kepada dasar yang terkandung dalam Garis Panduan Am dan Garis Panduan Operasi, Peraturan Pejabat dan Peraturan Perkhidmatan yang bertulis atau amalan biasa yang dilaksanakan oleh Bank Rakyat kepada warga kerjanya dari masa ke semasa.”**

[26] The Claimant was then promoted to the Head of the AFCSJ on 1 July 2019. The terms of the Claimant's appointment as the Head of the AFCSJ were as follows:

“Sebagai Pengurus, tuan diperuntukkan kuasa untuk melulus Pembiayaan Runcit seperti yang digariskan di bawah **GPO Pembiayaan Bil. Polisi Perenggan 4.0**. Warga kerja yang dipertanggungjawabkan untuk meluluskan pembiayaan perlu mematuhi dan memberikan komitmen yang penuh dalam meluluskan pembiayaan mengikut jumlah kuasa melulus yang diperturunkan.”

[27] The Claimant had allegedly breach the Bank's Code of Business Conduct & Ethics and Disciplinary Policy & Procedures (**COB 3 pp 98 – 125**).

**[28]** All charges against the Claimant via Show Cause Letter dated 26 August 2020 was duly replied by the Claimant.

**[29]** The Domestic Inquiry was held on 24 September 2020. The Claimant was presented with the charges levelled against him and he was given the opportunity to defend himself.

**[30]** Vide letter dated 4 November 2020 (**COB-1 p 110**), the Claimant was informed that the management had found him guilty of the charges levelled against him as stated in the Show Cause Letter dated 26 August 2020. The said Show Cause Letter reproduced as follows:



4/INRL/20/2011219/SULIT  
26 Ogos 2020 / 7 Muharam 1442H

Encik Ahmad Khushairi Bin Mohamed Nasser  
Pengurus *Auto Finance Centre*, Seberang Jaya,  
Bank Rakyat

Tuan,

**SURAT TUNJUK SEBAB**

Perkara di atas dirujuk.

Tuan dilaporkan telah melakukan salah laku berat di bawah peruntukan Garis Panduan Am (GPA) Dasar Perkhidmatan Bil. 10, *Code of Business Conduct & Ethics, Disciplinary Policy & Procedures*, 20.2 Salah Laku Berat (yang telah dipinda dan berkuatkuasa pada 26 Mac 2018) :

- i. Bil. 27 "Terlibat dengan apa-apa perkara berkaitan frod dalam urusan perniagaan Bank atau semasa menjalankan tugas".
- ii. Bil. 30 "Memalsukan, mengubah atau meminda apa-apa rekod atau dokumen Bank untuk kepentingan peribadi atau tujuan lain"; dan
- iii. Bil.21 "Gagal mematuhi peruntukan berkenaan Sifat Profesionalisma Dan Akauntabiliti seperti yang telah ditetapkan dalam Kod Tatalaku Dan Etika Perniagaan)

Tuduhan salah laku adalah seperti berikut :

1. Tuan diantara 21 Ogos 2019 hingga 8 November 2019, semasa bertugas sebagai Ketua, *Auto Finance Centre (AFC) Seberang Jaya*, dikatakan telah terlibat dengan perkara berkaitan frod apabila telah meluluskan permohonan pembiayaan kenderaan pelanggan (An Naqlu 1) seperti di Jadual A di bawah dengan cara mengarahkan Encik Syamsul Amri Bin Ahmad Tajuddin Bukhari, Eksekutif Pembiayaan, AFC Seberang Jaya dan Encik Azirulzaimi Bin Azmi, mantan Ekekutif Kanan, AFC Seberang Jaya untuk melakukan pemalsuan terhadap dokumen *Vehicle Sales Invoice (VSI)* yang dikeluarkan oleh Syarikat Duaria Sdn. Bhd seperti berikut :
  - i. Meminda Harga Jualan Diluluskan Kerajaan (*Government Approved Selling Price*) dengan memasukkan Harga Pakej Aksesori (*accessory packages*), Harga Aksesori Tambahan Perodua (*Additional Perodua Accessories (APA)*), dan Kos Pemasangan (*Installation Cost*) untuk dijadikan sebagai Harga Jualan Diluluskan Kerajaan;

Perhubungan Perusahaan  
Tingkat 22, Menara 1, Menara Kembar Bank Rakyat, No. 33 Jalan Rakyat, KL Sentral 50470 Kuala Lumpur  
Tel: 03 26129500 Fax: 03 22722259



4/INRL/20/2011219/SULIT  
26 Ogos 2020 / 7 Muharam 1442H  
SURAT TUNJUK SEBAB

- ii. Menggunakan cop (*rubber stamp*) palsu di atas nama Syarikat Duaria Sdn. Bhd;
- iii. Menggunakan template *Vehicle Sales Invoice palsu* di atas nama Syarikat Duaria Sdn. Bhd;

JADUAL A

No.	Nama Pelanggan / No. Akaun (61-298-)	Tarikh Ketulusan Pembiayaan	Jumlah Pembiayaan Diluluskan (RM)	Jumlah kos yang tidak sepatutnya dibiayai oleh Bank	VSI (palsu) disediakan oleh	Pembiayaan Diluluskan oleh
1	Nurul Izatul Afzan Binti Ariffan / 003234-0	21.08.2019	43,000.00	<i>Other Accessories</i> : RM 5,017.96	Syamsul Amri Ahmad Tajuddin Bukhari	Ahmad Khushari Mohamed Nasser
2.	Mohamad Shahrul Fardeen Bin Mohamed Ashari / 003804-8	24.09.2019	35,000.00	<i>Additional Accessories</i> : RM 128.00  Kos Pemasangan : RM 21.20	Syamsul Amri Ahmad Tajuddin Bukhari	Ahmad Khushari Mohamed Nasser
3.	Raziah Binti Mohd Pauzi / 004150-1	10.10.2019	35,000.00	<i>Additional Accessories</i> : RM 281.40  Kos Pemasangan : RM 10.60	Syamsul Amri Ahmad Tajuddin Bukhari	Ahmad Khushari Mohamed Nasser
4.	Arteen Duangta A/P Arkhom / 004231-1	14.10.2019	53,700.00	<i>Other Accessories</i> : RM 3,287.97	Azirulzaimi Azmi	Azirulzaimi Azmi
5.	Mohd Kamal Bin Mohd Naplah / 004256-1	15.10.2019	40,000.00	<i>Other Accessories</i> : RM 4,180.06  <i>Additional Accessories</i> : RM 140.00	Azirulzaimi Azmi	Azirulzaimi Azmi
6.	Martinus Paulus / 004303-4	18.10.2019	35,800.00	<i>Other Accessories</i> : RM 7,787.59	Syamsul Amri Ahmad Tajuddin Bukhari	Ahmad Khushari Mohamed Nasser

Perhubungan Perusahaan  
Tingkat 22, Menara 1, Menara Kembar Bank Rakyat, No. 33 Jalan Rakyat, Kl. Sentral 50470 Kuala Lumpur  
Tel: 03 26129500 Fax: 03 22722269





4/INRL/20/2011219/SULIT  
26 Ogos 2020 / 7 Muharam 1442H  
SURAT TUNJUK SEBAB

No.	Nama Pelanggan / No. Akaun (81-298-)	Tarikh Kelulusan Pembiayaan	Jumlah Pembiayaan Diluluskan (RM)	Jumlah kos yang tidak sepatutnya dibiayai oleh Bank	VSI (palsu) disediakan oleh	Pembiayaan Diluluskan oleh
7.	Danny Goh Kau En / 004391-2	23.10.2019	41,900.00	<i>Additional Accessories</i> : RM 338.80  Kos Pemasangan : RM 21.20	Azirulzaimi Azmi	Ahmad Khushari Mohamed Nasser
8.	Nur Fatehah Binti Azmi	08.11.2019	48,000.00	<i>Additional Accessories</i> : RM 1,485.20  Kos Pemasangan : RM 84.80	Azirulzaimi Azmi	Ahmad Khushari Mohamed Nasser
	Jumlah		<u>332,400.00</u>	<u>22,784.78</u>		

2. Tuan juga di antara 21 Ogos 2019 hingga 8 November 2019, Tuan juga diantara 21 Ogos 2019 hingga 8 November 2019, semasa bertugas sebagai Ketua, *Auto Finance Centre (AFC)* Seberang Jaya, dikatakan gagal mematuhi peruntukan berkenaan *Sifat Profesionalisma Dan Akauntabiliti* apabila telah meluluskan permohonan pembiayaan kenderaan pelanggan (An Naqlu 1) seperti di Jadual B di bawah termasuk dengan perkara-perkara yang tidak dikira sebagai harga kenderaan seperti *Additional Accessories, Other Accessories* dan Kos Pemasangan.

Perkara ini telah menyebabkan pihak Bank telah mengalami kerugian sebanyak RM15,176.75 (Ringgit Malaysia: Lima Belas Ribu, Satu Ratus Tujuh Puluh Enam dan Sen Tujuh Puluh Lima) selepas terlebih biaya perkara-perkara yang tidak dikira sebagai harga kenderaan seperti *Additional Accessories, Other Accessories* dan Kos Pemasangan.

Perkara ini juga adalah bertentangan dengan :

Garis Panduan Operasi (GPO), Pembiayaan, Bil. 206 Sewa Beli Kenderaan-i An Naqlu 1, Perkara 2.8.2, Margin Pembiayaan, Para b. Harga Kenderaan Meliputi (antaranya) ix. Pakej Aksesori, Nota : *Melibatkan pakej aksesori standard atau pakej edisi khas yang dikeluarkan oleh pembuat/pengeluar kenderaan.*

Perhubungan Perusehaan  
Tingkat 22, Menara 1, Menara Kembar Bank Rakyat, No. 33 Jalan Rakyat, KL Sentral 50470 Kuala Lumpur  
Tel: 03 26129500 Fax: 03 22722259

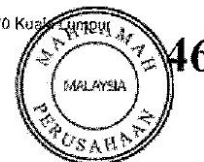


4/INRL/20/2011219/SULIT  
26 Ogos 2020 / 7 Muharam 1442H  
SURAT TUNJUK SEBAB

JADUAL B

No.	Nama Pelanggan / No. Akaun (61-298-)	Tarikh Kelulusan Pembiayaan	Jumlah Pembiayaan Diluluskan (RM)	Jumlah kos yang tidak sepatutnya dibiayai oleh Bank	VSI (palsu) disediakan oleh	Pembiayaan Diluluskan oleh
1	Nurul Izatul Afzan Binti Ariffan / 003234-0	21.08.2019	43,000.00	<i>Other Accessories :</i> RM 5,017.96	Syamsul Amri Ahmad Tajuddin Bukhari	Ahmad Khushari Mohamed Nasser
2.	Mohamad Shahrul Fardeen Bin Mohamed Ashari / 003804-8	24.09.2019	35,000.00	<i>Additional Accessories :</i> RM 128.00  Kos Pemasangan : RM 21.20	Syamsul Amri Ahmad Tajuddin Bukhari	Ahmad Khushari Mohamed Nasser
3.	Raziah Binti Mohd Pauzi / 004150-1	10.10.2019	35,000.00	<i>Additional Accessories :</i> RM 281.40  Kos Pemasangan : RM 10.60	Syamsul Amri Ahmad Tajuddin Bukhari	Ahmad Khushari Mohamed Nasser
4.	Martinus Paulus / 004303-4	18.10.2019	35,800.00	<i>Other Accessories :</i> RM 7,787.59	Syamsul Amri Ahmad Tajuddin Bukhari	Ahmad Khushari Mohamed Nasser
5.	Danny Goh Kau En / 004391-2	23.10.2019	41,900.00	<i>Additional Accessories :</i> RM 338.80  Kos Pemasangan : RM 21.20	Azirulzaimi Azmi	Ahmad Khushari Mohamed Nasser
6.	Nur Fatehah Binti Azmi	08.11.2019	48,000.00	<i>Additional Accessories :</i> RM 1,485.20  Kos Pemasangan : RM 84.80	Azirulzaimi Azmi	Ahmad Khushari Mohamed Nasser
<b>Jumlah</b>			<b>238,700.00</b>	<b>15,176.75</b>		

Perhubungan Perusahaan  
Tingkat 22, Menara 1, Menara Kembar Bank Rakyat, No. 33 Jalan Rakyat, KL Sentral 50470 Kuala Lumpur  
Tel: 03 26129600 Fax: 03 22722259



4/INRL/20/2011219/SULIT  
26 Ogos 2020 / 7 Muharam 1442H  
SURAT TUNJUK SEBAB

3. Tuan juga diantara 21 Ogos 2019 hingga 8 November 2019, semasa bertugas sebagai Ketua, *Auto Finance Centre (AFC)* Seberang Jaya, dikatakan gagal mematuhi peruntukan berkenaan dengan integriti apabila mengetahui dan membenarkan penggunaan cop palsu dan *template Vehicle Sales Invoice* palsu Syarikat Duaria Sdn. Bhd oleh Encik Syamsul Amri Bin Ahmad Tajuddin Bukhari, Eksekutif Pembiayaan, AFC Seberang Jaya dan Encik Azirulzaimi Bin Azmi bagi pelanggan-pelanggan seperti di Jadual A di atas.

Perkara di atas adalah bertentangan dengan *Code of Business Conduct & Ethics*, Seksyen 1.0 Integriti -Kita mengambil tindakan yang wajar, Perkara 1.1 Sifat Profesional dan Beratnggungjawab, iaitu :

*"Warga kerja hendaklah berkelakuan dan mengendalikan urusan sehariannya dengan penuh sikap profesional dan beretika dan tidak boleh bertolak ansur dari segi integriti, kebertanggungjawaban dan moraliti dalam menjalankan tugas mereka sebagai warga kerja Bank."*

Sehubungan itu, tuan dikehendaki memberi penjelasan bertulis dalam tempoh 7 hari dari tarikh surat ini berhubung perkara di atas. Sekiranya tuan gagal memberikan penjelasan di dalam tempoh yang ditetapkan, tuan akan dianggap sebagai tidak mempunyai sebab yang munasabah dan tindakan tata tertib yang sewajarnya akan diambil terhadap tuan.

Sila akui penerimaan surat ini dengan menandatangani akuan penerimaan yang disertakan.

Yang benar,

  
MOHAMAD KAMAL HANAFIAH ABDUL KARIM  
Ketua, Perhubungan Perusahaan

  
NOORZILAH ABDULLAH  
Ketua, Operasi-Modal Insan

S.k : Ketua Wilayah Kedah / Perlis / Pulau Pinang  
Ketua, Siasatan Frod  
Unit HRIT

mm..

Perhubungan Perusahaan  
Tingkat 22, Menara 1, Menara Kembar Bank Rakyat, No. 33 Jalan Rakyat, KL Sentral 50470 Kuala Lumpur  
Tel: 03 26129600 Fax: 03 22722259



[31] The Claimant being the Head of the AFCSJ should have vetted all loan agreements as guided by the Bank Guidelines. In this case, the Claimant was proven had approved VSIs which has been fabricated within his full knowledge.

[32] The Claimant during cross-examination had testified and confirmed as follows:

- (i) As an officer of the Bank, he must adhere to its rules, regulations and policies;
- (ii) He was the highest-ranking officer in the AFCSJ with a close-knit team of only 15 officers;
- (iii) As the Head of the AFCSJ, he was responsible to oversee the duties of his subordinates; and
- (iv) He was the officer responsible for the last inspection of loan documents such as the VSIs before approving the financing to be disbursed.

[33] The Claimant, as the most senior officer of the Bank in the AFCSJ was responsible to oversee the duties of subordinates in the AFCSJ and ensuring all the employees of the Bank will comply with the Bank's Guidelines, Rules and Procedure. In the case of ***NORKHAIRUL IZAM KASSIM v BANK MUAMALAT (M) BERHAD*** [2018] 2 LNS 0375 where

Y.A. Puan Jamhirah Ali held:

*“The employees in the banking industry are indeed required to uphold a higher standard of integrity in executing their duties and responsibilities. Every procedure, rule and SOP which were in place by the Company had its own objectives to ensure the Company’s interest, in particular; and the public at large were safeguard. As COW4 had explained in his evidence; it was the requirement of Bank Negara under the Anti Money Laundering and Counter Terrorism policy for the Bank’s officers to ascertain the identity of its customers; which the Claimant had failed to do so when he opened the savings account, without the presence of the customers. The Claimant’s misconduct could cause extensive loss and damages.”*

(emphasis is this Court’s)

### *Fiduciary Duty in the Banking Industry*

[34] It was submitted by the Bank that being the Head of the AFCSJ who holding a senior position of trust, the Claimant owed a duty to the Bank to be diligent in discharging his duties to protect its interest provided for in his employment contract, In the case of **JAGDISH SINGH GILL AMIR SINGH V BAYER CROPSCIENCE (M) SDN BHD** [2014] 1 ILJ 356, Y.A Anna Ng Fui Choo highlighted the need to hold employees in senior position of trust as follows:

*“The court has considered the gravity of the Claimant's misconduct which was not only a gross dereliction of his duties but that as a senior management employee of the Company, he had failed to discharge his duties and responsibilities expected of an employee at his level and position. The court is in accord with the Company's decision that the Claimant's dismissal was warranted and it was for a just cause or excuse”.*

(emphasis is this Court's)

[35] COW-2 testified that prior to the Claimant's dismissal, it was reported to the Bank's management that the Claimant as the Head of the AFCSJ had instructed his subordinates, namely **COW-4** and Azirulzaimi to fabricate **8** VSIs. These 8 VSIs prepared in such a manner to be purportedly issued by vehicle dealer known as Duaria Sdn Bhd to replace the genuine VSIs actually issued by Duaria Sdn Bhd to facilitate the financing disbursements.

[36] COW-2 further testified that the fabrication was done to hide the breakdown details of the additional accessories, other accessories and installation costs, which were not allowed to be financed under the **GPO**

**Pembiayaan 206 Sewa Beli Kenderaan-l An-Naqlu 1** Policies and Procedures (“**Guidelines**”). The said Guidelines reproduced as follows:

“Margin Pembiayaan

(a) Margin pembiayaan adalah seperti berikut:

Pembiayaan	Margin Pembiayaan Maksimum
RM300,000 dan ke bawah	Tidak melebihi 90%
Dari RM300,001 sehingga RM500,000	Tidak melebihi 80%
Lebih dari RM500,000	Tidak melebihi 75%

(b) Harga kenderaan meliputi

- (i) Harga kereta
- (ii) Sumbangan Takaful / premium Insuran (ditanggung oleh pelanggan sekiranya pembiayaan kenderaan dilindungi oleh insuran konvensional selaras dengan klausa 2.4.13)
- (iii) Duti eksais
- (iv) Tuntutan Hak Milik
- (v) Duti Jualan
- (vi) Plet Kenderaan
- (vii) Kos Pendaftaran / Pindah milik
- (viii) Cukai Jalan
- (ix) Pakej Aksesori

[37] It was the evidence of the Bank, the AFCSJ through Claimant had approved 6 out of 8 (**COB-2 p.107, Table (b)**) vehicle financing under *the Sewa Beli Kenderaan-I An-Naqlu 1* Facility as a whole total of **RM332,400-00**. The margin of financing approved by the Claimant, was calculated to be inclusive of accessories installation costs, additional accessories and other accessories amounting to **RM8,747-93** that were not allowed to be financed.

[38] This Court is of the view that the Claimant as the Head OF AFCSJ was fully aware of the ongoings in that Bank and now is not at liberty of pointing his fingers at his subordinates. The Claimant was clearly responsible for the good governance in the AFCSJ and should put a stop to the wrong practice upon his posting to AFCSJ. In **ADINOR MOHAMED YUNUS v MALAYAN BANKING BERHAD** (AWARD NO.: 606 / 2015), Y.A. Rajendran Nayagam pointed out that:

*“6. Finding*

*“In conclusion, the claimant as the Head of Structured Product Desk in the Treasury & Dealings Department owed a high duty of care to the bank in managing the CCS rollovers, after the initial terms sheets were concluded. Though this court acknowledges that 4 other employees had also played a role in this transaction*



*and had been punished by the bank but the major responsibility must be borne by the claimant, as he was heading the unit managing the rollovers. He does not have the liberty of pointing his fingers at others. I have carefully considered the 2 accusations against the claimant and his role in this matter and I find that the bank has proved that claimant had not discharged the high standard of care which was expected of him as a senior banker based on the substantial merits of the case and as such it is not surprising that the bank had lost its trust and confidence in him.”*

(emphasis is this Court’s)

#### *The Contradiction versions of COW-4 and COW-5*

**[39]** In relating to all charges against the Claimant, it was the Claimant’s contention that COW-4 and COW-5’s testimonies were inconsistent and contradicted one another in relation to the time that the Claimant had instructed them to falsify the VSIs. In this regard, COW-4 had confirmed that the Claimant had instructed him personally to falsify the VSIs at the morning meetings at the AFCSJ.

**[40]** COW-5 had testified that the Claimant’s instruction to fabricate the VSIs by COW-4 and Azirulzaimi given whenever certain financing files were presented to the Claimant. What was the exact time the instruction

took place is not as material as the inference that would be drawn that the Claimant had instructed COW-4 and COW-5 on separate occasions and not necessarily during morning meeting at AFCSJ.

**[41]** It is trite that the COW-5 corroborated the evidence of COW-4 that the Claimant had verbally instructed her to ensure that COW-4 and Azirulzaimi would amend the VSIs to remove the breakdown of prices of “*standard accessories*”, “*other accessories*”, “*additional accessories*” and “*installation cost*”.

**[42]** The Claimant contended that he could not have possibly instructed the falsification of the VSIs since the soft copies of the same had already existed in the AFCSJ before he commenced work there.

**[43]** It is clearly from the evidence of COW-4 and COW-5 that the soft copies of the VSIs had existed, but there was no amendment made to remove the breakdown of prices of “*standard accessories*”, “*other accessories*”, “*additional accessories*” and “*installation cost*” until the Claimant commenced his duties as Head of the AFSCJ in July 2019.

**[44]** Their testimonies were consistent and corroborated by the documentary evidence adduced in Court. Investigation Interview by FRIV

with one Puan Nurul Fahani Mohd Saad, had established that they were only using soft copy of the VSIs after the Claimant joined the AFCSJ and instructed them to do so.

*Whether the proven misconduct constitutes just cause or excuse for the dismissal.*

[45] This Court had referred to DI Minutes and found that the correct procedure was applied, The Claimant had been given the right to be informed of the misconduct alleged, an opportunity to reply and present his case.

[46] In the case of **HONG LEONG EQUIPMENT SDN BHD V LIEW FOOK CHUAN & OTHERS APPEALS** [1997] 1 CLJ 665 at p. 176 where the Court of Appeal decided as follows:

*“As a general rule, procedural fairness, which includes the giving of reasons for decision, must be extended to all cases where a fundamental liberty as guaranteed by the Federal Constitution is adversely affected in consequence of a decision taken by a public decision maker. In this case the Minister when refusing to refer representations in the exercise of his discretion under s. 20(3) of the Industrial Relations Act is reasonably expected to give reasons for his decision. This is because the decision he makes has an impact upon a fundamental right conferred by the*

*Federal Constitution”.*

**[47]** The fact that a domestic inquiry was held by the employer before dismissing the Claimant is an added value to the procedural fairness given to this Claimant.

**[48]** Having considered all the relevant facts, this Court is of the view that misconduct complained of by the bank was established. Based on factual matrix, there were ample grounds to find that the misconduct constituted just cause for the dismissal of the Claimant. Therefore, the Bank had discharged its burden of proving that the Claimant was terminated with just cause and excuse on a balance of probabilities.

#### *Disparity of Punishment*

**[49]** The Claimant is misconceived to state that COW-4 and COW-5 were the actual perpetrators of the falsified VSIs. Throughout the investigation and the trial, there was no evidence established that COW-5 had ever falsified any of the VSIs using the soft copy VSIs and therefore cannot be labelled as a “perpetrator”. The evidence clearly demonstrated that 8 VSIs were falsified by COW-4 and Azirulzaimi following the Claimant’s instructions.

[50] It was the Claimant's submission also that the Bank had chosen to retain the other employees who were the actual "perpetrators" in the fabrication of the eight VSIs and only the Claimant was dismissed.

[51] This Court has found that the Bank had already taken proper disciplinary action against COW-4 Azirulzaimi and COW-6 for their respective roles in fabrications of the VSIs on the Claimant's instruction. The Bank's management found COW-4 and Azirulzaimi not guilty of the charges leveled against them. Meanwhile COW-6 had been punished with no salary increment for the years 2021 and 2022.

[52] It is the Bank's submission which this Court agree that the punishment (or lack thereof) in respect of other individuals of the Bank is irrelevant to the present dispute before the Honourable Court. This very principle was illustrated by Raus Sharif FCJ in **RANJIT KAUR S GOPAL SINGH v HOTEL EXCELSIOR (M) SDN BHD [2010] 4 ILR 475** as follows:

*"All the above are the relevant matters which the Industrial Court had failed to take into consideration. Instead, it took into consideration other irrelevant matters. A clear example was when it took into account the fact that the respondent's action in*

*not taking action against another employee for a similar misconduct amounted to a display of double standard. With utmost respect, such conclusion is a clear error. As rightly pointed out by the learned High Court judge that such consideration was irrelevant as it was not for the appellant to question why the respondent as the employer should take disciplinary action against her and not another.”*

**[53]** Pursuant to DI’s decision, the Claimant vide a letter dated 4 November 2020 was terminated due to the finding of guilt as he had breached the Bank’s Code of Business Conduct & Ethics and Disciplinary Policy & Procedures (COB 3 pp 98-125). The letter dated 4 November 2020 is reproduced as follows:



4/INRL/20/2011219/SULIT  
4 November 2020 / 18 Rabiulawal 1442H

Encik Ahmad Khushairi Bin Mohamed Nasser  
Pengurus, di Cawangan Kulim,  
(Penempatan Sementara Cawangan Kulim)  
Bank Rakyat

Tuan,

**PER : KEPUTUSAN SIASATAN DALAMAN**

Surat Pertuduhan / Notis Siasatan Dalaman bertarikh 11 September 2020 dan Siasatan Dalaman ke atas tuan yang diadakan pada 24 September 2020 adalah dirujuk.

Panel Siasatan Dalaman mendapati tuan bersalah ke atas pertuduhan salah laku berat seperti yang dinyatakan di dalam surat pertuduhan (pindaan 24 September 2020). Salah laku tuan adalah bertentangan dengan Garis Panduan Am (GPA) Dasar Perkhidmatan Bil. 10, *Code of Business Conduct & Ethics, Disciplinary Policy & Procedures*, 20.2 Salah Laku Berat seperti berikut :

- i. Bil. 27 "Terlibat dengan apa-apa perkara berkaitan frod dalam urusan pemiagaan Bank atau semasa menjalankan tugas".
- ii. Bil. 30 "Memalsukan, mengubah atau meminda apa-apa rekod atau dokumen Bank untuk kepentingan peribadi atau tujuan lain"; dan
- iii. Bil.21 "Gagal mematuhi peruntukan berkenaan Sifat Profesionalisma Dan Akauntabiliti seperti yang telah ditetapkan dalam Kod Tatalaku Dan Etika Pemiagaan"

Jawatankuasa Tindakan Disiplin 1 (JTD 1) yang bermesyuarat pada 28 Oktober 2020 membuat keputusan tuan dijatuhkan hukuman **dibuang kerja**. Hukuman ini akan berkuatkuasa pada 5 November 2020.

Sekiranya tuan ingin membuat rayuan ke atas keputusan hukuman ini, tuan boleh mengemukakan permohonan rayuan secara bertulis kepada Jawatankuasa Rayuan melalui Ketua, Perhubungan Perusahaan dalam tempoh 14 hari dari tarikh surat ini diterima.

Sila tuan serahkan pas warga kerja dan semua hak milik Bank Rakyat yang berada di dalam simpanan tuan kepada Pengurus Cawangan Kulim dengan kadar segera.

Pihak Bank mengucapkan ribuan terima kasih di atas segala sumbangan yang telah tuan berikan semasa berkhidmat dengan Bank Rakyat.

Perhubungan Perusahaan  
Tingkat 22, Menara 1, Menara Kembar Bank Rakyat, No. 33 Jalan Rakyat, 50470 Kuala Lumpur  
Tel : 03-26129600 Fax : 03-22722259



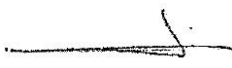
4/INRL/20/2011219/SULIT (V2)

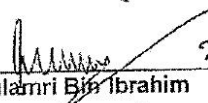
Adakah tuan mengaku bersalah?


Saya ~~mengaku bersalah~~ / mengaku tidak bersalah\*

Tandatangan :   
Ahmad Khushairi Bin Mohamed Nasser (Tertuduh)

Di hadapan Panel Siasatan Dalamam :

Tandatangan :   
Azni Bin Azaddin  
Ketua, Risiko Kewangan  
(Pengerusi)

Tandatangan :  24/9/2020  
Shaifulamri Bin Ibrahim  
Ketua, Pengurusan Kewangan  
(Panel 1)

Tandatangan :  24/9/2020  
Mohamad Sufian Mohd Yusof  
Ketua, Perbankan IKS & Mikro (Zon 1)  
(Ahli Panel 2)

\* Potong mana yang tidak berkenaan





## **Conclusion**

**[54]** The Claimant by approving the vehicle loan based on fabricated documents have committed act of serious misconduct which destroyed the trust and confidence that the Bank would have placed on him.

**[55]** Based on the evidence adduced through oral testimony as well as documentary evidence, the Court finds on the balance of probabilities that the company had proven the said alleged misconduct.

## **Conclusion**

**[56]** In conclusion, taking into account the totality of the evidence Based on the totality of the evidence and bearing in mind S. 30 (5) of the IRA 1967 to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form, this Court finds that the Bank on the balance of probabilities had proven that the Claimant was dismissed with just cause and excuse.

[57] Hence, the Claimant's case is dismissed.

**HANDED DOWN AND DATED THIS 22<sup>nd</sup> AUGUST 2023.**

*-SIGNED-*

**(RUSITA BINTI MD LAZIM)  
CHAIRMAN  
INDUSTRIAL COURT OF MALAYSIA  
PENANG**