

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO.: 21/4-631/22

BETWEEN

YUM KAN CHOONG

AND

RESORT VILLA GOLF COURSE BERHAD

AWARD NO.: 768 OF 2024

Before : **SYED NOH BIN SAID NAZIR @ SYED NADZIR
CHAIRMAN**

Venue : Industrial Court Malaysia, Kuala Lumpur

Date Of Reference: 02.03.2022.

Dates Of Mention : 14.04.2022; 08.06.2022; 05.07.2022; 26.07.2022;
10.08.2022; 25.08.2022; 05.03.2024.

Dates Of Hearing : 25.05.2023; 27.11.2023; 28.11.2023.

Representation : Pua Jun Wen
(together with her; Kam Sue Heng)
of Messrs Tay & Partners
Counsel for the Claimant

Amardeep Singh Toor
(together with him; Ashreyna Kaur Bhatia
of Messrs Lee Hishammuddin Allen & Gledhill
Counsel for the Company

REFERENCE

- [1] This is a reference made by the Director General of Industrial Relations Malaysia under Section 20(3) of the Industrial Relations Act 1967 (“the Act”) arising out of the dismissal of **Yum Kan Choong** (hereinafter referred to as “the Claimant”) by **Resort Villa Golf Course Berhad** (hereinafter referred to as “the Company”) on 06.08.2021.

SALIENT FACTS

- [2] The Claimant commenced employment at the Company’s Palm Garden Golf Club, IOI Resort City, 62502, Putrajaya effective 25.09.2014 (“Employment Contract”). The Claimant last held the position of Marketing Manager since 01.07.2019.
- [3] In October 2020, the Claimant purchased a standing thermometer for use by the Company (“1st Thermometer”). He subsequently submitted a claim and was duly reimbursed for it. The claim was supported by a tax invoice (“1st Invoice”).
- [4] In March 2021, the Claimant submitted another claim for the purchase of two more contactless thermometers with stand, a USB Cable and a Lithium battery for use by the Company (“2nd and 3rd Thermometers”).

This claim was also supported by a tax invoice (“2nd Invoice”). It is undisputed that both the 1st and 2nd Invoices were falsified and in fact created by the Claimant.

[5] On 05.05.2021, the Company issued the Claimant a letter seeking an explanation regarding the 1st and 2nd Invoices. The purpose was to provide the Claimant an opportunity to confess to his wrongdoings and to express remorse. When the letter was served on the Claimant, both CoW-1 and CoW-2 testified that:

- (a) he did not confess to his wrongdoings and instead denied that he had created/falsified the 1st and 2nd Invoices; and
- (b) he informed them that the 1st, 2nd, and 3rd Thermometers were purchased through a friend.

[6] On 19.05.2021, the Company received the Claimant's explanation. He continued to lie, claiming he had already provided all necessary documents to the Company. At this stage, the only documents which had been provided to the Company were the falsified 1st and 2nd Invoices. As such, he continued to deny wrongdoing and relied on the falsified documents.

The Show Cause letter

[7] On 21.05.2021, the Company issued a show cause letter (“Show Cause

Letter”) containing 2 allegations:

- (a) On 03.11.2020, the Claimant had submitted the 1st Invoice for the purchase of the 1st Thermometer and a lithium recharge cable battery at RM165.80 from NPI Accessories Sdn Bhd with the invoice No of IN091502 dated 27.10.2020. The 1st Thermometer had been received and he had been duly reimbursed for the first purchase of RM165.80.
- (b) On 18.03.2021, the Claimant submitted the 2nd Invoice for the purchase of the 2nd and 3rd Thermometers with stand, USB cable and lithium battery at RM330.00 from API Network Sdn Bhd with cash bill No. NP19563 dated 16.02.2021. This claim was still pending reimbursement.

[8] In the Show Cause Letter, the Company also expressly captured that the Claimant had lied that he purchased the 1st, 2nd, and 3rd Thermometers through a friend when the letter dated 05.05.2021 was served on him by CoW-1 and CoW-2.

[9] On 24.05.2021, the Company received the Claimant’s reply to the Show Cause Letter. In brief, he admitted that he had falsified the 1st and 2nd Invoices but attempted to raise various irrelevant matters such as his charity work etc., as a red herring to his dishonest conduct. He did not at any time deny that he had previously lied that he purchased the 1st, 2nd, and 3rd Thermometers through a friend when the letter dated 05.05.2021 was served on him by CoW-1 and CoW-2.

Notice of Domestic Inquiry

[10] On 26.07.2021, the Company issued a Notice of Domestic Inquiry (“Notice of Domestic Inquiry”) to the Claimant. The 3 charges made against him in the Notice of Domestic Inquiry are:

- (a) The Claimant was allegedly found to have defraud the Company by submitting claim for RM165.80 being payment for the items; (the 1st Thermometer & Stand – RM129.00), (one Infrared Stand – RM29.90) and (Lithium Rechargeable Battery – RM6.90) that was originally purchased by him earlier for his own personal interest.
- (b) The Claimant was allegedly found to have defraud the Company by submitting claim for RM330.00 being payment for the items; the 2nd and 3rd Thermometers with stand, USB Cable and Lit Battery that were purchased by him earlier for his own personal interest.
- (c) The Claimant was allegedly found to have falsified invoices to substantiate the above claim, to which he had admitted in his reply to the Show Cause Letter.
 - (i) NPI Accessories Sdn Bhd (867726-A), Tax Invoice No: IN091502 dated 27.10.2020 amounting of RM165.80.
 - (ii) API Network Sdn Bhd (8675-A), Cash bill no NP 19536 dated 16.02.2021 amounting of RM330.00.

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Termination of employment show

[11] The domestic inquiry panel subsequently found the Claimant guilty of all charges made against him. On 06.08.2021, the Company dismissed him with immediate effect premised on his serious acts of misconduct.

CLAIMANT'S SUBMISSIONS

[12] During the Company's daily operation briefing on 26.10.2020, the Company raised the need to replace the hand-held thermometer to a standing thermometer to reduce the requirement of manpower for the purposes of temperature screening. In view of the urgent need for such thermometer, the Claimant had immediately offered to pass his unused 1st Thermometer to the Company. In fact, the 1st Thermometer was purchased by the Claimant on 09.09.2020 at the price of RM155.30 (excluding the lithium rechargeable battery), through Lazada for his own charitable purposes. The Claimant states that he created the 1st invoice out of convenience and because he lost the receipt for the lithium rechargeable battery.

[13] For the 2nd allegation of misconduct, the Claimant averred that following the rising cases of COVID-19 around November 2020, the Company was in dire need of additional thermometers at two locations in the Company,

i.e. the Driving Range entrance and the Field Department entrance. The Claimant volunteered to purchase the 2nd and 3rd Thermometers on behalf of the Company. The Claimant had explained that the 2nd and 3rd Thermometers were purchased in November 2020 and December 2020 at the price of RM345.60. In fact, the 2nd and 3rd Thermometers were purchased between September to November 2020. The Claimant states that it is the Company's policy that any eligible claims must be submitted for reimbursement no later than three (3) months from the date of receipt. During the second Movement Control Order which took effect from January to February 2021, the Claimant was asked to work from home. As a result, the Claimant had forgotten to submit his claims for the 2nd and 3rd Thermometers within three (3) months from the date of receipt.

[14] The Claimant admitted to the allegations of creating invoices and apologised to the Company. The Claimant explained that he did not have any intention to defraud the Company. The Claimant further explained that his actions were done on the spur of the moment and out of desperation to be reimbursed for the cost he had personally incurred for the Company, as the three-month deadline to submit his claims had passed. The Claimant had shown his remorse for his actions at all material times.

[15] At the outset, the Claimant had unreservedly admitted to the allegations of creating invoices and he apologised to the Company on many occasions. The Claimant had no intention of cheating the Company and he had shown remorse for his conduct at all material times.

[16] The Claimant submits that the punishment of dismissal was not proportionate to the nature and gravity of the alleged misconduct committed by him. The Claimant further submits that the Claimant's dismissal was without just cause or excuse and/or was in clear breach of the principles of natural justice and/or was an unfair labour practice and/or an act of victimisation against the Claimant carried out by the Company capriciously with mala fide intentions.

CAUSE PAPERS, WITNESS STATEMENTS (together with a brief introduction of witnesses) AND OTHER DOCUMENTS

[17] This Court had considered the following documents that had been filed for the purpose of hearing as follows:

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Pleadings	Statement of Case dated 9.5.2022	SOC
	Statement in Reply dated 15.6.2022	SIR
	Rejoinder dated 10.7.2022	Rejoinder
Company's Documents	Bundle of Documents	COB-1
	Bundle of Documents (Volume 2)	COB-2
	Bundle of Documents (Volume 3A)	COB-3(a)
	Bundle of Documents (Volume 3B)	COB-3(b)
	Bundle of Documents (Volume 3C)	COB-3(c)
Claimant's Documents	Bundle of Documents	CLB-1

Company's Witness Statements	Mr Terence Lee Yeow Kong, Assistant General Manager in the Company.	CoWS-1
	Ms Juliet Rani A/P Joseph, former Assistant Manager, Human Resources in the Company	CoWS-2
Claimant's Witness Statement	The Claimant	CLWS-1

Written Submissions

- (i) Company's Written Submissions dated 02.02.2024.
- (ii) Company's Written Submissions In Reply dated 27.02.2024.
- (iii) Claimant's Written Submissions dated 02.02.2024.
- (iv) Claimant's Written Submissions In Reply dated 27.02.2024.

ROLE OF INDUSTRIAL COURT

[18] The role of the Industrial Court was lucidly explained by His Lordship Raja Azlan Shah CJ (Malaya) (as His Royal Highness then was) in a Federal Court Case of **Goon Kwee Phoy v. J & P Coats (M) Bhd. [1981] 1 LNS 30; [1981] 1 MLJ 129** at page 136 as follows:

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

[19] The appellate courts have recently, discussed and reiterated the role and function of the Industrial Court in determining cases referred to it pursuant to Section 20 of the Industrial Relations Act 1967. For instance, the Court of Appeal speaking through Justice Azizah Nawawi (JCA) in **INSTITUTE OF TECHNOLOGY PETRONAS SDN BHD / UNIVERSITI TEKNOLOGI PETRONAS V AMIRUL FAIRUZ BIN AHMAD (RAYUAN SIVIL NO.A-**

01(A)122-02/2020 made the following observation on the evolution of judicial pronouncements from historical perspective; as such:

“[30] It is trite law that the function of the Industrial Court in dismissal cases on a reference under section 20 of the Industrial Relations Act is twofold, first, 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 (see Milan Auto Sdn Bhd V. Wong Seh Yen [1995] 3 MLJ 537, FC). In other words, the Industrial Court will have to ascertain whether the Claimant had been dismissed, and if so, whether the dismissal was with or without just cause or excuse. Failure to determine these issues on the merits would be a jurisdictional error which would merit interference by certiorari by the High Court.”

Burden of proof

[20] It is trite that in a dismissal case, the burden of proof lies on the Company, as an employer, to prove, on a balance of probabilities that the Claimant’s dismissal was with just cause and excuse. In **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314**, the High Court held as follows:

“[2] Thus in hearing a claim of unjust dismissal, where the employee was dismissed on the basis of an alleged criminal offence such as theft of company property, the Industrial Court is not required to be satisfied beyond a reasonable doubt that such an offence was committed. The standard of proof applicable is the civil standard, i.e. proof on a balance of probabilities which is

flexible so that the degree of probability required is proportionate to the nature and gravity of the issue.”

Issues for Determination by this Court

[21] Since the Claimant’s termination is not in dispute, the issues to be determined by this Court are **[Milan Auto Sdn Bhd v Wong Seh Yen [1995] 3 MLJ 537]:**

- (a) 1st Question: Whether the Claimant had committed the acts of misconduct as alleged by the Company against him; and
- (b) 2nd Question: Whether, if this Court finds that the Claimant had committed the said acts of misconduct, the punishment of dismissal was warranted.

COURT’S FINDINGS AND EVALUATION

On 1st Question: Whether the Claimant Had Committed Misconduct

[22] The 1st Question is not in dispute. The Claimant admitted that he had falsified/created the 1st and 2nd Invoices to support his claims for the 1st 2nd, and 3rd Thermometers. Engaging in the fabrication or creation of invoices to support claims is unquestionably an act of misconduct. There is simply no room for plausible counterargument. There is a plethora of cases in which it was found that the submission of fabricated documents or the creation of false invoices to support a claim is a serious act of

misconduct which destroys the relationship of trust and confidence, as seen below:

(a) **Chong Voon Foo v Heineken Marketing Malaysia Sdn Bhd [2022] ILRU 1275 (“Heineken Marketing”)**:

The employee was dismissed for submitting falsified and/or fake receipts which were created by him to support his claims. The Industrial Court found the dismissal to be with just cause or excuse. In doing so, the Court found that the employee had violated the confidence and trust which the company had reposed in him and by submitting falsified receipts, he had failed to act faithfully to the company during his course of employment. The Court concluded that it was no longer appropriate for the employee to continue in his employment in a position which requires an honest and trustworthy employee.

(b) **Azraei Azaddin v Morac International Karting Circuit Sdn Bhd [2005] ILRU 1586**:

The employee was dismissed for submitting falsified receipts for the purpose of medical claims. The employee explained that he falsified the two receipts by using his name to put in a claim for medical expenses on behalf of a colleague. He had done so at the request of his colleague, as the said colleague was not eligible to claim medical expenses. The Industrial Court found the dismissal to be with just cause or excuse. In doing so, the Court found that the falsification of two medical receipts by the employee was a serious act of misconduct. **It was immaterial that the amounts were small. The employee’s job called for someone with the utmost integrity. He had breached the trust and confidence which had been reposed in him by the company.**

- (c) **Rozi Abdul Aziz v Hengyuan Refining Company Berhad [2018] ILRU 0937**: The employee was dismissed for submitting a falsified invoice by amending details on the said invoice. **The employee admitted that it was wrong to submit falsified claims and regretted having done so as a quick means to recover her other cash purchases from 2011 which she had not previously claimed back from the Company. The Industrial Court found the dismissal to be with just cause or excuse. In doing so, the Court found that the employee's contention that she had altered the said invoice to recover her previous out-of-pocket expenses for purchases she had made on behalf of the employer, cannot by any measure be accepted as a justification for her actions. The employee's act of falsifying a claim was not a minor misconduct which did not warrant a dismissal. The employee's dishonesty had undoubtedly destroyed the trust and confidence normally prevailing between employer and employee. To the Court's mind, the ends did not justify the fraudulent means.**

[23] This court is convinced that the 1st Question of whether the Claimant had committed acts of misconduct be answered in the affirmative.

On 2nd Question: Whether Punishment Of Dismissal Was Warranted

[24] It is implied in every contract of service that parties in an employment relationship shall not without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and

employee (**Bliss v South East Thames Regional Health Authority [1985] IRLR 308 C.A.**) cited in **Kenatex Sdn Bhd v Yong Gat Kee [1997] 3 ILR 796**

[25] Further, it is established that if an employer has reasonable grounds to dismiss an employee then the dismissal must be upheld by the Courts as fair; even though some other employers may not have dismissed him (**British Leyland UK Ltd v Swift [1981] IRLR 91**) followed by the Federal Court in **Norizan Bakar v Panzana Enterprise Sdn Bhd [2013] 4 ILR 477**)

[26] The issue of whether it was reasonable for an employer to dismiss an employee is contingent upon the seriousness of the employee's act(s) of misconduct [Heineken Marketing (supra)]:

"...[70] ... the Court is of the considered opinion that the issue of whether it was reasonable for the Company to dismiss the Claimants would depend on the seriousness of the Claimant's misconducts. The principle in the above cases is that if the Court is of the view that it was fair for the Company to dismiss a Claimant, the dismissal must be upheld as fair. It is the Industrial Court's subjective assessment of the facts of the case."

[27] Thus, it pertinent to determine whether the punishment of dismissal is proportionate to the acts of misconduct committed by the Claimant. The claimant submits in the negative on the reason that the company can

never be impacted by the claimant's act of misconduct even if proven. However, the evidence does not appear to support the claimant's case.

[28] The Claimant is a repeat offender; in that this is not a case of a one-off incident. The Claimant is an employee who resorts to dishonest means when purportedly faced with any problems, in this instance relating to claims for purchases. The 1st Invoice was created to support his claim for the 1st Thermometer in October 2020. The Claimant purports that he created the 1st Invoice as he had lost the receipt for the lithium battery he had purchased - the cost of which was only RM6.90. He was duly paid on 03.11.2020.

[29] He got away with his dishonest conduct, scot-free. In short, he used a dishonest method instead of being honest in his dealings with the Company. The Claimant admitted during cross examination that he *compromised his integrity and honesty as a Manager by creating the 1st Invoice because he "lost" or "could not find" the actual receipt for the lithium battery which cost RM6.90:*

AST : *You decided to compromise your integrity and honesty as a manager for RM6.90, Mr Yum, is that what you're telling this Court? That that is your value of your integrity, RM6.90. For RM6.90 you decided to create invoices, fake invoices using fake information, is that what you're telling this Court, correct?*

YKC : Yes

(NOP, 27.11.2023, Page 76, Lines 14-31)

[30] Next, the 2nd invoice was submitted in March 2021. This time, he purportedly created the 2nd Invoice because he had passed the 3- month deadline to submit claims to the Company. It must be observed that when faced with a problem, the claimant has the tendencies to overcome the obstacles by flouting the company's process i.e. by resorting to dishonest means. Instead of being honest with the Company, he chose, yet again, to be dishonest in his dealings with the Company. He therefore created the 2nd Invoice. The Claimant conceded during cross-examination that when creating the 2nd Invoice, he decided to "re-cheat" the Company instead of being honest with the Company,

[31] Surely no employer could reasonably be expected to trust an employee, let alone a manager, who would compromise his integrity and honesty for a mere several ringgits and cents. It would defy all sense for the Company to be expected to retain an employee who consciously resorts to dishonest means repeatedly to resolve problems - with the issue of the Claimant's integrity and honesty now being at the forefront of the Company's mind **[Telekom Research and Development v Ahmad Farid Abdul Rahman [2021] 1 LNS 1711 (COA) ("Telekom Research")]**.

[32] In fact, the Claimant himself admits that any employer dealing with an employee like him would no longer be able to repose the necessary trust

and confidence during cross examination (**NOP, 28.11.2023, Page 14, Lines 10-18**). Based on the Claimant's admission alone, i.e. that any employer faced with an employee like him would no longer be able to repose the necessary trust and confidence in him, the punishment of dismissal must be seen as appropriate and proportionate.

[33] An employee who exhibits dishonesty or a lack of integrity, the trust and confidence reposed in him by his or her employer can no longer subsist **[Universiti Teknologi Petronas v Amirul Fairuz Ahmad [2023] 1 LNS 222 (COA)**. In **Foong Jenny v White Cafe Sdn Bhd [2022] 2 LNS 2178**, the Industrial Court held that dismissal was a proportionate punishment as the relationship of trust and confidence between the employer and employee was destroyed by the employee's acts of misconduct which contained elements of dishonesty. It was held that the amount of monetary loss, though insignificant to the employer, was not the primary issue in the case. It was held:

“[80] The Company did not sustain any financial losses, as the Project was put on hold pending compliance with "internal CER process" and that the whole tendering process will be restarted anyway. The Claimant's dismissal was due to her breaches of the Code, and was not due to any financial losses sustained by the Company. The issue of whether the Company had suffered any financial losses is irrelevant as the lack of financial loss does not permit an infringement of the Code. There is no burden on the employer to prove that the employee had committed the misconduct with malicious

intent or even establish for certain the alleged misconduct caused the Company financial loss or a dent in its reputation and prestige. ...

[96] In the context of procurement, which demands nothing but the highest ethical standards from the relevant personnel, it is of utmost importance that the company is able to repose trust and confident in the claimant. As an employee of the company, it is the utmost duties and responsibilities of the claimant to act in the best interest of the company at all times of her employment.

[97] Such a failure is a breach of the express and implied terms of employment, mutual trust and confidence of the company towards its employees. Given the series of gross misconduct and the nature of the misconduct, there is no way the company can have any confidence and trust in the claimant by reason of the employee's dishonesty, the amount of monetary loss though insignificant to the company is not the primary issue in this case. The relationship of trust and confident has been destroyed by the claimant's gross misconduct.

[98] The court is of the considered view that no reasonable employer would in this case have retained the claimants in her employment after being found guilty of the said charges, regardless that they could have been given a warning instead. The company had lost its trust and confidence in the claimant due to the serious nature of the misconduct levelled against her. It is no longer appropriate for the claimant to continue in the employment of the company in that position which

requires an honest and trustworthy employee. The company was right in taking into account to dismiss the claimant upon her gross misconduct which is a clear breach of the claimant's duties and obligations to the company.”

[34] In **Southern Bank v Azmi Ali [2003] 1 ILR 614**, the employee was dismissed for submitting a false claim of RM18.00 when the actual amount in question was RM15.60. The Industrial Court (presided by now Justice Datuk Lau Bee Lan) found that it was clear that the employee had premeditated to "cheat" the bank, and the negligible amount involved was immaterial. Since the misconduct had marred the trust and confidence the bank had in the employee, the punishment of dismissal was appropriate.

[35] In **Esso Malaysia Bhd v Chiang Lick Teck [2003] 2 ILR 716; [2003] 2 MELR 39 (“Chiang Lick Teck”)**, the Industrial Court, in holding that the dismissal of the employee was for just cause and excuse, specifically took judicial notice of the fact that had the employee not been found out by his employer and told to stop, that perhaps the employee would have continued making claims in breach of the company policy.

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IOI Group’s Code of Conduct and Business Ethics – IOI Core Value (“Code of Conduct”) on Honesty and integrity

[36] In the IOI Group’s Code of Conduct and Business Ethics – IOI Core Value (“Code of Conduct”), the Executive Vice Chairman expressly stresses that “...it is of utmost importance that integrity is weaved into the fabric of our daily operations and is cast as the core foundation of our business” **(Pg 21, COB-1)**. In fact, trust is pivotal to the Company’s vision and mission with integrity being its most important core value **(COB-1, Page 21 and 22)**.

[37] Honesty and integrity form the cornerstone of employment contracts. A breach of the same is considered serious and warranting dismissal **[Muniandy Ayasamy v Intel Technology Sdn Bhd & 1 Or [2023] MLJU 743 (HC); Tan Poh Thiam v Nestle Products Sdn Bhd [2009] 9 CLJ 504 (HC)]**. It is undisputed that the Company took issues of honesty and integrity very seriously.

[38] On the evidence, the Claimant admitted during cross-examination that he was well aware of the importance of honesty and integrity in the Company as seen below:

- (a) He admitted that honesty and integrity were important values in the Company pursuant to the IOI Group’s Code of Conduct and Business Ethics – IOI Core Value on Integrity

(“Code of Conduct”). **(NOP, Tab B, 27.11.2023, Page 40, Lines 10-13)**

- (b) He admitted that employees are expressly informed to never falsify documents. **(COB-1, Page 28); (NOP, 27.11.2023, Page 53, Lines 30-35)**
- (c) He admitted that as a manager with 7 years’ service with the Company, the Claimant was aware of the importance of maintaining honesty and integrity at all times in the Company. **(NOP, Tab B, 27.11.2023, Page 40, Lines 15-19)**

[39] On or around the time he submitted the falsified invoices i.e., late October, the Company had a department town hall meeting on the IOI Core Values as a refresher regarding the core values of integrity and trust. **(NOP, 27.11.2023, Pages 40-41, Lines 26-36; 1-14); (CoWS-2, Q&A6 & Q&A8)**. Ironically, during one of these refresher sessions, the Claimant had even given a presentation to other Heads of Department on the importance of integrity and trust. He admitted the following during cross-examination:

- (a) On 3.11.2020, he had attended a department town hall meeting on the IOI Core Values which covered the core values of integrity and trust. **(NOP, 27.11.2023, Pages 40-41, Lines 26-36; 1-14)**
- (b) He had presented the IOI Core Values which covered the core values of integrity and trust to the Heads of Department in the Company. **(NOP, 27.11.2023, Pages 41-42, Lines 22-37; 2-24)**
- (c) He had sent a subsequent email to employees of the Company to incorporate the new email footer carrying the tagline,

“Building Trust And Inspiring Lives.” **(NOP, 27.11.2023, Pages 42, Lines 31-37)**

[40] This court observes that notwithstanding the aforesaid findings, the Claimant made the conscious decision to proceed with his dishonest practices. In **Marini Mohd Said v Sime Darby Property Berhad [2020] ILRU 0111**, the employee had acted in breach of the employer’s Code of Business Conduct and Core Values on Integrity by falsifying and/or fabricating approval papers and/or allowing the falsifying and/or fabricating the approval papers to deceive the company that the employee had not approved the salary adjustment and incentive payment of RM1,000 for himself and/or with an intention to conceal the fact that the employee had in fact approved the salary adjustment and incentive payment of RM1,000 for himself. The Industrial Court found the dismissal to be with just cause or excuse.

[41] The Court took into account that the conduct of the employee constituted a misconduct of concealment of the truth which went against the interest of the company, which warranted the punishment of dismissal. In the instant case, this court is satisfied that the Company cannot be expected to continue the employment of any employee who breached the Code of Conduct. It is the Claimant's conduct that is reprehensible – thereby undermining the Company's trust and confidence in him.

[42] Further, having been employed with the Company for approximately 7 years, the Claimant ought to have acted in line with the Code of Conduct, which places an unwavering emphasis on the values of honesty and integrity. The fact that the employee was a long-serving employee indicates that he must be aware of the company's policies and the need for strict compliance and adherence thereto. By the claimant's misconduct, the company can no longer repose its trust and confidence in him (see **Kenatex Sdn Bhd v Yong Gat Kee [1997] 3 ILR 796**).

[43] In **Said Dharmalingam Abdullah v Malayan Breweries (Malaya) Sdn Bhd [1997] 1 CLJ 646**, the Supreme Court, in upholding the employee's dismissal, took into account that the misconduct involved the element of dishonesty and a high degree of premeditation and preparation. The Claimant held a managerial position. The Claimant occupied a managerial role in the Company, which the Claimant himself admitted in cross -examination. It is settled that any employee in a managerial position has a higher duty and responsibility to be honest with his dealings **[Tai Lai Mun v Heineken Malaysia Berhad/ Heineken Marketing Malaysia Sdn Bhd [2020] 2 LNS 0744]**.

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The Claimant has not demonstrated true remorse

[44] Contrary to the evidence, the Claimant failed to demonstrate true remorse for his wrongdoings, as he proffered excuse after excuse for his acts of misconduct, and blatantly lied to the Company on 2 occasions when he was given the chance to own up to his wrongdoings.

[45] CoW-1 and CoW-2 provided corroborative testimony in their respective witness statements that on 05.05.2021, when the Company served a letter seeking an explanation with regard to the 1st and 2nd Invoices to the Claimant, the Claimant denied that he had created/falsified the 1st and 2nd Invoices and verbally informed CoW-1 and CoW-2 that the 1st, 2nd, and 3rd Thermometers were purchased through a friend.

[46] The purpose was to provide the Claimant an opportunity to confess to his wrongdoing, if any. Apart from the corroborative evidence above, the Claimant's lie that he had purportedly purchased the thermometers from a friend, was captured in the Show Cause Letter : **(Page 80, COB-1)**. The Claimant never once disputed that he had informed CoW-1 and CoW-2 that the thermometer was purchased through a friend. He confirmed the same during cross-examination as seen below:

“AST Now, if you look at page 80, the paragraph below No.2, the third last line, sorry, fourth. Starting with the word, “Subsequently”, so the fifth last line on that paragraph. “Subsequently, management

also noted that during your conversation with Mr Terence and Ms Juliet on the 5th of May, you mentioned that you purchased it through a friend.” Do you see that?

YKC Yes.

AST Right. Now, you never once wrote to the Company and say, this statement is not true. Correct?

YKC I didn’t know I need to write a statement back to the Company.

AST Ok, you didn’t, it’s fine. But in your reply to the show cause letter also, which is page 82, here also, you never once told the Company that what is captured in your show cause letter is wrong because on the 5th of May, I never told Ms Juliet and Mr Terence. No such thing like that is captured. Correct? (COB-1, Page 80)

YKC I didn’t know that I need to capture over here.

AST Ok. Didn’t know. My question was, is just not there, right?

YKC Yes.”

[47] In a nutshell, the Claimant admitted in cross-examination that he did not admit to his wrongdoing on 5.5.2021 when first confronted by the Company:

“AST Yes. See, just, my question is very direct. I just wanted to know that you have not shown remorse. So, until the 5th of May when this letter is issued to you, the Company has given you a chance to show your wrongdoing, you have not admitted. Correct?

YKC Yes, Yang Arif.”

[48] In the Claimant’s written response to the Company, the Claimant provided Lazada print-screens as proof of the “pricing of each item”

purchased by the Claimant. The Claimant later admitted in cross - examination that the Lazada printouts did not reflect the actual price of the thermometers and batteries purchased –serving instead as an “example” of the market price. Nowhere in his letter of explanation dated 18.5.2021 did he ever provide an indication that the Lazada printouts were an example. In fact, the Claimant was propagating his lies at this stage by also arrogantly informing the Company that he was unable to provide further details as he had “*submitted all relevant documents and information when [he] submitted his claim*” and that “*since [he] ordered these items from the internet [he was] not privy to the information requested of [him]*”. At this stage only falsified documents were provided by the Claimant to the Company. As such, he continued to place reliance on falsified documents.

Whether punishment of dismissal proportionate

[49] This court is of the views that the answer is in the affirmative, and is guided by the following cases. In the case of **Chan Siew Choo v. Manulife Insurance (Malaysia) Berhad [2010] 2 LNS 0074 (Award No. 74 of 2010)** the Industrial Court held as follows:-

“BR Ghaiye in his text ‘Misconduct in Employment’ had this to say:-

Any breach of an express or implied duty on the part of employee unless it be a trifling nature, would amount to

misconduct. In Pearce v. Foster [1886] (17) QBD 536, Lord Esher MR observed:-

The rule of law that where a person has entered into the position of servant, if he does anything incompatible with the due and faithful discharge of his duty to his master, the latter has the right to dismiss. The relation of master and servant implies necessary that the servant shall be in a position to perform his duty and faithfully, and if by his own act be prevent himself from doing so, the master may dismiss him.”

And Lopes LJ in the same case stated:-

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal.”

[50] In the case of Zainol Zakaria v. UEM Builders Berhad [2019] 2 LNS 2695) the Industrial Court held thus in considering the importance of carrying out his duties and responsibilities and behaving contrary to the terms of employment:

“[113] It is the considered view of this Court that the Claimant had conducted himself in a manner that was contrary to the express and/or implied terms and conditions of employment and/or which was repugnant to the continuation of the same. He unfortunately had abused the responsibility bestowed upon him to undertake his duties with care, prudence and diligence, and Claimant's actions had completely eroded and shattered the trust and confidence reposed upon him by the Company. In the circumstances no reasonable employer, in a similar situation, would want to keep such an employee in its continued employment. (See the cases of Pantas Cerah Sdn

Bhd v. Lau Boon Seng [1999] 3 ILR 216 (Award No. 596 of 1999); SGSThomsom Microelectronics Sdn Bhd, Muar v. Ibrahim Ahmad 66 [1997] 3 ILR 1123 (Award No. 606 of 1997); and HK Ananda Travel (Malaysia) Sdn Bhd v. Khor Seng Kear [2003] 3 ILR 1280 (Award No. 761 of 2003)). Accordingly, the Court is of the considered view that the Claimant's misconducts were serious enough to warrant his dismissal."

OTHER POINTS RAISED BY THE CLAIMANT

(a) Defective disciplinary process

[51] It is trite that the hearing before the Industrial Court should be taken as sufficient opportunity for the employee to be heard to satisfy natural justice and thereby cure any defects in a domestic inquiry **Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Industrial Court of Malaysia [1988] 1 CLJ 1 ("Dreamland")**. As such, any purported defect is therefore irrelevant. The Claimant is yet again clutching at straws and nit-picking in an attempt to strengthen his submission that the punishment of dismissal was disproportionate.

[52] There is no merit in the Claimant's submission that his termination was tainted with mala fide intention as the Company had 'expanded' two allegations of misconduct in the Show Cause Letter into three charges in the Notice of Domestic Inquiry. The position as it stands is clear. It is an employer's prerogative to prefer any number of charges against an

employee for the purposes of a domestic inquiry as it deems proper. There is no prohibition to increase the number of charges to include newly found irregularities and can be included in the notice of domestic inquiry, so long as the charges were prepared in advance before the domestic inquiry and the Claimant was given the opportunity to respond to the new charges **Malayan Banking Bhd v Warsa Mohamed Bakar [2004] 3 ILR 999**.

[53] In **John Joseph Fernandez v Mestari Adjusters Sdn Bhd [2016] 1 ILR 521**, the Industrial Court held that the allegation that the domestic inquiry was defective as it was not based on the charge in the show cause letter, was baseless as the substance of the show cause letter and the charge against the employee were essentially the same and no prejudice was shown to have occasioned as a result of the so called differences in the contents of the charge against him in the domestic inquiry and in the show cause letter.

[54] In **Ahmad Rasly Haji Osman v Padiberas Nasional Berhad [2015] 1 LNS 1427**, the High Court held among others, that where the charges stated in the domestic inquiry notice are proven, it is of no consequences that the charges stated in the show cause letter and the domestic inquiry notice differed. Ravinthran Paramaguru J cited the Federal Court case of *Goon Kwee Phoy v J & P Coats (M) Bhd [1981] 2 MLJ :*

“... 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. The Industrial Court in this case examined the charges stated in the DI notice and found that 2nd charge was proven. In the premises, it is of no consequences that the charges stated in the show cause letter and the DI notice differed ...”

(b) The Comments Raised by the Prosecuting Officer

[55] This court also found that the Claimant’s submission that the Prosecuting Officer, one Ms Lee Ai Ming (“Prosecuting Officer”) made a “few remarks” regarding the allegations of misconduct against the Claimant does not hold water. In his submissions, the Claimant submits that she purportedly indicated, amongst others, that (i) the Claimant's act of volunteering to purchase the thermometers for the Company was good and the Company's management would appreciate such conduct; (ii) the claim amounts for the thermometers were reasonable which was hard to attain as it was at the height of the pandemic; and (iii) it was also confirmed that the Company was still using the Thermometers purchased by the Claimant and the Company did not suffer any losses.

[56] This court found that the claimant’s submission tantamount to cherry-picking the comments raised by the Prosecuting Officer, in an attempt to paint a portrait of an aggrieved employee wronged by the Company. The

full extract of the Prosecuting Officer's remarks are found in the company's bundle **(Page 114, COB-1)**. This was conceded by the Claimant during cross -examination as seen below:

“AST Disagree. He can read certain parts. Certain parts are not very clear. Can you confirm that the prosecutor actually said very clearly your act of dishonesty cannot be accepted by the management? Correct?”

YKC Yes, correct.

AST Correct. So, she did say that. And when you cannot accept, I have to ask you this. Yang Arif, just a further question. When you cannot accept something, isn't the prosecutor saying that this employee should be dismissed? It's serious misconduct? That's what she's saying. We cannot accept misconduct. Correct? She's not saying what you have done is for the good of the company, therefore we can let him go. Therefore, you should not find him guilty. Correct? She never said that. Mr Yum?

YKC Yes. ...

AST Yes. In your witness statement you have said, during the DI, the prosecutor has said one, two, three. Right? But you very casually forgot four which is the prosecutor said this conduct cannot be accepted. So, now, I have taken you to the document, to the minutes of the domestic inquiry and showed you actually what the said is your conduct cannot be accepted. Now, having seen that the prosecutor actually said your conduct cannot be accepted, can you now agree with me that what the prosecutor said was you did indeed commit misconduct and that cannot be accepted by the management? Correct?

YKC Correct. Yes.”

[57] The Claimant's reliance on the remarks made by the Prosecuting Officer therefore is a desperate action that failed to serve any assistance to controvert that the punishment of dismissal was proportionate in the circumstances.

DECISION

[58] Based on the above facts and authorities, this court is convinced that the punishment of dismissal against the Claimant was proportionate to the nature and gravity of the misconduct committed by the claimant. It follows that the Claimant's dismissal was with just cause and excuse.

CONCLUSION

[59] In conclusion, based on the facts and circumstances of the present case in its entirety and the evidence adduced by both parties in the proceedings and upon hearing the testimonies of the witnesses and considering the respective written submissions, this Court is of the considered view that the Company had successfully proved on the balance of probabilities that the Claimant had committed the misconduct as in both charges. The Company had acted fairly and reasonably when terminating the Claimant which is proportionate in the circumstances.

This court found that it was a considered decision by the company that ought not to be interfered with by this court.

[60] The company had proved on the balance of probabilities that the Claimant's termination was in parallel with established principles in respect of dismissal with just cause or excuse.

[61] Having considered the evidence as produced by both parties in totality, and bearing in mind the provision in Section 30(5) of the Industrial Relation Act 1967 by which virtue the Court shall act according to equity, good conscience and the substantial merit of the case without regard to technicalities and legal form, this Court has no hesitation to order that the Claimant's case be hereby dismissed.

HANDED DOWN AND DATED THIS 30TH MAY 2024

~Signed~

(SYED NOH BIN SAID NAZIR @ SYED NADZIR)

CHAIRMAN

INDUSTRIAL COURT OF MALAYSIA

KUALA LUMPUR