

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO: 4/4-945/24

BETWEEN

ZURINA BINTI OTHMAN

AND

BANK PERTANIAN MALAYSIA BERHAD

AWARD NO: 1491 OF 2025

<u>BEFORE</u>	: Y.A. TUAN AUGUSTINE ANTHONY CHAIRMAN
<u>VENUE</u>	: Industrial Court Malaysia, Kuala Lumpur.
<u>DATE OF REFERENCE</u>	: 09.07.2024.
<u>DATE OF RECEIPT OF REFERENCE</u>	: 11.07.2024.
<u>DATES OF MENTION</u>	: 15.08.2024, 14.10.2024, 26.11.2024, 17.02.2025 & 02.09.2025.
<u>DATE OF HEARING</u>	: 19.06.2025.
<u>REPRESENTATION</u>	: Mr Deepak Mahadevan and Puan Faeza Suraya Roselan of Messrs Azmi Fadzly Maha & Sim – Counsel for the Claimant : Encik Shariffullah Majeed and Puan Nurul Aisyah Hassan of Messrs Lee

THE REFERENCE:

This is a reference dated 09.07.2024 by the Director General of the Department of Industrial Relations, Ministry of Human Resources pursuant to section 20(3) of the Industrial Relations Act 1967 (“The Act”) arising out of the alleged dismissal of **ZURINA BINTI OTHMAN** (Claimant) by **BANK PERTANIAN MALAYSIA BERHAD** (Bank) on the 06.01.2024.

AWARD

[1] Pursuant to the directions of this Court, the parties in this matter filed their respective submissions dated 04.08.2025 (Claimant’s written submissions), 04.08.2025 (Bank’s written submissions) 02.09.2025 (Claimant’s written submissions in reply) and (Bank’s written submissions in reply) 02.09.2025.

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

- (i) The Claimant’s Statement of Case dated 05.09.2024;

- (ii) The Bank's Statement in Reply dated 26.09.2024;
- (iii) The Claimant's Rejoinder dated 10.10.2024;
- (iv) The Claimant's Bundle of Documents – CLB1 and CLB2;
- (v) The Bank's Bundle of Documents – COB1 and COB2;
- (vi) The Claimant's Witness Statement – CLW – WS (Puan Zurina Binti Othman);
- (vii) The Bank's Witness Statement – COW-WS (Dato' Tengku Ahmad Badli Shah bin Raja Hussin);

INTRODUCTION

[3] The dispute before this Court relates to the claim by Zurina Binti Othman ("Claimant") that she was dismissed from her employment without just cause or excuse by Bank Pertanian Malaysia Berhad ("the Bank") on the 06.01.2024.

[4] The Bank is a development financial institution under the purview of the Ministry of Finance Incorporated (MOF) and its financing of the agriculture sector is guided by policies determined by the Ministry of Agriculture and Agro Based Industries. The Bank is a Government linked Company (GLC).

[5] By a service agreement dated 29.10.2019, the Claimant was appointed as the Bank's Chief Credit Officer for a fixed term period of 2 years commencing on the 06.01.2020 to 05.01.2022. The Claimant's fixed term contract of employment was renewed for another fixed term period of 2 years commencing from the 07.01.2022 to the 06.01.2024 by a second service agreement dated 07.01.2022.

[6] On 29.11.2023, the Bank notified the Claimant that her second service agreement will expire on the 07.01.2024 and that her last day of service with the Bank will be on the 06.01.2024. Thereafter there was no further renewal of the Claimant's contract of employment by the Bank. Dissatisfied with the Bank's treatment of the Claimant and in not offering the Claimant further renewal of her contract of employment, the Claimant now states that she was a permanent employee of the Bank and that the fixed term contracts of employment signed by her were permanent contract of employment disguised as fixed term contract of employment to defeat her security of tenure.

[7] The Claimant believes that her fixed term contracts of employment were not renewed because the Bank was unhappy with her alleged conduct as the chairman of Disciplinary Review Committee in not adhering to the Board of Directors mandate in deliberating and deciding

on charges of misconduct against certain other employees. The Claimant states that her position is also central to the Bank's operation and this key role continues to exist in the Bank. The Claimant now states that she was dismissed from her employment without just cause or excuse and prays that she be reinstated to her former position in the Bank without any loss of wages and other benefits.

[8] The Bank however denies the Claimant's allegation that the expiration of her fixed terms contract of employment was in any way connected to the conduct of the Claimant in deliberating and deciding on charges of misconduct against certain other employees and states that the Claimant's fixed term contract of employment expired pursuant to the terms of the service agreement. The Bank maintains that the Claimant's fixed term contracts of employment were genuine fixed term contract of employment that had come to an end through effluxion of time. The Bank denies dismissing the Claimant and prays that the Claimant's case be dismissed.

[9] The Claimant gave evidence under oath and remained the sole witness for her case. The Bank's sole witness COW (YM Dato' Tengku Ahmad Badli Shah Raja Husin) gave evidence on behalf of the Bank and testified on the employment history of the Claimant, the nature and terms

of the Claimant's employment contract, the nature and terms of other employees including the Claimant holding the senior management position known as C-Suite position and the reasons for the cessation of the Claimant contract of employment.

THE CLAIMANT'S CASE

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

- (i) By way of a service agreement dated 29.10.2019, the Claimant was appointed as Chief Credit Officer (CCO) of the Bank for a term of two years from 06.01.2020 to 05.01.2022 with a monthly salary of RM21,200.00 per month and was also given other allowances;
- (ii) Upon expiry, the Claimant's contract of employment was successfully renewed for another 2 year period by another service agreement dated 07.01.2022 from 07.01.2022 to 06.01.2024 as the CCO of the Bank;
- (iii) By the second service agreement, the Claimant was given a salary increment to RM27,000.00 per month with other allowances remaining unchanged;

- (iv) The CCO position is one of the most important role in the Bank and was just one level below the President/Chief Executive Officer (P/CEO) of the Bank. The Claimant's position is also central to the Bank's operation and this key role continues to exist in the Bank;
- (v) At all material times the Claimant performed her duties well meeting the Bank's expectation and there were no issues of any misconduct or poor performance;
- (vi) On the 11.10.2023, the Claimant was handed a letter seeking the Claimant's explanation which amongst other alleged that the Claimant as the chairman of Disciplinary Committee Review (DRC) did not adhere to the Board of Director's (BOD) mandate on the DRC deliberation on certain employees of the Bank;
- (vii) The Claimant responded to the Company's letter seeking explanation by denying and giving justification for her action by the 25.10.2023;

- (viii) Thereafter the Bank did respond to the Claimant's response and the matter was treated as adequately responded by the Claimant;
- (ix) Thereafter the Bank issued a letter to the Claimant on the 29.11.2023 informing the Claimant the her employment contract will end on the 06.01.2024 and there will be no further renewal of the Claimant's contract of employment;
- (x) The Claimant believes that the Bank did not renew her contract of employment due to the issues and allegations raised in the Bank's letter titled "letter of explanation" dated 10.10.2023;
- (xi) The Claimant now states that from the beginning of her employment, her contracts of employment were successively renewed by the Bank and in view of that she was a permanent employee of the Bank;
- (xii) The Claimant states that the cessation of her employment was colourable exercise to dismiss the Claimant and as such

it amounts to a dismissal of the Claimant without just cause or excuse;

(xiii) The Claimant now states that she was victimised by the Bank and her termination was done in haste, in bad faith and without just cause or excuse;

(xiv) The Claimant now prays that she be reinstated to her former position in the Bank without any loss of wages and other benefits.

THE BANK'S CASE

[11] The Bank's case can be summarised as follows:-

(i) The Bank states that it is a development financial institution under the purview of the Ministry of Finance Incorporated (MOF) and its financing of the agriculture sector is guided by policies determined by the Ministry of Agriculture and Agro Based Industries. It is a Government linked Company;

(ii) The Bank does not dispute the two service agreements as stated by the Claimant giving rise to an employer employee relationship between the Claimant and the Bank;

- (iii) The Bank states that there are 8 positions in the Bank which include the Claimant as the CCO who are employees in the C-Suite positions and all C-Suite positions in the Company are employed on fixed term contracts of employment;
- (iv) There is nothing in the fixed terms contract of employment offered to the Claimant that guarantees continued employment beyond the 2 year contract period unless a written agreement is mutually agreed by the parties, entered into and signed;
- (v) As such the Bank denies that the Claimant was a permanent employee of the Company with the legitimate expectation to continue working with the security of tenure enjoyed by permanent employees;
- (vi) The Bank admits that by way of a letter titled "letter of explanation" dated 10.10.2023, the Claimant was asked to explain why disciplinary action should not be taken against her for her failure to adhere to the BOD's mandate;

- (vii) The Bank however denies that the letter of explanation issued to the Claimant was the reason for the non renewal of the Claimant's contract.
- (viii) The Bank maintains that the reason for the cessation of the Claimant's employment was solely due to clause 3 of the second service agreement which was mutually agreed and accepted by the Claimant and Bank;
- (ix) The Bank states that at no time the Claimant had ever objected to any of the terms and conditions as set out in the second service agreement including the Claimant's period of employment as stipulated in clause 3 of the said service agreement;
- (x) As the Bank has decided not to renew the Claimant's fixed term contract of employment, in line with the terms and conditions of the second service agreement, on the 29.11.2023, the Bank notified the Claimant that her second fixed term contract of employment will expire on the 06.01.2024 as agreed by the parties;

- (xi) The Bank by the same letter dated 29.11.2023, notified the Claimant that her last day of service with the Bank will end on the 06.01.2024 thereby giving the Claimant ample notice as stipulated in the service agreement;
- (xii) The Bank now states that the Claimant's two service agreements with the Bank constitutes genuine fixed term contracts of employment and the Claimant by signing and accepting the same was fully aware of her employment under genuine fixed term contracts of employment;
- (xiii) The Bank states that the Claimant's second genuine fixed term contract of employment had come to an end through effluxion of time;
- (xiv) The Bank states that it did not victimise the Claimant at any time, did not act in bad faith and did not engage in any unfair labour practices;
- (xv) The Bank denies dismissing the Claimant as the Claimant's contract of employment has expired without more and as

such the allegation of dismissal of the Claimant without just cause or excuse does not arise;

(xvi) The Bank prays that the Claimant's case be dismissed.

THE LAW

Role and function of the Industrial Court

[12] The role of the Industrial Court under section 20 of the Industrial Relations Act 1967 is succinctly explained in the case of ***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 ...”*

[13] 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 Bhd and Another Appeal [1995] 3 CLJ 344 where in delivering the judgment of the court Mohd Azmi FCJ said (at p. 352):

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”

[14] 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

[15] Whenever a Company has 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.*

Burden of Proof in cases where the dismissal of the workman from employment is disputed by the Company.

[16] The case of ***Weltex Knitwear Industries Sdn. Bhd. v Law Kar Toy & Anor (1998) 1 LNS 258/ 91998) 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 Justice 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).

[17] In view of the above case and based on a dispute between the parties here on whether the Claimant's contracts of employment were genuine fixed term contracts of employment or otherwise and where the Company denies dismissing the Claimant from her employment, it is now incumbent upon the Claimant to prove her case that she was indeed dismissed by the Company from her employment. The burden of proof thus had now shifted to the Claimant to prove that she has been dismissed by the Company from her 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

[18] 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.”

Issues to be decided by this Court

[19] The issues to be decided by this Court are :-

- (i) whether the fixed term contracts of employment between the Claimant and the Company were genuine fixed term employment contracts;
- (ii) and if so, whether the last fixed term employment contract had come to its natural end by effluxion of time;
- (iii) In the event (i) and (ii) is answered in the negative whether there was a dismissal of the Claimant from her employment and whether that dismissal amounts to one without just cause or excuse.

The Law on Genuine Fixed Term Contract

[20] The primary duty of this Court when dealing with the issue of whether an employment contract is a genuine fixed term employment contract was clearly stated in the case of ***M Vasagam Muthusamy v. Kesatuan Pekerja-Pekerja Resorts World, Pahang & Anor [2003] 5 CLJ 448*** where his lordship Justice Faiza Tamby Chik J had opined :-

"The applicant contended that the Industrial Court had not applied the correct test in making its decision by first asking itself whether there was a dismissal and secondly that if there was a dismissal, whether the dismissal was with just cause or excuse. I am of the opinion that the Industrial Court had correctly

addressed the issue in this case by determining first whether or not the contract in question was a genuine fixed term contract (see pp. 3 and 4 of the said award). If the Industrial Court made a finding that it was not a genuine fixed term contract but was really a contract of employment, then only would the Industrial Court be required to ask whether there was a dismissal or not and that if so whether it was with just cause or excuse. In the instant case, since a finding was reached that the contract concerned was indeed a genuine fixed term contract, the question of there being a dismissal or not does not arise. Once it was established that there is a genuine fixed term contract, the dissolution of the contract upon reaching the expiry date of the fixed term would clearly spell the end of the worker's tenure with the relevant company."

[21] His lordship Justice Abdul Kadir Sulaiman JCA delivering the judgment of the Court of Appeal in the case of ***M Vasagam Muthusamy [(supra) (2005) 4 CLJ 93]*** further explained the consequence of the non renewal of a genuine fixed term contract of employment in the following manner :-

"Having analysed the evidence before him, at p. 450, the learned chairman of the second respondent came to this conclusion:

That being the case, that it was a genuine fixed term contract of employment, in normal circumstances such a contract automatically comes to an end of itself, in the absence of express renewal. In normal parlance, there is neither a resignation nor a termination and the letter of notice not to renew the Claimant's

contract in exhibit CLA-30 was not a letter of termination. It was simply a letter of non-renewal.

The learned Chairman of the second respondent found that the appellant's contract of employment with the first respondent was a genuine fixed term contract and therefore the first respondent has a right to not renew the said contract upon expiry. This is a pure finding of facts based on the evidence before it.....”

[22] Having stated the primary duty of this Court to determine whether the Claimant was employed under genuine fixed term contracts of employment that had come to an end through effluxion of time or otherwise, it is now incumbent upon this Court to make a finding of fact on whether the Claimant's contracts of employment with the Company were genuine fixed term contracts of employment. Only upon deciding on this primary issue will this Court go further to determine on the other issues of whether there was a dismissal and a dismissal without just cause or excuse.

EVALUATION OF EVIDENCE AND THE FINDINGS OF THIS COURT

[23] In determining whether an employment contract is a genuine fixed term contract of employment or a permanent contract of employment disguised as a fixed term contract of employment, this Court is guided by

the principles set out by his lordship Justice Mohd Zawawi Salleh FCJ in the Federal Court case of **Ahmad Zahri Mirza Abdul Hamid v AIMS Cyberjaya Sdn. Bhd.(2020) 6 CLJ 557** wherein his lordship opined :-

“[55] The judicial treatment regarding the question of whether an employer had a genuine need for the service of an employee for a fixed duration may be divided into three consideration points:

(i) The intention of parties (see Han Chiang High School/Penang Han Chiang Associated Chinese School Association v. National Union of Teachers in Independent Schools, West Malaysia & Industrial Court of Malaysia [1990] 1 ILR 473, Hasni Hassan & Ors v. Menteri Sumber Manusia & Anor [2013] 6 CLJ 74);

(ii) Employers' subsequent conduct during the course of employment (see Innoprise Corporation Sdn Bhd, Sabah v. Sukumaran Vanugopal [1993] 1 ILR 373B, Sime UEP Development Sdn Bhd v. Chu Sh Poi [1996] 1 ILR 256, Malaysia Airlines Bhd v. Michael Ng Liang Kok [2000] 3 ILR 179, Holiday Villages of Malaysia Sdn Bhd v. Mohd Zaizam Mustafa [2006] ILRU 0812; [2006] 2 LNS 0812); and

(iii) Nature of the employer's business and the nature of work which an employee is engaged to perform (see Audrey Yeoh Peng Hoon v. Financial Mediation Bureau [2015] 3 ILR 371, Charles Aseervatham Abdullah v. The Zenith Hotel Sdn Bhd [2018] ILRU 2349; [2018] 2 LNS 2349).”

[24] This Court will therefore consider the intention of the parties namely the Claimant and the Bank when entering into the contracts of employment of the Claimant, the Bank's subsequent conduct during the course of employment of the Claimant and the nature of the Bank's business and the nature of work which the Claimant was engaged to perform.

[25] It is common knowledge and this Court takes judicial notice that the Bank is a development financial institution under the purview of the Ministry of Finance Incorporated (MOF) and its financing of the agriculture sector is guided by policies determined by the Ministry of Agriculture and Agro Based Industries as stated by the Bank's witness, COW. It is also common knowledge that the Bank is a Government linked Company (GLC).

[26] COW gave evidence that the Claimant entered into a service agreement dated 29.10.2019 for a fixed term contract of employment which commenced from the 06.01.2020 to 05.01.2022 as the CCO of the Bank. Having considered the evidence of this witness, this Court had also considered the evidence of the Claimant and the terms and conditions of the service agreement dated 29.10.2019. It is apparent that at the time of signing this service agreement dated 29.10.2019, the

Claimant was fully aware that the Bank had made it very clear to her that this service agreement was meant as a fixed term contract for a period of two years and nothing more. The intention of the parties entering into this service agreement is well captured in clause 3 and 29(a) of the service agreement wherein the Claimant recognised and accepted the employment pursuant to this service agreement for a fixed term period of two years. The Claimant in recognising, accepting and signing this service agreement did not raise any objections and commenced employment with the Bank as the CCO. For all intent and purposes, this Court upon considering all the evidence before this Court is of the view that the Claimant was fully aware that she commenced employment with the Bank pursuant to a genuine fixed term contract of employment.

[27] The duration of the fixed term contract of employment under the service agreement dated 29.10.2019 came to an end on the 05.01.2022. Prior to the expiration of the service agreement dated 29.10.2019, the Bank notified the Claimant that her fixed term contract of employment will be renewed by way of a letter dated 06.09.2021. However the Bank made it clear with no uncertain terms that the terms and conditions of the renewal shall be read together as stipulated in the service agreement dated 07.01.2022 which is to be signed by the Claimant on the 07.01.2022, one day after the expiration of the Claimant's service

agreement dated 29.10.2019. The Claimant then signed another service agreement on the 07.01.2022 after a break in the Claimant's employment with the Bank wherein by the service agreement dated 29.10.2019, her fixed term contract of employment expired on the 05.01.2022.

[28] The evidence before this Court is clear in that the Claimant accepted without any objection and protest the employment as the CCO of the Bank for a further period of 2 years effective 07.01.2022 by another service agreement dated 07.01.2022 and this service agreement even stipulated an attractive salary increment of RM27,000.00 per month, a steep increase from the previous service agreement. Clause 3 of this service agreement makes it abundantly clear that the parties fully understood that this new contract of employment is also on a fixed term contract basis.

[29] Having considered all the evidence before this Court, it is amply clear that when the parties entered into the first service agreement on the 29.10.2019, the intention of the parties were unmistakeable and clear. The Claimant and the Bank were fully aware that the Claimant's contract of employment was for a fixed term period only. The subsequent conduct of the Bank further fortified this Court's believe that

the Claimant's contract of employment was a fixed term contract of employment as the Bank in offering a renewal of the fixed term contract made it very clear to the Claimant that again the Claimant was only given another fixed term contract of employment as captured in the second service agreement dated 07.01.2022 which was entered into after a break in the Claimant's employment.

[30] This Court has also considered the nature of the Bank's business and that this nature of the Bank's business is closely connected to its status as a GLC.

[31] In the case of ***Azman Shah Mohamed v Malaysia Airports Holdings Berhad (2025) ILRU 0857***, this Court had the opportunity to make observation on the status of senior management employees of GLCs and opined :-

“[24] This Court will therefore consider the intention of the parties in entering into the contract of employment, employer's subsequent conduct during the course of employment and nature of the employer's business and the nature of work which an employee is engaged to perform.

[25] The Company's witnesses gave evidence on matters touching on the national policy initiated in 2004 by the government of Malaysia involving the GLCs. It was their evidence that in 2004 the transformation of the GLCs was

identified as a national priority and various initiatives were put in place to transform the GLCs into high performance entities as seen in the Blue Book. Amongst other one of the guidelines set was that all members of the senior management at GLCs also known as employees at the C-Suite/KMP level be employed under fixed term contracts of employment.”

[32] Similarly in the present case before this Court, the Claimant is fully aware that she was employed by GLCs and knows full well what is expected of her pursuant to her contract of employment. COW also testified that there are other senior management employees apart from the Claimant also known as C-Suites employees and all their contracts of employment are on a fixed term basis including COW's contract of employment.

[33] Based on all the above it is unmistakable that the Claimant's two fixed term contracts of employment for a period of four years cumulatively are genuine fixed term contract of employment. The benefits enjoyed by the Claimant including the amount of salary increase as seen in the second service agreement and the various allowances are all clear proof that the Claimant was an employee under a genuine fixed term contract of employment as oppose to permanent employees of the Bank. The terms and conditions of both the service agreement

also do not have specific provisions for retirement from service that is common in all contracts of employment of permanent employees.

[34] This Court now finds that the words used in the two service agreements dated 29.10.2019 and 07.01.2022 respectively between the Claimant and the Bank were plain and unambiguous and clearly shows that the two fixed term contracts of employment were genuine fixed terms contracts of employment and in light of all the evidence it is clear that it was the intention of the parties namely the Claimant and the Bank at the material time that these contracts were indeed to be construed, recognised and accepted as genuine fixed terms contracts of employment and not otherwise and this Court must respect the intention of the parties at the time of entering into these two genuine fixed term contracts of employment . This Court finds support for this finding made herein by referring to the instructive passages in the judgment of his lordship Justice Gopal Sri Ram JCA in the Court of Appeal case of ***Datuk Yap Pak Leong v Sababumi (Sandakan) Sdn. Bhd. (1997) 1 CLJ 23*** :-

“That the role of the Court in upholding agreements adverted to by Lord Wright is not confined to documents drafted by laymen and includes those prepared by lawyers was recognised by Gibbs J (as he then was) in

Australian Broadcasting Commission v. Australasian Performing Right Association Ltd. [1973] 129 CLR 99. He said (at p. 109):

*It is trite law that the primary duty of a Court in construing a written contract is to endeavour to discover the intention of the parties from the words of the instrument in which the contract is embodied. Of course the whole of the instrument has to be considered, since the meaning of any one part of it may be revealed by other parts and the words of every clause must if possible be construed so as to render them all harmonious one with another. **If the words used are unambiguous the Court must give effect to them, notwithstanding that the result may appear capricious or unreasonable, and notwithstanding that it may be guessed or suspected that the parties intended something different. The Court has no power to remake or amend a contract for the purpose of avoiding a result which is considered to be inconvenient or unjust.***

We find the opinion expressed by Gibbs J in the foregoing passage to coincide with what we apprehend to be the true legal principles that govern the interpretation of contracts. For that reason we would gratefully adopt his honour's views as our own.

It boils down to this. Where a contract is couched in unambiguous language, the Court must give effect to it. But where the terms of a contract are ambiguous then the Court may imply a term in order to uphold the transaction. See, Luggage Distributors (m) Sdn Bhd V. Tan Hor Teng & Anor. [1995] 3 CLJ 520."

[35] Having stated the above this Court is also mindful of the testimony of the Claimant that she believes that the Bank did not renew her contract of employment due to the issues and allegations raised in the Bank's letter titled "letter of explanation" dated 10.10.2023 sent to the Claimant and that she was victimised by the Bank due to the allegations levelled against her though she had adequately explained it all. Despite being mindful of the Claimant's testimony, this Court is of the view that the evidence of COW is convincing enough to this Court that the Claimant's second fixed term contract of employment coming to an end on the 06.01.2024 without any further renewal has no connection or relevance at all to the Bank's letter of explanation sent to the Claimant seeking her response. This Court is not convinced with the Claimant's testimony that she was terminated from her employment more so in haste and in bad faith.

[36] Having considered all the facts of this case, the intention of the parties at the time of entering into the contract, the subsequent conduct of the Bank and the nature of the Bank's business and the evidence of the Claimant and the Bank's witness as a whole, this Court must come to a conclusion that the Claimant's contracts of employment for a specific duration of time were genuine fixed term contracts of

employment, the last of which has come to an end through the effluxion of time on the 06.01.2024. The Claimant's contention that she was dismissed from her employment must therefore fail.

[37] Pursuant to Section 30(5) of "The Act" and guided by the principles of equity, good conscience and substantial merits of the case without regard to technicalities and legal forms and after having considered the totality of the facts of the case, the evidence adduced and by reasons of the established principles of industrial relations and disputes as stated above, this Court finds that the Claimant had failed to prove on the balance of probabilities that she was dismissed from her employment with the Bank and as such the issue of dismissal of the Claimant without just cause or excuse does not arise and need not be determined by this Court.

[38] The Claimant's claims against the Bank hereby dismissed.

HANDED DOWN AND DATED THIS 23rd DAY OF SEPTEMBER 2025

-Signed-
(AUGUSTINE ANTHONY)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
KUALA LUMPUR